



## NOTICES OF PROPOSED RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Proposed Rulemakings.

A proposed rulemaking is filed by an agency upon completion and submittal of a Notice of Rulemaking Docket Opening. Often these two documents are filed at the same time and published in the same *Register* issue.

When an agency files a Notice of Proposed Rulemaking under the Administrative Procedure Act (APA), the notice is published in the *Register* within three weeks of filing. See the publication schedule in the back of each issue of the *Register* for more information.

Under the APA, an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the proposed rules should be addressed to the agency the promulgated the rules. Refer to item #4 below to contact the person charged with the rulemaking and item #10 for the close of record and information related to public hearings and oral comments.

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 2. ADMINISTRATION

#### CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

[R16-168]

#### PREAMBLE

1. **Article, Part or Section Affected (as applicable)**

|          |                                 |
|----------|---------------------------------|
| R2-8-401 | <b><u>Rulemaking Action</u></b> |
| R2-8-403 | Amend                           |
| R2-8-405 | Amend                           |
2. **Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**  
 Authorizing statute: A.R.S. § 38-714(E)(4)  
 Implementing statutes: A.R.S. §§ 41-1092 et seq.
3. **Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rules:**  
 Notice of Docket Opening: 22 A.A.R. 2568, September 16, 2016 (*in this issue*).
4. **The agency's contact person who can answer questions about the rulemaking:**  
 Name: Jessica A.R. Thomas, Rules Writer  
 Address: Arizona State Retirement System  
 3300 N. Central Ave., Suite 1400  
 Phoenix, AZ 85012-0250  
 Telephone: (602) 240-2039  
 E-mail: JessicaT@azasrs.gov
5. **An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:**  
 R2-8-401 contains definitions that are applicable to this Article. R2-8-401 needs to be amended to reflect that for purposes of appeals, the "Board" refers to the Committee designated by the Board to hear appeals. R2-8-403 allows a person who is dissatisfied with a decision by the Director to file an appeal with the ASRS by submitting a Request for Hearing of an appealable agency action. The ASRS will amend the rule to distinguish between an appeal related to a long-term disability determination and an appeal related to a member benefits determination. R2-8-405 allows a person who is dissatisfied with the final decision of the appeal to file a motion for rehearing or review. The ASRS will amend this rule to distinguish between a motion for reconsideration and a motion for rehearing. The amended rules will better reflect the ASRS appeals process and will make the appeal rules more consistent, clear, and understandable; this rulemaking will ensure members have notice about how the ASRS processes different types of appeals.



6. **A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material.**

None

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

Not applicable

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

The ASRS promulgates rules that allow the agency to provide for the proper administration of the state retirement trust fund. ASRS rules affect ASRS members and ASRS employers regarding how they contribute to, and receive benefits from, the ASRS. The ASRS effectively administers how public-sector employers and employees participate in the ASRS. As such, the ASRS does not issue permits or licenses, or charge fees, and its rules have little to no economic impact on private-sector businesses, with the exception of some employer partner charter schools, which have voluntarily contracted to join the ASRS. Thus, there is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package. The rule will have minimal economic impact, if any, because it merely clarifies the appeals process. Clarifying the appeals process will increase understandability of how a person may submit an appeal and will ensure members of the public understand how an appeal will be handled with the ASRS, which will increase the effectiveness and efficiency of the appeals process; thus, reducing the regulatory burden and the economic impact.

9. **The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:**

Name: Jessica A.R. Thomas, Rules Writer

Address: Arizona State Retirement System  
3300 N. Central Ave., Suite 1400  
Phoenix, AZ 85012-0250

Telephone: (602) 240-2039

E-mail: JessicaT@azasrs.gov

10. **The time, place, and nature of the proceedings for to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request and oral proceedings on the proposed rule:**

An oral proceeding regarding the proposed rule will be held as follows:

Date: October 17, 2016

Time: 9:00 a.m.

Location: Arizona State Retirement System  
10th Floor Board Room  
3300 N. Central Ave.  
Phoenix, AZ 85012-0250

11. **All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**

None

- a. **Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**

None of the rules requires a permit.

- b. **Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law, and if so, citation to the statutory authority to exceed the requirements of federal law:**

There are no federal laws applicable to these rules.

- c. **Whether a person submitted an analysis to the agency that compares the rule's impact on the competitiveness of business in this state to the impact on business in other states:**

No analysis was submitted.

12. **A list of incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:**

None

13. **The full text of the rules follows:**

## TITLE 2. ADMINISTRATION

### CHAPTER 8. STATE RETIREMENT SYSTEM BOARD



## ARTICLE 4. PRACTICE AND PROCEDURE BEFORE THE BOARD

|           |  |
|-----------|--|
| Section   |  |
| R2-8-401. | Definitions  |
| R2-8-403. | Request for a Hearing of an Appealable Agency Action |
| R2-8-405. | Rehearing; Review of a Final Decision                |

## ARTICLE 4. PRACTICE AND PROCEDURE BEFORE THE BOARD

### R2-8-401. Definitions

The following definitions apply to this Article, unless otherwise specified:

1. "Appealable agency action" has the same meaning as in A.R.S. § 41-1092.
2. "Board" means a Committee designated by the Board to take action on appeals as described in A.R.S. § 38-714(E)(1).
3. "Final administrative action" has the same meaning as in A.R.S. § 41-1092 and is rendered by the Board.

### R2-8-403. **Letters of Appeal; Request for a Hearing of an Appealable Agency Action**

A. After receipt of an agency decision, a person who is not satisfied with the agency decision, may submit a letter of appeal:

1. To the ASRS's vendor for long-term disability benefits, if the appeal relates to a long-term disability decision; or
2. To the ASRS Member Services Division Assistant Director, or his designee, if the appeal relates to an agency decision other than a long-term disability decision.

B. Upon receipt of a letter of appeal, the long-term disability vendor, or the Member Services Division Assistant Director, or his designee, shall send a response letter to the person requesting the appeal notifying the person of:

1. The decision the agency is making in response to the letter of appeal; and
2. The person's right to appeal the agency response by submitting a letter of appeal to the ASRS Director or his designee.

C. A person who is not satisfied with the agency response pursuant to subsection (B) may submit a letter of appeal to the ASRS Director or his designee within 60 days of the date on the agency response letter.

D. Upon receipt of a letter of appeal pursuant to subsection (C), the ASRS director or his designee shall send a response letter by certified mail to the person requesting the appeal that includes:

1. The agency action the ASRS is taking in response to the letter of appeal; and
2. Notice of Appealable Agency Action, as required pursuant to A.R.S. § 41-1092.03 informing the person requesting the appeal, that the person has a right to appeal the agency action by submitting a Request for Hearing pursuant to subsections (E) and (F).

~~A-E.~~ A. For an appealable agency action, a person who is not satisfied with a decision by the Director an agency action pursuant to subsection (D) that is an appealable agency action may file a Request for a Hearing, in writing, with the Director ASRS. The date the Request is filed is established by the ASRS date stamp on the face of the first page of the Request. The request Request shall include the following:

1. The name and mailing address of the member, employer, or other person filing the request;
2. The name and mailing address of the attorney for the person filing the request, if applicable;
3. A concise statement of the reasons for the appeal.

~~B-F.~~ B. The person requesting a hearing shall file the Request for a Hearing with the ASRS Office of the Director within 30 days after receiving a response letter decision of the Director and including a Notice of an Appealable Agency Action, pursuant to subsection (E). The date the request Request is filed is established by the Director's date stamp on the face of the first page of the request.

~~C-G.~~ C. Upon receipt of the Request for a Hearing, the ASRS shall notify the Office of Administrative Hearings as required in A.R.S. § 41-1092.03(B).

### R2-8-405. **Motion for Rehearing Before the Board; Motion for Review of a Final Decision**

A. Except as provided in subsection (H), within 30 days after service of the final administrative decision, any aggrieved party in an appealable agency action aggrieved by a final decision may file with the Board a written motion-Motion for rehearing-Rehearing Before the Board, in writing, or review of the final decision-specifying the particular grounds for rehearing before the Board not later than 30 days after service of the decision.

B. Except as provided in subsection (H), within 30 days after service of the final administrative decision, any aggrieved party of an appealable agency action may file with the Board a Motion for Review of a Final Decision, in writing, specifying the particular grounds for reviewing the Board's final administrative decision.

~~B-C.~~ C. A party may amend a motion-Motion for rehearing-Rehearing Before the Board or a Motion for review-Review of a Final Decision at any time before the Board rules on the motion. A party may file a response within 15 days after the motion or the amended motion is filed. The Board may require the filing of written briefs upon the issues raised in the motion or the amended motion, and may provide for oral argument.

~~C-D.~~ D. The Board may grant a Motion for rehearing-Rehearing Before the Board or a Motion for review-Review of a Final decision-Decision for any of the following causes that materially affecting-affects the moving party's rights:

1. Irregularity in the administrative proceedings of the agency or the hearing officer, or any order or abuse of discretion that deprives the moving party of a fair hearing;
2. Misconduct of the Board, the hearing officer, or the prevailing party;



3. Accident or surprise that could not have been prevented by ordinary prudence;
  4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
  5. Excessive or insufficient penalties;
  6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing or during the process of the action; or
  7. That the decision, or findings of fact, is not justified by the evidence or is contrary to law.
- D-E.** The Board may affirm or modify the final administrative decision or grant a rehearing before the Board or review of final administrative decision to all or any of the parties on all or part of the issues for any of the reasons in subsection (C). An order granting a rehearing or review shall specify with particularity the grounds for the order.
- E-F.** Not later than 10 days after the final administrative decision, the Board may, after giving each party notice and an opportunity to be heard, order a rehearing or review of its final administrative decision for any reason for which it might have granted a rehearing or review on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing or review for a reason not stated in the motion. In either case, the order granting a rehearing or review shall specify the grounds on which it is granted.
- F-G.** When a motion for rehearing or review is based upon an affidavit, the affidavit shall be filed with the motion. An opposing party may, within 15 days after filing, file an opposing affidavit. The Board may extend the period for filing an opposing affidavit for not more than 20 days for good cause shown or by written stipulation of the parties. The Board may permit a reply affidavit.
- G-H.** The Board shall rule on the motion within 15 days after the response to the motion is filed or if a response is not filed, within five days of the expiration of the response period.
- H-I.** If the Board makes a specific finding that the immediate effectiveness of a particular decision is necessary for the preservation of the public peace, health, and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, an application for judicial review of the decision may be made within the time limits permitted for applications for judicial review of the Board's final decisions.

## NOTICE OF PROPOSED RULEMAKING

### TITLE 12. NATURAL RESOURCES

#### CHAPTER 4. GAME AND FISH COMMISSION

[R16-169]

#### PREAMBLE

1. **Article, Part, or Section Affected (as applicable)** **Rulemaking Action**  
R12-4-402 Amend
2. **Citations to the agency's statutory authority to include the authorizing statute (general) and the implementing statute (specific):**  
Authorizing statute: A.R.S. § 17-231(A)(1)  
Implementing statute: A.R.S. §§ 17-102, 17-231(A)(3), 17-231(B)(8), 17-240, 17-250(A), 17-250(B), and 17-306
3. **Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:**  
Notice of Rulemaking Docket Opening: 22 A.A.R. 2569, September 16, 2016 (*in this issue*).
4. **The agency's contact person who can answer questions about the rulemaking:**  
Name: Celeste Cook, Rules and Policy Manager  
Address: Arizona Game and Fish Department  
5000 W. Carefree Highway  
Phoenix, AZ 85086  
Telephone: (623) 236-7390  
Fax: (623) 236-7110  
E-mail: CCook@azgfd.gov  
Please visit the AZGFD web site to track progress of this rule and any other agency rulemaking matters at <https://www.azgfd.com/agency/rulemaking/>.
5. **An agency's justification and reason why the rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:**  
An exemption from Executive Order 2015-01 was provided for this rulemaking by Hunter Moore, Natural Resource Policy Advisor, Governor's Office, in an email dated August 15, 2016.



The Game and Fish Commission (Commission) proposes to amend its rules that authorize the release of wildlife in Arizona without a state permit, provided the release is accompanied by a federal permit. The Commission is concerned the current rule language could be construed as authorizing a federal agency to release or reintroduce threatened or endangered species in Arizona without first obtaining a state permit. The Commission intends to clarify this rule to make it inapplicable to federal agencies.

Federal regulations require agencies within the Department of the Interior to comply with state permit requirements in connection with the release or reintroduction of wildlife, except when the Secretary of Interior determines compliance will prevent an agency from carrying out its statutory responsibilities; see 43 C.F.R. Part 24. The federal regulation requiring state permits recognizes that the effective conservation of wildlife resources requires cooperation among the states and the federal government, and that states have broad trustee responsibilities for fish and wildlife with primary authority for wildlife management on federal lands.

The issue of state permits has become more significant in response to a recent lawsuit in New Mexico where the New Mexico Game and Fish Department obtained a preliminary injunction prohibiting the Service from releasing Mexican wolves in New Mexico without first obtaining state permits. Previously, the Service obtained permits in New Mexico and Arizona to release wolves. The situation in New Mexico, however, may indicate a shift in the federal position on state permits, and Arizona Game and Fish has also found agencies other than the Service refusing to cooperate with the State prior to the reintroducing or removing wildlife.

The Commission expects federal agencies to obtain state permits to release wildlife, and wants to eliminate any ambiguity in its regulations that a federal agency may bypass state permit requirements if federal law authorizes release of wildlife. Due to concerns that federal agencies may become more resistant to cooperating with the states, the Commission proposes to strengthen its rules to avoid any unintended outcome that a federal agency can avoid state permits before releasing or removing wildlife.

The rule is amended to clearly state that a permit or license issued by the Department or the Department of Agriculture is required when conducting any activity listed under R12-4-402(A) with live wildlife to ensure the Department maintains sovereignty over Arizona's wildlife and wildlife habitat.

**6. A reference to any study relevant to the rule that the agency reviewed and proposes to either rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The agency did not rely on any study in its evaluation of or justification for the rules.

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

Not applicable

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

The Commission's rule protects native wildlife in many ways, including preventing the spread of disease, reducing the risk of released animals competing with native wildlife, discouraging illegal trade of native wildlife, and preventing interactions between humans and wildlife that may threaten public health or safety.

The Commission anticipates the rulemaking will benefit the Department by ensuring the Commission maintains sovereignty over Arizona's wildlife.

The Commission anticipates the rulemaking will result in an overall benefit to the regulated community, members of the public, and the Department. The Commission anticipates the rulemaking will result in little or no impact to political subdivisions of this state; private and public employment in businesses, agencies or political subdivisions; or state revenues. The Commission has determined that there are no less intrusive or costly alternative methods of achieving the purpose of the rulemaking. Other than the regular cost of rulemaking, there are no costs associated with the rulemaking. Therefore, the Commission has determined that the benefits of the rulemaking outweigh any costs.

**9. The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:**

Name: Celeste Cook, Rules and Policy Manager  
Address: Arizona Game and Fish Department  
5000 W. Carefree Highway  
Phoenix, AZ 85086  
Telephone: (623) 236-7390  
Fax: (623) 236-7110  
E-mail: CCook@azgfd.gov

**10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Date: December 2, 2016  
Time: 8:00 a.m. to 5:00 p.m.



Location: 5000 W. Carefree Highway  
Phoenix, AZ 85086

Close of record: December 2, 2016

**11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**

**a. Whether the rule requires a permit, whether a general permit is used, and if not, the reason why a general permit is not used:**

The rule does not require a general permit.

**b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law, and if so, citation to the statutory authority to exceed the requirements of federal law:**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

**c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:**

The agency has not received an analysis that compares the rule's impact of competitiveness of business in this state to the impact on business in other states.

**12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:**

Not applicable

**13. The full text of the rules follows:**

**TITLE 12. NATURAL RESOURCES**

**CHAPTER 4. GAME AND FISH COMMISSION**

**ARTICLE 4. LIVE WILDLIFE**

Section

R12-4-402. Live Wildlife; Unlawful Acts

**ARTICLE 4. LIVE WILDLIFE**

**R12-4-402. Live Wildlife: Unlawful Acts**

- A.** A person shall not perform any of the following activities with live wildlife unless authorized by a federal license or permit, this Chapter, or A.R.S. Title 3, Chapter 16:
1. Import any live wildlife into the state;
  2. Export any live wildlife from the state;
  3. Conduct any of the following activities with live wildlife within the state:
    - a. Display,
    - b. Exhibit,
    - c. Give away,
    - d. Lease,
    - e. Offer for sale,
    - f. Possess,
    - g. Propagate,
    - h. Purchase,
    - i. Release,
    - j. Rent,
    - k. Sell,
    - l. Sell as live bait,
    - m. Stock,
    - n. Trade,
    - o. Transport; or
  4. Kill any captive live wildlife.
- B.** The Department may seize, quarantine, hold, or euthanize any lawfully possessed wildlife held in a manner that poses an actual or potential threat to the wildlife, other wildlife, or the safety, health, or welfare of the public. The Department shall make reasonable efforts to find suitable placement for any animal prior to euthanizing it.
- C.** A person who does not lawfully possess wildlife in accordance with this Article shall be responsible for all costs associated with the care and keeping of the wildlife.
- D.** Performing activities authorized under a federal license or permit does not exempt a federal agency or its employees from complying with state permit requirements.



## NOTICE OF PROPOSED RULEMAKING

## TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

## CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

[R16-170]

PREAMBLE

1. **Article, Part or Section Affected (as applicable)**

|           |                                 |
|-----------|---------------------------------|
| R20-5-601 | <b><u>Rulemaking Action</u></b> |
| R20-5-602 | Amend                           |
|           | Amend                           |
2. **Citations to agency's statutory rulemaking authority to include the authorizing statute and the implementing statute:**

Authorizing statute: A.R.S. § 23-405(4)  
Implementing statute: A.R.S. § 23-410
3. **Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:**

Notice of Rulemaking Docket Opening: 22 A.A.R. 2570 September 16, 2016 (*in this issue*).
4. **The agency's contact person who can answer questions about the rulemaking:**

Name: Larry Gast, Assistant Director  
Address: Industrial Commission of Arizona  
800 W. Washington St., Suite 203  
Phoenix, AZ 85007  
Telephone: (602) 542-1695  
Fax: (602) 542-1614  
E-mail: larry.gast@azdosh.gov
5. **An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

Section 18(c) of the Federal Occupational Safety and Health Act of 1970 requires state-administered occupational safety and health programs to adopt standards that are at least as effective as those adopted by the United States Department of Labor, Occupational Safety and Health Administration ("OSHA"). *See also* 29 CFR 1953.5; Ariz. Rev. Stat. § 23-405(3). The Industrial Commission of Arizona is proposing to amend R20-5-601 ("The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926") and R20-5-602 ("The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910") to incorporate by reference recent OSHA rule updates to 29 CFR 1926 ("Safety and Health Regulations for Construction") and 29 CFR 1910 ("Occupational Safety and Health Standards"), as published on March 25, 2016, in OSHA's Final Rules titled "Updating OSHA Standards Based on National Consensus Standards; Eye and Face Protection" and "Occupational Exposure to Respirable Crystalline Silica." The Final Rules were published in the *Federal Register* at 81 FR 16085 and 81 FR 16285, respectively.

29 CFR 1926 (which is incorporated by reference into R20-5-601) sets forth safety and health standards promulgated by OSHA for the construction industry. 29 CFR 1910 (which is incorporated by reference into R20-5-602) sets forth safety and health standards promulgated by OSHA for general industry. Under 29 CFR 1910 and 1926, employers are required to ensure that their employees use eye and face protection where necessary to protect them against flying objects, splashes or droplets of hazardous chemicals, and other workplace hazards that could injure their eyes and face. The standards state that the protection employers provide must meet specified consensus standards. For operations covered by OSHA's general industry standards, the protection must comply with one of the following standards: ANSI Z87.1-2003, ANSI Z87.1-1989 (R-1998), or ANSI Z87.1-1989. Alternatively, an employer may show that the devices used are at least as effective as one of these consensus standards (29 CFR 1910.133(b); 29 CFR 1915.153(b); 29 CFR 1917.91(a)(1); 29 CFR 1918.101(a)(1)). The construction standard requires that eye and face protection meet the requirements of ANSI Z87.1-1968 (29 CFR 1926.102(a)(2)).

OSHA's Final Rule titled "Updating OSHA Standards Based on National Consensus Standards; Eye and Face Protection" updates the eye and face protection requirements in 29 CFR 1910 and 1926. The changes involve incorporation by reference of the latest ANSI/ISEA Z87.1-2010 standard on Occupational and Educational Eye and Face Protection Devices and removal of the oldest ANSI (Z87.1-1989) version of the same standard. OSHA has stated that the rule update allows employers to continue to follow the existing ANSI standards referenced or the latest version of the same ANSI/ISEA standard. Employers will not be required to update or replace protection devices



solely as a result of the new rule and may continue to follow their current and usual practices for their eye and face protection. The Final Rule related to eye and face protection became effective on April 25, 2016.

Next, under 29 CFR 1910 and 1926, employers are subject to standards for occupational exposure to respirable crystalline silica. OSHA's Final Rule titled "Occupational Exposure to Respirable Crystalline Silica" updates these silica standards. OSHA determined that employees exposed to respirable crystalline silica at the previous permissible exposure limits face a significant risk of material impairment to their health. The evidence in the record for OSHA's rulemaking indicated that workers exposed to respirable crystalline silica are at increased risk of developing silicosis and other non-malignant respiratory diseases, lung cancer, and kidney disease. The Final Rule establishes a permissible exposure limit (PEL) for respirable crystalline silica of 50 µg/m<sup>3</sup> as an 8-hour time-weighted average (TWA) in all industries covered by the rule. In addition to the PEL, the updated rule includes provisions to protect employees, such as requirements for exposure assessments, methods for controlling exposure, respiratory protection, medical surveillance, hazard communication, and recordkeeping. OSHA implemented two separate standards – one for general/maritime industries, and the other for construction industry – in order to tailor requirements to the circumstances found in these sectors. There are, however, numerous common elements in the two standards.

The Final Rule regarding respirable silica became effective June 23, 2016. However, for general industry and maritime, all obligations for compliance commence two years after the effective date, with two exceptions: (1) the obligation for engineering controls commences five years after the effective date for hydraulic fracturing operations in the oil and gas industry; and (2) the obligation for employers in general industry and maritime to offer medical surveillance commences two years after the effective date for employees exposed above the PEL, and four years after the effective date for employees exposed at or above the action level. For construction, all obligations for compliance commence one year after the effective date, with the exception that certain requirements for laboratory analysis commence two years after the effective date.

**6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The Industrial Commission did not review or rely on any study relevant to the proposed amended rules. However, in adopting the Final Rule titled "Occupational Exposure to Respirable Crystalline Silica," OSHA relied on various studies. Information relating to the studies reviewed and relied upon by OSHA are electronically available at <https://www.federalregister.gov/articles/2016/03/25/2016-04800/occupational-exposure-to-respirable-crystalline-silica#h-18>.

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

Not applicable

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

The Industrial Commission anticipates that the rule change related to OSHA's Final Rule titled "Updating OSHA Standards Based on National Consensus Standards; Eye and Face Protection" will have little to no economic, small business, or consumer impact. OSHA reports that the Final Rule will allow employers to continue to follow the existing ANSI standards referenced or allow employers to follow the latest version of the same ANSI/ISEA standard. Employers are therefore not required to update or replace protection devices solely as a result of the rule updates and may continue to follow their current and usual practices for their eye and face protection. Therefore, OSHA concluded that the rule update has no associated compliance or economic burdens.

The Industrial Commission anticipates that the rule change related to OSHA's Final Rule titled "Occupational Exposure to Respirable Crystalline Silica" will have an economic, small business, and consumer impact. Nationally, according to OSHA, the final rule is estimated to prevent 642 fatalities and 918 silica-related illnesses annually once it is fully effective, even though there has been a 93% decline since 1968 in silica deaths, and the estimated cost of the rule nationally is \$1.03 billion annually. The discounted monetized benefits of the final rule are estimated to be \$8.7 billion annually, and the final rule is estimated to generate net benefits of \$7.7 billion annually. OSHA estimates that the standard will have a total cost of \$1.02 billion per year in 2012 dollars. Of that total, OSHA states that \$370.8 million will be borne by the general industry and maritime sectors, and \$659.0 million will be borne by the construction industry. However, other studies place the cost as high as \$4.9 billion. For both construction and general industry/maritime, the estimated costs for the silica rule represent the additional costs necessary for employers to achieve full compliance with the new standard, assuming that all firms are compliant with the previous standard. Additional information related to the economic impact of the amended rule, including tables of annualized compliance costs for affected sectors of general and construction industry (Tables VII-10, VII-11) are electronically available at <https://www.federalregister.gov/articles/2016/03/25/2016-04800/occupational-exposure-to-respirable-crystalline-silica#h-18>.





**9. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:**

Name: Larry Gast, Assistant Director  
 Address: Industrial Commission of Arizona  
 Division of Occupational Safety and Health  
 800 W. Washington St., Suite 203  
 Phoenix, AZ 85007  
 Telephone: (602) 542-1695  
 Fax: (602) 542-1614  
 E-mail: larry.gast@azdosh.gov

**10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Written comments can be submitted to the address listed in item 9 by the close of the comment period, which is at 5:00 p.m. on October 26, 2016. An oral proceeding on the proposed amended rule is scheduled for October 26, 2016, at 2:00 p.m., at the Industrial Commission of Arizona, 800 W. Washington, Room 206, Phoenix, AZ 85007.

**11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**

A.R.S. § 23-405(3) requires the Industrial Commission to “[c]ooperate with the federal government to establish and maintain an occupational safety and health program as effective as the federal occupational safety and health program.”

**a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**

The proposed amended rules do not require issuance of a regulatory permit or license.

**b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**

Section 18(c) of the Federal Occupational Safety and Health Act of 1970 requires state-administered occupational safety and health programs to adopt standards that are at least as effective as those adopted by the United States Department of Labor, Occupational Safety and Health Administration (“OSHA”). *See also* 29 CFR 1953.5; A.R.S. § 23-405(3). The Industrial Commission of Arizona is proposing to amend R20-5-601 (“The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926”) and R20-5-602 (“The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910”) to incorporate by reference recent OSHA rule updates to 29 CFR 1926 (“Safety and Health Regulations for Construction”) and 29 CFR 1910 (“Occupational Safety and Health Standards”) as published on March 25, 2016 in OSHA’s Final Rules titled “Updating OSHA Standards Based on National Consensus Standards; Eye and Face Protection” and “Occupational Exposure to Respirable Crystalline Silica.”

**c. Whether a person submitted an analysis to the agency that compares the rule’s impact of the competitiveness of business in this state to the impact on business in other states:**

No analysis was submitted.

**12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:**

The Industrial Commission of Arizona is proposing to amend R20-5-601 (“The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926”) and R20-5-602 (“The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910”) to incorporate by reference recent OSHA rule updates to 29 CFR 1926 (“Safety and Health Regulations for Construction”) and 29 CFR 1910 (“Occupational Safety and Health Standards”) as published on March 25, 2016 in OSHA’s Final Rules titled “Updating OSHA Standards Based on National Consensus Standards; Eye and Face Protection” and “Occupational Exposure to Respirable Crystalline Silica.” A copy of OSHA’s Final Rules are available for inspection or reproduction at the Arizona Division of Occupational Safety and Health, 800 W. Washington St., Room 203, Phoenix, AZ 85007, or are electronically available at: (1) <https://www.federalregister.gov/articles/2016/03/25/2016-06359/updating-osh-a-standards-based-on-national-consensus-standards-eye-and-face-protection> and (2) <https://www.federalregister.gov/articles/2016/03/25/2016-04800/occupational-exposure-to-respirable-crystalline-silica>.

**13. The full text of the rules follows:**

**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE**

**CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**

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



Section

- R20-5-601. The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926  
R20-5-602. The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910

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

**R20-5-601. The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926**

Each employer shall comply with the standards in the Federal Occupational Safety and Health Standards for Construction, as published in 29 CFR 1926, with amendments as of ~~August 3, 2015~~ July 26, 2016, incorporated by reference. Copies of these 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. These standards shall apply to all conditions and practices related to construction activity by all employers, both public and private, in the state of Arizona. This incorporation by reference does not include amendments or editions to 29 CFR 1926 published after ~~August 3, 2015~~ July 26, 2016.

**R20-5-602. The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910**

Each employer shall comply with the standards in Subparts B through Z inclusive of the Federal Occupational Safety and Health Standards for General Industry, as published in 29 CFR 1910, with amendments as of ~~August 3, 2015~~ July 26, 2016, incorporated by reference. Copies of these reference 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. These standards shall apply to all conditions and practices related to general industry activity by all employers, both public and private, in the state of Arizona; provided that this Section shall not apply to those conditions and practices which are the subject of R20-5-601. This incorporation by reference does not include amendments or editions to 29 CFR 1910 published after ~~August 3, 2015~~ July 26, 2016.

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE**

**CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**

[R16-171]

**PREAMBLE**

1. **Article, Part, or Section Affected (as applicable)** **Rulemaking Action**  
R20-5-629 Amend
2. **Citations to agency's statutory rulemaking authority to include the authorizing statute and the implementing statute:**  
Authorizing statute: A.R.S. § 23-405(4)  
Implementing statute: A.R.S. § 23-410
3. **Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:**  
Notice of Rulemaking Docket Opening: 22 A.A.R. 2571, September 16, 2016 (*in this issue*)
4. **The agency's contact person who can answer questions about the rulemaking:**  
Name: Larry Gast, Assistant Director  
Address: Industrial Commission of Arizona  
800 W. Washington St., Suite 203  
Phoenix, AZ 85007  
Telephone: (602) 542-1695  
Fax: (602) 542-1614  
E-mail: larry.gast@azdosh.gov

**5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

Section 18(c) of the Federal Occupational Safety and Health Act of 1970 requires state-administered occupational safety and health programs to adopt standards that are at least as effective as those adopted by the United States Department of Labor, Occupational Safety and Health Administration ("OSHA"). *See also* 29 CFR § 1904.37. The Industrial Commission of Arizona is proposing to amend R20-5-629 ("The Occupational Injury and Illness Recording and Reporting Requirements, 29 CFR 1904") to incorporate by reference recent OSHA rule updates to 29 CFR 1904 ("Recording and Reporting Occupational Injuries and Illnesses") as published on May 12, 2016 in OSHA's Final Rule titled "Improve Tracking of Workplace Injuries and Illnesses." The Final Rule was published in the *Federal Register* at 81 FR 29623-29694.

29 CFR 1904 (which is incorporated by reference into R20-5-629) requires employers with more than 10



employees in most industries to keep records of occupational injuries and illnesses at their establishments. Employers covered by these rules must record each recordable employee injury and illness on an OSHA Form 300, which is the “Log of Work-Related Injuries and Illnesses,” or equivalent. Employers must also prepare a supplementary OSHA Form 301 “Injury and Illness Incident Report” or equivalent that provides additional details about each case recorded on the OSHA Form 300. Finally, at the end of each year, employers are required to prepare a summary report of all injuries and illnesses on the OSHA Form 300A, which is the “Summary of Work-Related Injuries and Illnesses,” and post the form in a visible location in the workplace.

OSHA’s Final Rule titled “Improve Tracking of Workplace Injuries and Illnesses” amended 29 CFR 1904 to add requirements for the electronic submission of injury and illness information employers are already required to keep under part 1904. First, the Final Rule requires establishments with 250 or more employees to electronically submit information from their part 1904 recordkeeping forms (Forms 300, 300A, and 301) to OSHA or OSHA’s designee on an annual basis. Second, the Final Rule requires establishments with 20 or more employees, but fewer than 250 employees, in certain designated industries, to electronically submit information from their part 1904 annual summary (Form 300A) to OSHA or OSHA’s designee on an annual basis. Third, the final rule requires, upon notification, employers to electronically submit information from part 1904 recordkeeping forms to OSHA or OSHA’s designee. The electronic submission requirements in the Final Rule do not add to or change any employer’s obligation to complete and retain injury and illness records under OSHA’s regulations for recording and reporting occupational injuries and illnesses. The Final Rule also does not add to or change the recording criteria or definitions for these records.

OSHA intends to post the establishment-specific injury and illness data it collects under the Final Rule on its public Web site at [www.osha.gov](http://www.osha.gov). The publication of specific data fields will be in part restricted by applicable federal law, including the Freedom of Information Act (FOIA), as well as specific provisions within part 1904. OSHA does not intend to post any information on the Web site that could be used to identify individual employees.

Additionally, OSHA’s existing recordkeeping regulation requires employers to inform employees about how to report occupational injuries and illnesses (29 CFR 1904.35(a), (b)). The Final Rule amends OSHA’s recordkeeping regulations to require employers to inform employees of their right to report work-related injuries and illnesses; clarifies the existing implicit requirement that an employer’s procedure for reporting work-related injuries and illnesses must be reasonable and not deter or discourage employees from reporting; and incorporates the existing statutory prohibition on retaliating against employees for reporting work-related injuries or illnesses.

OSHA believes that the benefits of the Final Rule include better compliance with OSHA’s statutory directive “to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources” (29 U.S.C. 651(b)). Benefits also include: (1) increased prevention of workplace injuries and illnesses as a result of expanded access to timely, establishment-specific, injury/illness information by OSHA, employers, employees, employee representatives, potential employees, customers, potential customers, and researchers, and (2) promotion of complete and accurate reporting of work-related injuries and illnesses.

A copy OSHA’s Final Rule titled “Improve Tracking of Workplace Injuries and Illnesses” is available for inspection or reproduction at the Arizona Division of Occupational Safety and Health, 800 West Washington Street, Room 203, Phoenix, AZ 85007, or is electronically available at <https://www.federalregister.gov/articles/2016/05/12/2016-10443/improve-tracking-of-workplace-injuries-and-illnesses>.

**6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The agency did not review or rely on any study relevant to the proposed amended rule.

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

Not applicable

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

OSHA estimates that this final rule will have economic costs of \$15 million per year, including \$13.7 million per year to the private sector, with costs of \$7.2 million per year for electronic submission for affected establishments with 250 or more employees and \$4.6 million for electronic submission for affected establishments with 20 to 249 employees in designated industries. With respect to the anti-discrimination requirements of this final rule, OSHA estimates a first-year cost of \$8.0 million and annualized costs of \$0.9 million per year. When fully implemented, the first-year economic cost for all provisions of the final rule is estimated at \$28 million. The rule will be phased in, which moves the annual cost for reporting case characteristic data from OSHA Forms 300 and 301 by 33,000 establishments nationwide from 2017 to 2018. This phase-in removes about \$6.9 million from the first year costs, but those costs would reappear in years two through 10.

**9. The agency’s contact person who can answer questions about the economic, small business and consumer impact statement:**

Name: Larry Gast, Assistant Director



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

Telephone: (602) 542-1695

Fax: (602) 542-1614

E-mail: larry.gast@azdosh.gov

**10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Written comments can be submitted to the address listed in item 9 by the close of the comment period, which is at 5:00 p.m. on October 25, 2016. An oral proceeding on the proposed amended rule is scheduled for October 25, 2016, at 9:00 a.m., at the Industrial Commission of Arizona, 800 W. Washington, Room 206, Phoenix, AZ 85007.

**11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. § 41-1052 and § 41-1055 shall respond to the following questions:**

Not applicable

**a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**

The proposed amended rule does not require issuance of a regulatory permit or license.

**b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**

Section 18(c) of the Federal Occupational Safety and Health Act of 1970 requires state-administered occupational safety and health programs to adopt standards that are at least as effective as those adopted by the United States Department of Labor, Occupational Safety and Health Administration ("OSHA"). *See also* 29 CFR § 1904.37. The Industrial Commission of Arizona is proposing to amend R20-5-629 ("The Occupational Injury and Illness Recording and Reporting Requirements, 29 CFR 1904") to incorporate by reference recent federal rule updates to 29 CFR 1904 ("Recording and Reporting Occupational Injuries and Illnesses") as published in the *Federal Register* on May 12, 2016, in OSHA's Final Rule titled "Improve Tracking of Workplace Injuries and Illnesses."

**c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:**

No analysis was submitted.

**12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:**

The Industrial Commission of Arizona is proposing to amend R20-5-629 ("The Occupational Injury and Illness Recording and Reporting Requirements, 29 CFR 1904") to incorporate by reference recent federal rule updates to 29 CFR 1904 ("Recording and Reporting Occupational Injuries and Illnesses") as published in the *Federal Register* on May 12, 2016, in OSHA's Final Rule titled "Improve Tracking of Workplace Injuries and Illnesses." A copy of OSHA's Final Rule is available for inspection or reproduction at the Arizona Division of Occupational Safety and Health, 800 W. Washington St., Room 203, Phoenix, AZ 85007, or is electronically available at <https://www.federalregister.gov/articles/2016/05/12/2016-10443/improve-tracking-of-workplace-injuries-and-illnesses>.

**13. The full text of the rules follows:**

**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE**

**CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**

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

Section

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

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

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

Each employer shall comply with the standards in the Federal Occupational Safety and Health Standards for Recordkeeping, as published in 29 CFR 1904, with amendments published as of ~~January 1, 2015~~ January 1, 2017, incorporated by reference. Copies of the incorporated 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. These standards shall apply to all conditions and practices related to recordkeeping by all employers, both public and private, in the state of Arizona. This incorporation by reference does not include amendments or editions to 29 CFR 1904 published after ~~January 1, 2015~~ January 1, 2017.