

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Attachment No. 2

INITIAL 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**SUMMARY**

This proposal was initiated in response to a Division of Occupational Safety and Health (Division) Form 9 received by the Occupational Safety and Health Standards Board (Board) on November 3, 2004. The Division requests that Section 1524, Water Supply, be amended to allow the use of sealed one-time use water containers and re-usable individual water containers which, the Division asserts, the current standard does not permit. The Division also requests that the standard be revised to specifically prohibit the use of common drinking receptacles in order to reduce the risk of disease transmission.

Section 1524 of the Construction Safety Orders contains requirements regarding the provision of potable drinking water, including safeguards to protect employees from exposure to pathogenic microorganisms which can be transmitted from one employee to another when employees share drinking water containers. Section 1524 and the counterpart federal standard, 29 Code of Federal Regulations (CRF), Section 1926.51, contain nearly identical requirements, except the federal standard prohibits the common use of a drinking receptacle.

The proposed revisions would provide employers with two additional options for providing drinking water for employees. These options are: 1) re-usable, closable, personally identifiable containers for individual employee use, and 2) sealed one-time use water containers for individual employee use. In order to be at least as effective as the counterpart federal standard, the proposal would also prohibit the common use of a drinking cup or container. In addition, the proposal would reference Section 3395, Heat Illness Prevention in Outdoor Places of Employment, to inform employers that there are additional requirements in that standard which may be applicable.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

Section 1524(a)(1) requires that an adequate supply of drinking water be provided; however it does not give any guidance on the quantity of water which must be provided. The proposal would add a note to inform the reader that additional requirements for the provision of drinking

water in outdoor places of employment are contained in Section 3395 of the General Industry Safety Orders. Section 3395, Heat Illness Prevention for Outdoor Places of Employment, became effective July, 27, 2006, as a permanent standard. One of the provisions of that standard requires outdoor places of employment provide, or have effective replenishing procedures which are capable of providing, one quart of water per employee per hour. The proposed amendment is necessary to give direction to employers on the quantity of water which must be provided in outdoor places of employment and to make employers aware of other additional requirements which apply to the provision of drinking water in outdoor places of employment.

Section 1524(a)(2) requires that portable containers used to dispense drinking water shall be equipped with a faucet or drinking fountain. It also prohibits the dipping of water from containers and requires that containers be designed, constructed and serviced so that sanitary conditions are maintained. The proposed amendment would clarify that faucets or fountains are only required on containers that are used to provide water to more than one person. The proposed amendment is necessary to provide more flexibility for employers to make potable water readily available to their employees without diminishing existing provisions which guard against unsanitary conditions and practices.

Section 1524(a)(4) specifies that single-service cups shall be supplied where there is no drinking fountain. The proposed amendment would provide employers with two additional alternatives for providing drinking water when drinking fountains are not available. One of the new, proposed alternatives would require that the employer supply sealed one-time use water. The other new, proposed alternative would require that the employer ensure each employee has access to a refillable, closable, personally identifiable container for the employee's individual use. The proposal would move the requirement regarding containers for storing and disposing of single-service cups to new subsection (a)(5). The proposed amendment is necessary to provide more flexibility for employers to make potable water readily available to their employees without diminishing existing provisions that guard against unsanitary conditions and practices.

New Section 1524(a)(5) would contain the requirement, which was relocated from subsection 1524(a)(4), that employers provide containers for storing and disposing of single-service cups where these cups are supplied. A provision would be added to require that a receptacle for disposing of one-time use water containers be provided where these containers are supplied. The proposed amendment is necessary to require that a receptacle for disposal of one-time use water containers be provided where these containers are supplied.

New Section 1524(a)(6) and the related exception is proposed to prohibit employees from using the same drinking cup or container unless it can be done in a sanitary manner. The counterpart federal standard, 29 CFR, Section 1926.51 prohibits the common drinking cup. The proposed amendment is necessary to be at least as effective as the counterpart federal standard.

DOCUMENTS RELIED UPON

1. Memorandum from the Division of Occupational Safety and Health dated November 4, 2004, to the Occupational Safety and Health Standards Board with attached Request for New or Change in Existing Safety Order.
2. U.S. Department of Labor, Occupational Safety and Health Administration, 29 CFR 1926.51.

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

No costs or savings to state agencies will result as a consequence of the proposed action.

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 a 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. The proposal would allow more flexibility for employers to supply potable water to their employees.

Cost Impact on Private Persons or Businesses

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.

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

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard 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 standard 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 proposal does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed standard 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 standard does not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendment may affect small businesses. However, no economic impact is anticipated. The proposed amendment allows more flexibility for employers to supply potable water to their employees.

ASSESSMENT

The adoption of the proposed amendments to this standard 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.