

## NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

### NOTICE OF FINAL RULEMAKING

#### TITLE 20. COMMERCE, BANKING, AND INSURANCE

#### CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

#### PREAMBLE

**1. Sections Affected**

R20-5-629  
R20-5-630  
R20-5-631  
R20-5-632  
R20-5-633  
R20-5-634  
R20-5-635  
R20-5-636  
R20-5-637  
R20-5-638  
R20-5-639  
R20-5-640  
R20-5-641  
R20-5-642  
R20-5-643  
R20-5-644  
R20-5-645

**Rulemaking Action**

New Section  
Repealed  
Repealed  
Repealed  
Repealed  
Repealed  
Repealed  
Repealed  
Repealed  
Repealed  
Repealed  
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Repealed  
Repealed  
Repealed

**2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 23-405(4)

Implementing statute: A.R.S. § 23-410

**3. The effective date of the rules:**

December 21, 2001

**4. A list of all previous notices appearing in the register addressing the Proposed Rule:**

Notice of Rulemaking Docket Opening: 7 A.A.R. 1564, April 13, 2001

Notice of Proposed Rulemaking: 7 A.A.R. 1614, April 20, 2001

**5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Patrick Ryan, Assistant Director

Address: Division of Occupational Safety and Health  
Industrial Commission of Arizona  
800 West Washington, Suite 203  
Phoenix, AZ 85007

Telephone: (602) 542-1695

Fax: (602) 542-1614

E-mail: Pat.ryan@osha.gov

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**6. An explanation of the rule, including the agency's reasons for initiating the rule:**

On January 19, 2001 the Department of Labor and the Occupational Safety and Health Administration (OSHA) revised its rules for the recording and reporting of occupational injury and illnesses. The Arizona Division of Occupational Safety and Health (ADOSH) must promulgate recording and reporting requirements that are substantially the same as those in 29 CFR 1904. Therefore, the Division of Occupational Safety and Health incorporates by reference the 29 CFR 1904, occupational injury and illness recording and reporting requirements. The rulemaking package also eliminates the current requirements for recording and reporting occupational injuries and illnesses, now listed in R20-5-630 through R20-5-645.

The goal for revising the occupational injury and illness recording and reporting requirements is to improve the quality of workplace injury and illness records. The records have several important purposes, and higher quality records will better serve those purposes. The Division of Occupational Safety and Health also believes that an improved recordkeeping system will raise employer awareness of workplace hazards and help employers and employees use and analyze these records more effectively. In revising its recordkeeping rule, the Division also hopes to reduce underreporting and to remove obstacles to complete and accurate reporting by employers and employees.

**7. A reference to any study that the agency relied on in its evaluation of or justification for the rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

None

**8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**9. The summary of the economic, small business, and consumer impact:**

The Arizona Division of Occupational Safety and Health has determined that these revisions to the occupational injury and illness recording and reporting requirements will have minimal to modest impact for most affected industry groups and has determined the revisions to be economically feasible for all industries including small business. Cost and benefit analysis of these amendments is available for inspection, review, and copying at the Industrial Commission of Arizona, Division of Occupational Safety and Health, 800 West Washington, Phoenix, Arizona 85007.

**10. A description of the changes between the proposed rules, including supplemental notices and final rules (if applicable):**

Various technical and grammatical changes were made at the suggestion of G.R.R.C. staff.

**11. A summary of the principal comments and the agency response to them:**

No comments, either oral or written, were received.

**12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable

**13. Incorporation by reference and its location in the rules:**

29 CFR 1904, *Occupational Injury and Illness Recording and Reporting Requirements*. This incorporation by reference will appear in A.A.C. R20-5-629.

**14. Was this rule previously made as an emergency rule?**

No

**15. The full text of the rule follows:**

**Title 20. COMMERCE, BANKING, AND INSURANCE**

**CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**

**ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH CONSTRUCTION STANDARDS**

Section

- R20-5-629. ~~Reserved~~ The Occupational Injury and Illness Recording and Reporting Requirements, 29 CFR 1904
- R20-5-630. ~~Definitions~~ Repealed
- R20-5-631. ~~Log of Occupational Injuries and Illnesses~~ Repealed
- R20-5-632. ~~Period Covered~~ Repealed
- R20-5-633. ~~Supplementary Record~~ Repealed
- R20-5-634. ~~Annual Summary~~ Repealed
- R20-5-635. ~~Retention of Records~~ Repealed
- R20-5-636. ~~Access to Records~~ Repealed
- R20-5-637. ~~Reporting of Fatality or Multiple Hospitalization Accidents~~ Repealed

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- R20-5-638. ~~Failure to Keep Records or Reports Repealed~~
- R20-5-639. ~~Change of Ownership Repealed~~
- R20-5-640. ~~Petitions for Recordkeeping Exceptions Repealed~~
- R20-5-641. ~~Employees not in Fixed Establishments Repealed~~
- R20-5-642. ~~Small Employers Repealed~~
- R20-5-643. ~~Description of Statistical Program Repealed~~
- R20-5-644. ~~Duties of Employers Repealed~~
- R20-5-645. ~~Effects of State Plans Repealed~~

**ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH CONSTRUCTION STANDARDS**

**R20-5-629. ~~Reserved The Occupational Injury and Illness Recording and Reporting Requirements, 29 CFR 1904.~~**

~~All employers, both public and private shall comply with the Occupational Injury and Illness Recording and Reporting Requirements, in 29 CFR 1904, published January 19, 2001, incorporated by reference and on file with the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments. Copies of the referenced materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402.~~

**R20-5-630. ~~Definitions Repealed~~**

- ~~A. "Act" means the Arizona Occupational Safety and Health Act of 1972, Arizona Revised Statutes, Title 23, Chapter 2, Article 10.~~
- ~~B. The definitions and interpretations contained in A.R.S. § 23-401 of the Act shall be applicable to such terms when used in rules R20-5-630 through R20-5-646.~~
- ~~C. "Recordable occupational injuries" are any occupational injuries or illnesses which result in:
  - 1. Fatalities, regardless of the time between the injury and death, or the length of the illness; or
  - 2. Lost workday cases, other than fatalities, that result in lost workdays; or
  - 3. Nonfatal cases without lost workdays which result in transfer to another job or termination of employment or require medical treatment (other than first aid) or involve loss of consciousness or restriction of work or motion. This category also includes any diagnosed occupational illnesses which are reported to the employer but are not classified as fatalities or lost workday cases.~~
- ~~D. "Medical treatment" includes treatment administered by a physician or by registered professional personnel under the standing orders of a physician. Medical treatment does not include first aid treatment even though provided by a physician or registered professional personnel.~~
- ~~E. "First aid" is any one-time treatment, and any follow-up visit for the purpose of observation, of minor scratches, cuts, burns, splinters, and so forth, which do not ordinarily require medical care. Such one-time treatment, and follow-up visit for the purpose of observation, is considered first aid even though provided by a physician or registered professional personnel.~~
- ~~F. "Lost workdays" means the number of days (consecutive or not) after, but not including, the day of injury or illness during which the employee would have worked but could not do so; that is, could not perform all or any part of his normal assignment during all or any part of the workday or shift, because of the occupational injury or illness.~~
- ~~G. "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed (for example: a factory, mill, store, hotel, sales office, restaurant, movie theatre, farm, ranch, bank, warehouse, or central administrative office). Where distinctly separate activities are performed at a single physical location (such as contract, construction activities operated from the same physical location as a lumber yard), each activity shall be treated as a separate establishment.
  - 1. For firms engaged in activities such as agriculture, construction, transportation, communications, and electric, gas and sanitary services, which may be physically dispersed, records may be maintained at a place to which employees report each day.
  - 2. Records for personnel who do not primarily report or work at a single establishment, and who are generally not supervised in their daily work, such as traveling salesmen, technicians, engineers, etc., shall be maintained at the location from which they are paid or the base from which personnel operate to carry out their activities.
  - 3. For public agencies an "establishment" is defined as either:
    - a. Single physical location where a specific governmental function is performed; or
    - b. That location which is the lowest level where attendance or payroll records are kept for a group of employees who perform the same governmental functions, or who are in the same specific organizational unit, even though the activities are carried on at more than a single physical location.~~

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**R20-5-631. Log of Occupational Injuries and Illnesses Repealed**

- A.** Each employer shall maintain in each establishment a log and summary of all recordable occupational injuries and illnesses for that establishment, except that under the circumstances described in subsection (B) of this Section an employer may maintain the Log of Occupational Injuries and Illnesses at a place other than the establishment. Each employer shall enter each recordable occupational injury and illness on the Log and summary as early as practicable but no later than 6 working days after receiving information that a recordable case has occurred. For this purpose, Occupational Safety and Health Administration OSHA Form No. 200 or any private equivalent may be used. OSHA Form No. 200 or its equivalent shall be completed in the detail provided in the form and the instruction contained in OSHA Form No. 200. If an equivalent OSHA Form No. 200 is used, such as a printout from data processing equipment, the information shall be as readable and comprehensible to a person not familiar with the data processing equipment as the OSHA Form No. 200 itself.
- B.** Any employer may maintain the Log of Occupational Injuries and Illnesses at a place other than the establishment or by means of data processing equipment, or both, under the following circumstances:
1. There is available at the place where the Log is maintained sufficient information to complete the Log to a date within 6 working days after receiving information that a recordable case has occurred, as required by subsection (A) of this Section;
  2. At each of the employer's establishments, there is available a copy of the Log which reflects separately the injury and illness experience of that establishment complete and current to a date within 45 calendar days.

**R20-5-632. Period Covered Repealed**

Records shall be established on a calendar year basis.

**R20-5-633. Supplementary Record Repealed**

In addition to the Log and Summary of Occupational Injuries and Illnesses provided under rule R20-5-631, each employer shall have available for inspection at each establishment within 6 working days after receiving information that a recordable case has occurred, a supplementary record for each occupational injury or illness for that establishment. The record shall be completed in the detail prescribed in the instructions accompanying Occupational Safety and Health Administration OSHA Form No. 101. Workmen's compensation, insurance, or other reports are acceptable alternative records if they contain the information required by OSHA Form No. 101.

**R20-5-634. Annual Summary Repealed**

- A.** Each employer shall compile an annual summary of occupational injuries and illnesses for each establishment. This summary shall consist of a copy of the year's totals from the form OSHA No. 200 and the following information from that form: calendar year covered, company name, establishment name, establishment address, certification signature, title, and date. A form OSHA No. 200 shall be used in presenting the summary. If no injuries or illnesses occurred in the year, zeros must be entered on the totals line, and the form must be posted.
- B.** The summary shall be completed no later than February 1 beginning with calendar year 1979. The summary of previous years' occupational injuries and illnesses shall be posted on form OSHA No. 102.
- C.** Each employer, or the officer or employee of the employer who supervises the preparation of the log and summary of occupational injuries and illnesses, shall certify that the annual summary of occupational injuries and illnesses is true and complete. The certification shall be accomplished by affixing the signature of the employer, or the officer or employee of the employer who supervises the preparation of the annual summary of occupational injuries and illnesses, at the bottom of the last page of the log and summary or by appending a separate statement to the annual summary certifying that the annual summary is true and complete.
- D.** Each employer shall post a copy of the establishment's summary in each establishment in the same manner that notices are required to be posted under rule R20-5-609(A). The summary covering the previous calendar year shall be posted no later than February 1 and shall remain in place until March 1. For employees who do not primarily report or work at a single establishment, or who do not report to any fixed establishment on a regular basis, employers shall satisfy this posting requirement by presenting or mailing a copy of the summary during the month of February of the following year to each such employee who receives pay during that month. For multi-establishment employers where operations have closed down in some establishments during the calendar year, it will not be necessary to post summaries for those establishments.

**R20-5-635. Retention of Records Repealed**

Records provided for in rules R20-5-631, R20-5-633 and R20-5-634 (including OSHA Form No. 200 and its predecessor forms OSHA No. 100 and OSHA No. 102) shall be retained in each establishment for 5 years following the end of the year to which they relate.

**R20-5-636. Access to Records Repealed**

- A.** Records provided for in rules R20-5-631, R20-5-633 and R20-5-634 shall be available for inspection and copying by Compliance Safety and Health Officers of the Occupational Safety and Health Division, Industrial Commission of Arizona, during any occupational safety and health inspection provided for under rules R20-5-607 through R20-5-626 and A.R.S. § 23-427 of the Act, by any representative of the Bureau of Labor Statistics, U.S. Department of Labor, or by a rep-

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representative of the Secretary of Health, Education, and Welfare during any investigation under Section 20(b) of the Williams-Steiger Occupational Safety and Health Act of 1970.

- B.** The log and summary of all recordable occupational injuries and illnesses (OSHA Form No. 200) provided for in rule R20-5-631 shall, upon request, be made available by the employer to any employee, former employee, and to their representatives for examination and copying in a reasonable manner and at reasonable times. The employee, former employee and representatives shall have access to the log for any establishment in which the employee is or has been employed.
1. Nothing in this Section shall be deemed to preclude employees and employee representatives from collective bargaining to obtain access to information relating to occupational injuries and illnesses in addition to the information made available under this Section.
  2. Access to the log provided under this Section shall pertain to all logs retained under the requirements of rule R20-5-635.

**R20-5-637. Reporting of Fatality or Multiple Hospitalization Accidents Repealed**

- A.** A work-related death must be reported to the Industrial Commission immediately, followed by a telegram or written notice within 8 hours. Within 8 hours of the inpatient hospitalization of 3 or more employees as a result of a work-related accident, the employer of any employees so affected shall report the accident either orally or in writing to the nearest office of the Occupational Safety and Health Division, Industrial Commission of Arizona.
- B.** This requirement applies to each such fatality or hospitalization of 3 or more employees which occurs within 30 days of an incident.
- C.** Exception: If the employer does not learn of a reportable incident at the time it occurs and the incident would otherwise be reportable under subsections (A) and (B) of this Section, the employer shall make the report within 8 hours of the time the incident is reported to any agent or employee of the employer.
- D.** Each report required by this Section shall relate the following information: Establishment name, location of incident, time of the incident, number of fatalities or hospitalized employees, contact person, phone number, and a brief description of the incident.

**R20-5-638. Failure to Keep Records or Reports Repealed**

Failure to maintain records or file reports required by rules R20-5-630 through R20-5-645, inclusive, or in the details required by forms and instructions issued under those rules, may result in the issuance of citations and assessment of penalties as provided for in A.R.S. §§ 23-415, 23-417, 23-418 of the Act.

**R20-5-639. Change of Ownership Repealed**

Where an establishment has changed ownership, the employer shall be responsible for maintaining records and filing reports only for that period of the year during which he owned such establishment. However, in the case of any change in ownership, the employer shall preserve those records, if any, of the prior ownership which are required to be kept under this part. These records shall be retained at each establishment to which they relate, for the period or remainder thereof required under rule R20-5-635.

**R20-5-640. Petitions for Recordkeeping Exceptions Repealed**

- A.** Submission of petition. Any employer, except a public agency, who wishes to maintain records in a manner different from that required by this part may submit a petition containing the information specified in subsection (C) of this Section to the Regional Commissioner of the Bureau of Labor Statistics wherein the establishment involved is located. Any public agency who wishes to maintain records in a manner different from that required may submit a petition to the Industrial Commission of Arizona. This petition must contain the information specified in subsections (C)(1) through (C)(5) of this Section.
- B.** Opportunity for comment. Affected employees or their representatives shall have an opportunity to submit written data, views, or arguments concerning the petition to the Regional Commissioner involved within 10 working days following the receipt of notice under subsection (C)(5) of this Section.
- C.** Contents of petition. A petition filed under subsection (A) of this Section shall include:
1. The name and address of the applicant;
  2. The address of the place or places of employment involved;
  3. Specifications of the reasons for seeking relief;
  4. A description of the different recordkeeping procedures which are proposed by the applicant;
  5. A statement that the applicant has informed his affected employees of the petitions by giving a copy thereof to them or to their authorized representative and by posting a statement giving a summary of the petition and by other appropriate means. A statement posted pursuant to this subsection shall be posted in each establishment in the same manner that notices are required to be posted under rule R20-5-609(A) of this Article. The applicant shall also state that he has informed his affected employees of their rights under subsection (B) of this Section;
  6. In the event that an employer has more than 1 establishment he shall submit a list of the states in which such establishments are located and the number of establishments in each such state. In the further event that certain of the

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employer's establishments would not be affected by the petition, the employer shall identify every establishment which would be affected by the petition and give the state in which they are located.

- D.** Referrals to Assistant Commissioner. Whenever a Regional Commissioner receives a petition from an employer having 1 or more establishments beyond the geographic boundary of his region, or a petition from a class of employers having any establishment beyond the boundary of his region, he shall refer the petition to the Assistant Commissioner for action.
- E.** Additional notice, conferences
1. In addition to the actual notice provided for in subsection (C)(5) of this Section, the Assistant Commissioner, the Regional Commissioner, or the Industrial Commission of Arizona, as the case may be, may provide, or cause to be provided, such additional notice of the petition as he may deem appropriate.
  2. The Assistant Commissioner, the Regional Commissioner, or the Industrial Commission of Arizona, as the case may be, may also afford an opportunity to interested parties for informal conference or hearing concerning the petition.
- F.** Action. After review of the petition, and of any comments submitted in regard thereto, and upon completion of any necessary appropriate investigation concerning the petition, if the Regional Commissioner, Assistant Commissioner, or the Industrial Commission of Arizona, as the case may be, finds that the alternative procedure proposed will not hamper or interfere with the purposes of the Williams-Steiger Occupational Safety and Health Act of 1970, or the Arizona Occupational Safety and Health Act of 1972, with amendments effective August 27, 1977, and will provide equivalent information, he may grant the petition subject to such conditions as he may determine appropriate, and subject to revocation for cause.
- G.** Publication
1. Whenever any relief is granted to an applicant under this Williams-Steiger Occupational Safety and Health Act of 1970, notice of such relief, and the reasons therefor, shall be published in the Federal Register.
  2. Whenever any relief is granted to an applicant under the Arizona Occupational Safety and Health Act of 1972, with amendments effective August 27, 1977, notice of such relief, and the reasons therefor, shall be published in statewide newspapers.
- H.** Revocation. Whenever any relief under this Section is sought to be revoked for any failure to comply with the conditions thereof, an opportunity for informal hearing or conference shall be afforded to the employers and affected employees or their representatives. Except in cases of willfulness or where public safety or health requires otherwise, before the commencement of any such informal proceeding, the employer shall:
1. Be notified in writing of the facts or conduct which may warrant the action; and
  2. Be given an opportunity to demonstrate or achieve compliance.
- I.** Compliance after submission of petitions. The submission of a petition or any delay by the Regional Commissioner, the Assistant Commissioner, or the Industrial Commission of Arizona, as the case may be, in acting upon a petition shall not relieve any employer from any obligation to comply with this part. However, the Regional Commissioner, the Assistant Commissioner, or the Industrial Commission of Arizona, as the case may be, shall give notice of the denial of any petition within a reasonable time.
- J.** Consultation. There shall be consultation between the appropriate representatives of the Industrial Commission of Arizona, the Federal Occupational Safety and Health Administration and the Bureau of Labor Statistics in order to ensure the effective implementation of this Section.

**R20-5-641. Employees Not in Fixed Establishments Repealed**

Employers of employees engaged in physically dispersed operations such as occur in construction, installation, repair or service activities who do not report to any fixed establishment on a regular basis but are subject to common supervision may satisfy the provisions of rules R20-5-631, R20-5-633 and R20-5-635 with respect to such employees by:

1. Maintaining the required records for each operation or group of operations which is subject to common supervision (field superintendent, field supervisor, etc.) in an established central place;
2. Having the address and telephone number of the central place available at each worksite; and
3. Having personnel available at the central place during normal business hours to provide information from the records maintained there by telephone and by mail.

**R20-5-642. Small Employers Repealed**

An employer who had no more than 10 full-time, part-time, or seasonal employees at any time during the calendar year immediately preceding the current calendar year need not comply with any of the requirements of this part except the following:

1. Obligation to report under R20-5-637 concerning fatalities or multiple hospitalization accidents; and
2. Obligations to maintain a log of occupational injuries and illnesses under R20-5-631 and to make reports under R20-5-644 upon being notified in writing by the Bureau of Labor Statistics that the employer has been selected to participate in a statistical survey of occupational injuries and illnesses.

**R20-5-643. Description of Statistical Program Repealed**

Section 24 of the Williams-Steiger Occupational Safety and Health Act of 1970 directs the Secretary of Labor, in consultation with the Secretary of Health, Education, and Welfare, to develop and maintain a program of collection, compilation, and anal-

~~ysis of occupational safety and health statistics. The Commissioner of the Bureau of Labor Statistics has been delegated this authority by the Secretary of Labor. The program shall consist of periodic surveys of occupational injuries and illnesses.~~

**~~R20-5-644. Duties of Employers Repealed~~**

~~Upon receipt of an Occupational Injuries and Illnesses Survey Form, OSHA No. 200-S, the employer shall promptly complete the form in accordance with the instructions contained therein and return it in accordance with the aforesaid instructions.~~

**~~R20-5-645. Effect of State Plans Repealed~~**

~~Nothing in any State Plan approved under Section 18(e) of the Williams-Steiger Occupational Safety and Health Act shall affect the duties of employers to submit statistical report forms under Rule R20-5-644.~~