

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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ATTACHMENT NO. 3**INITIAL STATEMENT OF REASONS**

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Chapter 4, Subchapter 4, Article 3, Section 1527 of the Construction Safety Orders

Washing Facilities at Construction JobsitesSUMMARY

Title 8, California Code of Regulations, Section 1527 currently requires construction employers to provide washing facilities for employees engaging in operations involving hazardous substances. There is no Cal/OSHA requirement for provision of washing facilities for personal hygiene at construction jobsites, with the exception of tunneling operations. However, such facilities are required in Title 8 standards for general industry and for agricultural hand labor.

On January 1, 2001 a new Wage Order, Number 16, adopted by the Industrial Welfare Commission took effect. Wage Order 16 applies to construction, drilling, logging and mining industries and includes a requirement at Section 10, Meal Periods, for provision of "an adequate supply of potable water, soap, or other suitable cleansing agent and single use towels for hand washing." Wage Order 16 is limited to providing the handwashing facility in conjunction with a meal period and does not address access during the rest of the work day and being located near toilet facilities.

This proposed rulemaking will amend Section 1527 to require provision of washing facilities for personal hygiene at construction jobsites, in the same ratio to employees as Section 1526 currently requires provision of toilet facilities at such jobsites. The effect of these amendments will be to require construction employers to obtain, provide, and maintain washing facilities for employees, along with the toilet facilities that are already required by Section 1526. A number of other amendments to Section 1527 are proposed to clarify its requirements and to make it consistent with the counterpart Federal OSHA regulation at 29 CFR 1926.51(f), Washing Facilities for the construction industry.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

Proposed Section 1527(a) will require provision at all construction jobsites of one washing facility for each twenty employees or fraction thereof. The purpose of this amendment is to provide employees with basic washing facilities along with the toilet facilities already required to be provided by Section 1526. Washing facilities are already required to be provided to employees working in general industry, agricultural hand labor settings, and tunneling operations. The proposed amendments are necessary to reduce the spread of disease that can result when employees use toilet facilities and then transmit disease-causing bacteria either by incidental contact with other employees or by contact with their own food or the food of other employees. Disease microorganisms that can be transmitted as a result of inadequate washing of the hands include *Shigella*, *Giardia lamblia*, hepatitis A virus, and *Campylobacter jejuni*.

Proposed Section 1527(a)(1) will establish standards for washing facilities required to be provided at construction jobsites.

Proposed Section 1527(a)(1)(A) will require that washing facilities be located as close as reasonably feasible to the toilet facilities provided to comply with Section 1526. The purpose and necessity of this requirement, consistent with the concept of using washing to interrupt the chain of transmission of disease-causing organisms, is to minimize the time transpiring between washing and use of the toilet facilities where disease-causing microorganisms are particularly likely to contaminate the hands, arms, and face. Linking the requirement for provision of washing facilities to the toilet facilities required to be provided by Section 1526, incorporates the exception at Section 1526(e) for provision of sanitation facilities to mobile crews when transportation to nearby toilet facilities is readily available. Thus, under the proposed amendments, washing facilities will not be required to be provided at a particular fixed location to mobile crews when they have readily available transportation to nearby toilet facilities that also provide a washing facility that satisfies the standards in proposed Section 1527(a).

Proposed Section 1527(a)(1)(B) will require that washing facilities provide a flow of water sufficient for effective washing. Recognizing that at some worksites water may have to be transported to portable washing facilities, a performance oriented approach is proposed which would require a flow of water sufficient for effective washing.

Proposed Section 1527(a)(1)(C) will require that soap or other suitable cleansing agent be provided for use in washing. This requirement is consistent with that for washing facilities for agricultural hand labor in Section 3457 and is necessary because soap used in washing is a significant aid in the physical removal of transient microorganisms from the skin.

Proposed Section 1527(a)(1)(D) will require that single-use towels be provided in washing facilities. This requirement is consistent with washing facilities for agricultural hand labor in Section 3457 and is necessary because towel drying is a significant aid in removal by frictional force of significant numbers of microorganisms from the skin. Single-use towels are specified to avoid sharing of towels with resulting increased potential for transmission of disease-causing microorganisms.

Proposed Section 1527(a)(1)(E) will require that washing facilities be maintained in a clean and sanitary condition. This requirement is necessary to assure proper maintenance of washing facilities so that they do not contribute to transmission of disease-causing microorganisms and to avoid discouraging their use by employees.

In addition to the above-proposed requirements for washing related to general sanitation and hygiene for the purposes of prevention of infectious disease, amendments are proposed to the existing requirements of Section 1527 for washing facilities for employees working with hazardous substances. Existing Section 1527(a) is proposed to be renumbered to Section 1527(a)(2) with amendments to bring it into conformity with the counterpart Federal OSHA requirement at 29 CFR 1926.51. A number of these amendments are nonsubstantive modifications of language to clarify the existing requirement. Substantive changes consistent with the language of 29 CFR 1926.51 are necessary to clarify that the washing facilities must be in “near” proximity to the jobsite, and that washing facilities for hazardous substances shall provide hot and cold running water or tepid running water.

Section 1527(a)(3) is added to be at least as effective as 29 CFR 1926.51 and clarify where employers can find the shower specifications (in Section 3366) when they provide a shower at a construction jobsite.

DOCUMENTS RELIED UPON

1. Federal OSHA field sanitation final rule for hand labor in agriculture (52 Fed Reg 16050-16096 May 1, 1987).
2. Letter from Mr. Kenny Scheidecker, Ironworker Local 433, Petitioner, dated April 6, 2000.
3. Division Evaluation Report of Petition File No. 419, dated July 21, 2000.
4. Standards Board Petition File No. 419, Proposed Petition Decision, dated October 19, 2000.

These documents are 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 Way, Suite 350, Sacramento, California.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

Insignificant to no cost is anticipated to be associated with providing handwashing facilities at construction sites. It is estimated to cost \$15-\$35 per month for a handwashing facility and that is an insignificant increase to the average cost of a construction job. State agencies with employees directly involved in construction activities and which have the responsibility for assuring compliance with Title 8 requirements for sanitation at such jobsites will incur a cost for providing washing facilities that comply with the proposed rule. A telephone survey of providers of portable sanitation facilities to construction employers indicated that the costs for providing a portable sink unit for each 20 employees, along with the already required portable toilet, range from \$15 to \$35 per month per unit including weekly servicing. The current cost for a portable toilet alone with weekly servicing including delivery to, and pick-up from, the worksite ranges in price from approximately \$90 to \$110 per month.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

Insignificant to no cost is anticipated to be associated with providing handwashing facilities at construction sites. It is estimated to cost \$15-\$35 per month for a handwashing facility and that is an insignificant increase to the average cost of a construction job. See the rationale above under Costs or Savings to State Agencies.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

The estimated costs would be similar to those identified above for state agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulation does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this regulation does not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed regulation does not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulations require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulation does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed regulation does not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses.

ASSESSMENT

The adoption of the proposed amendments to these regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that 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 proposed action.