

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**FINAL STATEMENT OF REASONS****CALIFORNIA CODE OF REGULATIONS**

TITLE 8: Division 1, Chapter 4, Subchapter 4, Article 3, Section 1524
of the Construction Safety Orders

Drinking Water in Construction**MODIFICATIONS AND RESPONSES TO COMMENTS RESULTING FROM
THE 45-DAY PUBLIC COMMENT PERIOD**

There are no modifications to the information contained in the Initial Statement of Reasons except for the following sufficiently related modifications that are the result of public comments and/or Board staff evaluation.

Section 1524. Water Supply.**Subsection (a)(4)(D)**

Proposed subsection (a)(4)(D) pertains to one of four acceptable means available to the employer for providing drinking water for employees. This alternative would require employers to ensure re-usable, closable, personally identifiable containers are available for individual employee use. The provision that re-usable containers be “personally identifiable” was relocated from subsection (a)(4), then modified to require that such containers be marked to identify the user, and relocated to subsection (a)(6). This revision is necessary to delete the ambiguous term “personally identifiable.”

Subsection (a)(6)

The proposed prohibition on sharing cups and containers was revised for clarity and relocated to new subsection (a)(7), along with the exception to the prohibition. Revised subsection (a)(6) applies where re-usable containers for individual use are relied upon for compliance with subsection (a)(4) and requires that the employer ensure re-usable containers are marked to identify the user and maintained in a sanitary manner. This revision is necessary to clarify the ambiguous term “personally identifiable”, which was removed from revised subsection (a)(4)(D), and to clarify who is responsible for ensuring that drinking water containers are maintained in a sanitary condition.

Subsection (a)(7)

The prohibition on sharing cups and containers was revised for clarity and moved from subsection (a)(6) to new subsection (a)(7) along with the accompanying exception to the

prohibition. The revised prohibition does not include containers with fountains or faucets; therefore, the exemption was revised to no longer exempt these types of containers. The proposed exception would allow cups or containers to be used by more than one employee if they are effectively cleansed and sterilized between consecutive users. The revised exception would replace the term “sterilized” with the term “sanitized”. This revision is necessary because it is impractical to sterilize drinking cups and containers at construction sites. The revision is also necessary to be consistent with Section 114095 of the Health and Safety Code which, in part, requires that all food facilities in which multi-service utensils are used shall provide methods to effectively clean and sanitize utensils.

SUMMARY AND RESPONSES TO WRITTEN AND ORAL COMMENTS:

I. Written Comments

Teresa A. Harrison, Acting Regional Administrator, U.S. Department of Labor, Occupational Safety and Health Administration, Region IX, by letter dated January 30, 2008.

Comment:

Federal OSHA indicated it had reviewed the proposed changes for drinking water in construction and concluded that the proposed standard provides additional options for supplying potable water in a sanitary manner and is at least effective as the federal standard.

Response:

The Board thanks Ms. Harrison and Federal OSHA for their input and for their participation in the rulemaking process.

II. Oral Comments Received at the Public Hearing on February 21, 2008.

Mr. Larry Pena, Southern California Edison.

Comment:

Mr. Pena expressed appreciation for the work done to craft the proposed language. He expressed concern, however, regarding language in the exception that would require containers be “sterilized”. He stated that sterilization would be difficult on a construction site and suggested that the term be struck from the proposal.

Response:

New subsection (a)(6) would provide that only one individual employee shall drink water from an individual cup or container. This provision was added to make the proposal at least as effective as the counterpart federal standard 1926.51(a)(4), which states, “The common drinking cup is prohibited.” The proposal also includes an exception which states, “Containers having a drinking fountain or faucet, and cups or containers that are effectively cleansed and sterilized between consecutive users may be used by more than one employee.” The Board agrees with Mr.

Pena that sterilization would be difficult on a construction site; however, removing the term “sterilized” would have the effect that cups need only be cleaned between users. Cleaning alone would not be an effective means of killing microorganism that can be transmitted when different individuals use the same cup. Health and Safety Code, Section 114095, provides in part that all food facilities in which multi-service utensils are used shall provide manual methods to effectively clean and sanitize utensils; therefore, the Board is revising the proposal to replace the term “sterilized” with “sanitized”. The Board considers that requiring cups to be cleaned and sanitized between use by different users is consistent with the Health and Safety Code and the counterpart federal standard. The Board concludes that it is not impractical for employers to sanitize drinking cups when necessary.

Mr. Bruce Wick, Director of Risk Management, representing the California Professional Association of Specialty Contractors and also speaking on behalf of Mr. Kevin Bland representing the California Framing Contractors Association and the Residential Contractors Association.

Comment:

Mr. Wick stated that all three organizations strongly support the proposal.

Response:

The Board thanks Mr. Wick for his comment and participation in the rulemaking process.

Ms. Bo Bradley, California Association of General Contractors.
Ms. Elizabeth Treanor, Phylmar Regulatory Roundtable.
Ms. Julianne Broyles, Lumber Association of California and Nevada.

Comment:

The commenters expressed support for the proposal with the change suggested by Mr. Pena.

Response:

See the response to Mr. Pena. The Board thanks the commenters for their comments and participation in the rulemaking process.
Board Member Jonathan Frisch.

Comment #1:

Dr. Frisch stated that there is a substantial difference between cleansing and sterilizing, and suggested exploring measures taken in the restaurant industry for cleaning and sterilizing similar cups.

Response:

See the response to Mr. Pena.

Comment #2:

Dr. Frisch suggested that staff should consider changing the term “personally identifiable”, as used in subsection (a)(4)(D), to “personally identified”.

Response:

The provision that re-usable containers be “personally identifiable” was revised to require that such containers be marked to identify the user, and the provision was relocated to revised subsection (a)(6).

Comment #3:

Dr. Frisch asked that staff evaluate the language to clarify who has the responsibility for ensuring that drinking water containers are maintained in a sanitary condition.

Response:

Amended subsection (a)(6) was revised to state, in part, that where re-usable containers for individual use are relied upon for compliance with subsection (a)(4) they shall be maintained in a sanitary condition. This revision is consistent with subsection (a)(2) which states, in part, that drinking water containers shall be serviced so that sanitary conditions are maintained. In both these cases the employer is responsible for maintaining the drinking containers in a sanitary condition.

Board Member William Jackson.

Comment:

Mr. Jackson suggested that the exception to revised subsection (a)(6) be split into two separate exceptions, one for containers with drinking fountains or faucets and another for cups or containers that are effectively cleaned or sterilized after use.

Response:

The prohibition on sharing cups and containers was revised and moved from revised subsection (a)(6) to new subsection (a)(7). The revised prohibition no longer includes containers with fountains or faucets, which eliminates the need for a separate exception for these types of containers.

MODIFICATIONS AND RESPONSES TO COMMENTS RESULTING FROM
THE 15-DAY NOTICE OF PROPOSED MODIFICATIONS

As a result of written comments to the proposed modifications contained in the 15-Day Notice of Proposed Modifications mailed on April 23, 2008, the following non-substantive modifications have been made to the Informative Digest published in the California Regulatory Notice Register dated January 4, 2008.

Section 1524. Water Supply.

Subsection (a)

Subsection (a)(2) is proposed to be renumber subsection (a)(3). This revision is necessary to reorder the subsections of the standard and to group related requirements together to improve clarity.

Subsection (a)(3) is proposed to be renumber subsection (a)(4). This revision is necessary to reorder the subsections of the standard and to group related requirements together to improve clarity.

Subsection (a)(4) is proposed to be renumbered subsection (a)(2). Renumbered subsection (a)(2)(B), which pertains to single-service cups, is proposed to be modified by adding the provisions of subsection (a)(5) that pertain to storing and disposing of single-service cups. Renumbered subsection (a)(2)(C), which pertains to sealed one-time use water containers, is proposed to be modified by adding the provisions of subsection (a)(5) that pertain to disposing of sealed containers. Renumbered subsection (a)(2)(D), which pertains to re-usable, closable containers for individual use, is proposed to be modified by adding the provisions of subsection (a)(6) that apply where re-usable containers for individual use are relied upon for compliance with the standard. The internal reference to “subsection (a)(4)” in renumbered subsection (a)(2)(D) is proposed to be replaced by a reference to “this section.” These revisions are necessary to reorder the subsections of the standard and to group related requirements together to improve clarity.

The provisions of subsection (a)(5) are proposed to be relocated to subsections (a)(2)(B) and (a)(2)(C). The provisions of subsection (a)(7) along with the accompanying exception are proposed to be relocated to subsection (a)(5). These revisions are necessary to reorder the subsections of the standard and to group related requirements together to improve clarity. The provisions of subsection (a)(6) are proposed to be relocated to subsection (a)(2)(D) and the subsection number deleted. This revision is necessary to reorder the subsections of the standard and to group related requirements together to improve clarity.

Subsection (a)(7) is proposed to be renumbered subsection (a)(5). This revision is necessary to reorder the subsections of the standard and to group related requirements together to improve clarity.

SUMMARY AND RESPONSE TO WRITTEN COMMENTS:

Mr. Bruce Wick, Director of Risk Management, representing the California Professional Association of Specialty Contractors (CalPASC), by email on May 13, 2008.

Comment #1:

Mr. Wick, representing (CalPASC), supports the modifications made to the February 21, 2008 proposal.

Response:

The Board thanks Mr. Wick for his support.

Comment #2:

Mr. Wick believes that the current order and outline of the proposed 1524 can be made much clearer. To that end, he attached a proposal with revisions to the order and placement of the various subsections. He believes that revising the order in this fashion will help field supervisors and employees to understand more readily and clearly the provisions of this safety order and strongly encourages the Board to consider these non-substantive changes.

Response:

The Board concludes that Mr. Wick's proposed editorial revisions, which merely reorder the text without any substantive changes, improve clarity; therefore, the Board is revising the proposal as suggested by Mr. Wick. The Board considers this revision to be non-substantive; therefore, the Board it is not required to notice the public of these editorial changes.

Comment #3:

Mr. Wick requests guidance on what an employer should do to know they are in compliance with the clause "Where re-usable containers for individuals use are relied upon for compliance with this subsection, the employer shall ensure the containers are marked to identify the user and maintained in a sanitary condition."

Response:

The Board believes that the employer's obligation under this provision is clear. The Board does not determine what an employer should do to know they are in compliance with a standard. The Division of Occupational Safety and Health should be contacted for guidance regarding compliance with a standard.

The Board thanks Mr. Wick for his participation in the rulemaking process.

Mr. Kevin Bland representing the California Framing Contractors Association and the Residential Contractors Association, by email on May 13, 2008.

Comments 1, 2 and 3:

Mr. Bland's comments and suggestions are substantially the same as those made by Mr. Wick.

Response:

See the responses to Mr. Wick. The Board thanks Mr. Bland for his comments.

ADDITIONAL DOCUMENTS RELIED UPON

- California Health and Safety Code, Part 7, Chapter 5, Section 114095.

This document is available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board office located at 2520 Venture Oaks Drive, Suite 350, Sacramento, California.

ADDITIONAL DOCUMENTS INCORPORATED BY REFERENCE

None.

DETERMINATION OF MANDATE

This standard does not impose a mandate on local agencies or school districts as indicated in the Initial Statement of Reasons.

ALTERNATIVES CONSIDERED

The Board invited interested persons to present statements or arguments with respect to alternatives to the proposed standard. No alternative considered by the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the adopted action.