

DEPARTMENT OF INDUSTRIAL RELATIONS
Occupational Safety and Health Standards Board
2520 Venture Oaks Way, Suite 350
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TITLE 8. CALIFORNIA CODE OF REGULATIONS

Construction Safety Orders

Sections 1504 and 1526

General Industry Safety Orders

Sections 3361, 3364, 3437, 3457 and 5192

(Published on March 1, 2019)

[Single-User Toilet Facilities](#)

NOTICE IS HEREBY GIVEN that the Occupational Safety and Health Standards Board (Board) proposes to adopt, amend or repeal the foregoing provisions of Title 8 of the California Code of Regulations in the manner described in the Informative Digest, below.

PUBLIC HEARING

The Board will hold a public hearing starting at 10:00 a.m. on **April 18, 2019** in the **Auditorium** of the **State Resources Building, 1416 9th Street, Sacramento, California**. At this public hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest.

WRITTEN COMMENT PERIOD

In addition to written or oral comments submitted at the public hearing, written comments may also be submitted to the Board's office. The written comment period commences on **March 1, 2019** and closes at 5:00 p.m. on **April 18, 2019**. Comments received after that deadline will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments can be submitted as follows:

By mail to Sarah Money, Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833; or

By e-mail sent to oshsb@dir.ca.gov.

AUTHORITY AND REFERENCE

Labor Code Section 142.3 establishes the Board as the only agency in the State authorized to adopt occupational safety and health standards. In addition, Labor Code Section 142.3 requires the adoption of occupational safety and health standards that are at least as effective as federal occupational safety and health standards.

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT **OVERVIEW**

On September 29, 2016, California Assembly Bill 1732, Chapter 818 was signed by the governor, and became effective on March 1, 2017, amending Health and Safety Code (HSC) Section 118600 to require that single-user toilet facilities be identified as all-gender facilities with signage compliant with Title 24 of the California Code of Regulations.

On July 25, 2017, the Division of Occupational Safety and Health submitted a Form 9 Request for New or Change in Existing Safety Orders to the Occupational Safety and Health Standards Board to request changing Title 8 to remove potential conflicts with HSC Section 118600 concerning all-gender designation of single-user toilet facilities.

The proposal also serves the purpose of allowing more employers to meet Title 8 toilet facility requirements by means of single-user toilet facilities also compliant with HSC Section 118600 gender-neutral designation requirements.

The Board evaluated the proposed regulations pursuant to Government Code section 11346.5(a)(3)(D) and has determined that the regulations are not inconsistent or incompatible with existing state regulations. This proposal is part of a system of occupational safety and health regulations. The consistency and compatibility of that system's component regulations is provided by such things as: (1) the requirement of the federal government and the Labor Code to the effect that the State regulations be at least as effective as their federal counterparts, and (2) the requirement that all state occupational safety and health rulemaking be channeled through a single entity (the Standards Board).

Anticipated Benefits

An anticipated benefit of the proposed revisions to the regulated public is to allow for all-gender usage designation by employers having single-user toilet facilities in conformity with HSC Section 118600 and California public policy pursuant to Assembly Bill 1732, Chapter 818 of 2016. The proposed regulation ultimately protects the health and safety of California workers and indirectly prevents discrimination and promotes fairness and social equity. It will not provide a direct benefit to the state's environment.

The specific changes are as follows:

Existing Title 8 regulations require, with limited exception, that toilet facilities, including single-user facilities, be separately designated for use by either men or women. An existing provision does provide an exception for employers having fewer than five employees from the requirement to provide separate men's and women's toilet facilities.

This proposal adds to Title 8, Construction Safety Orders, and General Industry Safety Orders, a definition of "single-user toilet facility," and as to such single-user facilities, expands the allowance of all-gender designation to employers having any number of employees, so long as the total quantity of provided toilet facilities is not fewer than otherwise required. Gender-

specific multi-user facilities are provided in equal number to each sex, so that men and women have access to the same total number of toilet facilities.

The effect of the proposed revisions on the regulated public is to remove potential conflict between existing Title 8 toilet facility requirements and those found in HSC Section 118600. Doing so eliminates the possibility of an employer compliant with the gender neutrality requirements of HSC Section 118600 being noncompliant with Title 8 toilet facility requirements when providing single-user facilities.

The proposed amendments to Title 8 are as follows:

Section 1504(a). A definition is added for the term “Single-User Toilet Facility,” to conform to the term as defined per HSC Section 118600.

Section 1526(a). The existing exception provided to employers having fewer than five employees from the requirement to have separate toilet facilities for each sex, is made clearer in allowing employers to designate single-user toilets as all-gender without changing the number of toilets required.

A second exception is added to allow employers having any number of employees to designate single-user toilet facilities for all-gender use, so long as the total quantity of provided toilet facilities is no fewer than otherwise required. Gender-specific multi-user facilities are provided in equal number to each sex, so that men and women have access to the same total number of toilet facilities.

Section 3361. A definition is added for the term “Single-User Toilet Facility,” to conform to the term as defined per HSC Section 118600.

Section 3364(a). The existing exception provided to employers having fewer than five employees from the requirement to have separate toilet facilities for each sex, is made clearer in allowing employers to designate single-user toilets as all-gender without changing the number of toilets required.

A second exception is added to allow employers having any number of employees to designate single-user toilet facilities for all-gender use, so long as the total quantity of provided toilet facilities is no fewer than otherwise required. Gender-specific multi-user facilities are provided in equal number to each sex, so that men and women have access to the same total number of toilet facilities.

Existing exception (a)(2) is re-numbered to (a)(3).

Section 3437. A definition is added for the term “Single-User Toilet Facility,” to conform to the term as defined per HSC Section 118600.

Section 3457(b). A definition is added for the term “Single-User Toilet Facility,” to conform to the term as defined per HSC Section 118600.

Section 3457(c)(2)(A). The allowance provided to employers having fewer than five employees from the requirement to have separate toilet facilities for each sex, is deleted and added as exception (1) to be consistent with other toilet requirement sections in Title 8.

A second exception is added to allow employers having any number of employees to designate single-user toilet facilities for all-gender use, so long as the total quantity of provided toilet facilities is no fewer than otherwise required. Gender-specific multi-user facilities are provided in equal number to each sex, so that men and women have access to the same total number of toilet facilities.

The existing exception is re-numbered to (3).

Section 5192(a)(3). A definition is added for the term “Single-User Toilet Facility,” to conform to the term as defined per HSC Section 118600.

Section 5192(n)(3)(A). The existing exception provided to employers having fewer than five employees from the requirement to have separate toilet facilities for each sex, is made clearer in allowing employers to designate single-user toilets as all-gender without changing the number of toilets required.

A second exception is added to allow employers having any number of employees to designate single-user toilet facilities for all-gender use, so long as the total quantity of provided toilet facilities is no fewer than otherwise required. Gender-specific multi-user facilities are provided in equal number to each sex, so that men and women have access to the same total number of toilet facilities.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on Local Agencies or School Districts: None.

Cost or Savings to State Agencies: None.

Cost to any Local Government or School District which must be Reimbursed in Accordance with Government Code Sections 17500 through 17630: None.

Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None.

Cost or Savings in Federal Funding to the State: None.

Cost Impacts on a Representative Private Person or Business:

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**Statewide Adverse Economic Impact Directly Affecting Businesses and Individuals:
Including the Ability of California Businesses to Compete:**

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses/individuals, including the ability of California businesses to compete with businesses in other states. The proposed changes to Title 8 remove potential conflict between it and the Health and Safety Code. No cost is associated with the changes, which comprise conditional allowances, rather than mandates.

Significant Affect on Housing Costs: None.

SMALL BUSINESS DETERMINATION

The Board has determined that the proposed amendments will not affect small businesses as the revisions basically do away with a potential conflict between Title 8 and the Health and Safety Code. The revisions place no added requirement to employers, but instead make allowance for gender-neutral designation of toilets and compliance with Title 8 toilet facility requirements.

**RESULTS OF THE ECONOMIC IMPACT
ASSESSMENT/ANALYSIS**

The proposed regulation will not have any effect on the creation or elimination of California jobs or the creation of new businesses or the elimination of existing California businesses or affect the expansion of existing California businesses. The revisions place no added requirement to employers, but instead make allowance for gender-neutral designation of toilets and compliance with Title 8 toilet facility requirements. The proposed regulation ultimately protects the health and safety of California workers but does not offer a direct benefit to the state's environment.

BENEFITS OF THE PROPOSED ACTION

A key benefit to the regulated public results from addressing a potential conflict between existing Title 8 regulations and the HSC Section 118600 requirements concerning single-user toilet facilities. It will benefit the regulated public by making allowance for gender-neutral compliance with pre-existing Title 8 toilet facilities requirements, consistent with the public policy promulgated pursuant to HSC Section 118600, as amended by Assembly Bill 1732, Chapter 818, effective March 1, 2017. The proposed regulation ultimately protects the health and safety of California workers and indirectly prevents discrimination and promotes fairness and social equity. It will not provide a direct benefit to the state's environment.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either 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 or would be more cost-effective to affected private persons and equally

effective in implementing the statutory policy or other provision of law than the proposal described in this Notice.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled public hearing or during the written comment period.

CONTACT PERSONS

Inquiries regarding this proposed regulatory action may be directed to Christina Shupe (Executive Officer) or the back-up contact person, Michael Manieri (Principal Safety Engineer) at the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833; (916) 274-5721.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF THE PROPOSED REGULATIONS AND RULEMAKING FILE

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this Notice of Proposed Action is published in the Notice Register, the rulemaking file consists of this Notice, the proposed text of the regulations, the Initial Statement of Reasons, supporting documents, or other information upon which the rulemaking is based. Copies may be obtained by contacting Ms. Shupe or Mr. Manieri at the address or telephone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this Notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public at least 15 days before the Board adopts the regulations as revised. Please request copies of any modified regulations by contacting Ms. Shupe or Mr. Manieri at the address or telephone number listed above. The Board will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Shupe or Mr. Manieri at the address or telephone number listed above or via the internet.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The Board will have rulemaking documents available for inspection throughout the rulemaking process on its web site. Copies of the text of the regulations in an underline/strikeout format, the Notice of Proposed Action and the Initial Statement of Reasons can be accessed through the Standards Board's website at <http://www.dir.ca.gov/oshsb>.