

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**TITLE 8. CALIFORNIA CODE OF REGULATIONS**

Ship Building, Ship Repairing and Ship Breaking Orders
Section 8397.4(b)

Water Supply - Access to Drinking Cups - Horcher

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 **June 18, 2015**, in the 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

Any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. The written comment period commences on **May 1, 2015**, and closes at 5:00 p.m. on **June 18, 2015**. 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 are to 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 fax at (916) 274-5743; 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 and health standards that are at least as effective as federal occupational safety and health standards.

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

The Occupational Safety and Health Standards Board (Board) intends to adopt the proposed rulemaking action pursuant to Labor Code Section 142.3, which mandates the Board to adopt regulations at least as effective as federal regulations addressing occupational safety and health issues.

The U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) promulgated regulations addressing General Working Conditions in Shipyard Employment on May 2, 2011, as 29 Code of Federal Regulations, Section 1915.88(b)(3). The Board is relying on the explanation of the provisions of the federal regulations in Federal Register, Volume 76, No. 84, pages 24576-24711, May 2, 2011, as the justification for the Board's proposed rulemaking action. The Board proposes to adopt a regulation which is the same as the federal regulation except for editorial and format differences.

The proposed regulation codifies requirements of each means of dispensing drinking water for consumption by employees.

In 2011, the Board adopted into Title 8, California Code of Regulations (CCR), the Occupational Safety and Health Standards for Shipyard Employment. Title 8, Section 8397.4 as adopted, included a reference to Title 8, Section 3363 of General Industry Safety Orders. The language was reviewed and approved by Federal OSHA Region IX in 2011.

Subsequent to the adoption, Federal OSHA Region IX representatives reexamined the regulation and determined the existing standard under Title 8, CCR, Section 8397.4 did not require "single use drinking cups" and "a sanitary receptacle" when water is dispensed from a "covered container".

Federal Representatives requested the Board to adopt language commensurate with 29 CFR 1915.88(b)(3). The proposed regulation would incorporate the requirements of 29 CFR 1915.88(b)(3) into Title 8, CCR Section 8397.4. The resulting standard would achieve regulatory compliance with "at least as effective as" provisions.

The proposed regulation is substantially the same as the final rule promulgated by Federal OSHA. Therefore, Labor Code Section 142.3(a)(3) exempts the Board from the provisions of Article 5 (commencing with Section 11346) and Article 6 (commencing with Section 11349) of Chapter 3.5, Part 1, Division 3 of Title 2 of the Government Code when adopting a standard substantially the same as a federal standard; however, the Board is still providing a comment period and will convene a public hearing. The primary purpose of the written and oral comments at the public hearing is to:

1. Identify any clear and compelling reasons for California to deviate from the federal standard; and
2. Identify any issues unique to California related to this proposal which should be addressed in this rulemaking and/or a subsequent rulemaking.

The responses to comments will be available in a rulemaking file on this matter and will be limited to the above areas.

The specific changes are as follows:

Allows the employers to provide single-use bottled water to employees or provide single use drinking cups if dispensed from a common container.

This proposed rulemaking action is 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).

DOCUMENTS RELIED UPON

1. Federal Register, Vol. 76, No. 84, pp. 24576-24711, May 2, 2011.

This document is available online at the Federal OSHA website: <http://www.gpo.gov/fdsys/pkg/FR-2014-09-26/pdf/2014-22816.pdf>

This document is also 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.

STRIKEOUT/UNDERLINE DRAFT PROPOSAL

See Attachment No. 1.

COST ESTIMATES OF PROPOSED ACTION

Federal OSHA's estimate of compliance costs are found at Federal Register, Vol. 76, No. 84, May 2, 2011, starting at page 24577.

Federal OSHA reviewed the cost of complying and determined in Table 4 that there is not additional cost.

TABLE 4—REVISIONS AND NEW REQUIREMENTS WITH NO MAJOR COST IMPACTS	
Subpart F revisions and new requirements	OSHA analysis
§1915.88(b)(3) The employer must dispense drinking water from a fountain, a covered container with single-use drinking cups stored in a sanitary receptacle, or single-use bottles. The employer must prohibit the use of shared drinking cups, dippers, and water bottles.	The standard expands existing §1910.141(b)(1)(iii) to also allow employers to provide potable water in single-use bottles. The standard should not impose additional costs; rather, it provides employers with greater flexibility in meeting the existing requirement.

Federal OSHA omitted from their cost impacts of dispensing water from a covered container with single-use drinking cups within their “OSHA analysis”. “The standard should not impose additional costs; rather it provides employers with greater flexibility in meeting the existing requirements” is the rationale Federal OSHA uses for their conclusions, that there are no “additional costs” when providing potable water in single-use bottles. Using the same rationale, the option to provide water through a covered container with single-use drinking cups dispensed from a sanitary receptacle similarly expands the means to comply with existing requirements and as such does not mandate additional costs.

Federal OSHA has also certified that the rule will not have a significant impact on a substantial number of small entities.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard does not impose a local mandate. There are no costs to any local government or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630.

SMALL BUSINESS DETERMINATION

The Board has determined that the proposed amendment may affect small businesses. However, no economic impact is anticipated. The cost of compliance as referenced in the table above is less than 1% of the profits for small businesses affected.

CONTACT PERSONS

Inquiries regarding this proposed regulatory action may be directed to Marley Hart (Executive Officer) and the back-up contact person is 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 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 is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, supporting documents, or other information upon which the rulemaking is based. Copies may be obtained by contacting Ms. Hart 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 without further notice even though modifications may be made to the original proposal in response to public comments or at the Board’s discretion.

**AVAILABILITY OF THE MEMORANDUM TO THE
STANDARDS BOARD MEMBERS**

Upon its completion, copies of the Memorandum may be obtained by contacting Ms. Hart 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 and the Notice of Proposed action can be accessed through the Standards Board's website at <http://www.dir.ca.gov/oshsb>.