

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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NOTICE OF PROPOSED MODIFICATIONS TO
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.

Pursuant to Government Code Section 11346.8(c), the Occupational Safety and Health Standards Board (Standards Board) gives notice of the opportunity to submit written comments on the above-named standard in which modifications are being considered as a result of public comments and/or Board staff consideration.

On February 21, 2008, the Standards Board held a Public Hearing to consider revisions to Title 8, Section 1524, of the General Industry Safety Orders. The Standards Board received written and oral comments on the proposed revisions. The standard has been modified as a result of these comments and Board consideration.

A copy of the full text of the standard, with the modifications clearly indicated, is attached for your information. In addition, a summary of all written and oral comments regarding the original proposal and staff responses is included.

Pursuant to Government Code Section 11346.8(d), notice is also given of the opportunity to submit comments concerning the addition to the rulemaking file of the following document relied upon:

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

A copy of this document is available for review during normal business hours at the Standards Board Office located at the address listed below.

Any written comments on these modifications and document relied upon must be received by 5:00 p.m. on May 13, 2008, at the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, California 95833. The standard will be scheduled for adoption at a future business meeting of the Standards Board.

The Standards Board's rulemaking files on the proposed action are open to public inspection Monday through Friday, from 8:00 a.m. to 4:30 p.m., at the Standards Board's office.

Inquiries concerning the proposed changes may be directed to Marley Hart, Executive Officer at (916) 274-5721.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Date: April 23, 2008

Marley Hart, Executive Officer

PROPOSED MODIFICATIONS
(Modifications are indicated in bold,
double underline for new language,
and bold, strikeout for deleted language.)

**STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD**

PROPOSED STATE STANDARD,
TITLE 8, CHAPTER 4

Amend Section 1524 to read:

1524. Water Supply.

(a) Potable Water.

(1) An adequate supply of potable drinking water shall be provided in all places of employment.

Note: Additional requirements for the provision of drinking water in outdoor places of employment are contained in Section 3395.

(2) Portable containers used to dispense drinking water to more than one person shall be equipped with a faucet or drinking fountain. Drinking water containers shall be capable of being tightly closed and shall be otherwise designed, constructed and serviced so that sanitary conditions are maintained. Water shall not be dipped from containers.

(3) Any container used to store or dispense drinking water shall be clearly marked as to the nature of its contents and shall not be used for any other purpose.

(4) ~~Where drinking fountains are not provided, single service cups (to be used but once) shall be supplied.~~ The employer shall take one or more of the following steps to ensure every employee has access to drinking water:

(A) Provide drinking fountains,

(B) Supply single-service cups,

(C) Supply sealed one-time use water containers, or

(D) Ensure re-usable, closable, ~~personally identifiable~~ containers are available for individual employee use.

(5) Where single-service cups are supplied, a sanitary container for the unused cups and a receptacle for disposing of the used cups shall be provided. Where sealed one-time use water containers are supplied, a receptacle for disposing of the used containers shall be provided.

(6) ~~Only one individual employee shall drink water from an individual cup or container. Where re-usable containers for individual use are relied upon for compliance with subsection (a)(4), the employer shall ensure the containers are marked to identify the user and maintained in a sanitary condition.~~

(7) Re-usable containers for individual use and drinking cups shall not be shared or used in common.

EXCEPTION: 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. Re-usable containers for individual use and drinking cups which are safely and effectively cleaned and sanitized between use by different users.

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NOTE: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code.

SUMMARY AND RESPONSE TO COMMENTS

SUMMARY AND RESPONSE TO ORAL AND WRITTEN 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.

Comment:

Ms. Bradley expressed support for the proposal with the change suggested by Mr. Pena.

Response:

See the response to Mr. Pena. The Board thanks Ms. Bradley for her comment and participation in the rulemaking process.

Ms. Elizabeth Treanor, Phylmar Regulatory Roundtable.

Comment:

Ms. Treanor expressed support for the proposal with the change suggested by Mr. Pena.

Response:

See the response to Mr. Pena. The Board thanks Ms. Treanor for her comment and participation in the rulemaking process.

Ms. Julianne Broyles, Lumber Association of California and Nevada.

Comment:

Ms. Broyles expressed support for the proposal with the change suggested by Mr. Pena.

Response:

See the response to Mr. Pena. The Board thanks Ms. Broyles for her comment

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.