

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**PROPOSED PETITION DECISION OF THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
(PETITION FILE NO. 552)**

INTRODUCTION

The Occupational Safety and Health Standards Board (Board) received a petition on November 6, 2015, from Mr. Rob Neenan, President/CEO, California League of Food Processors, (Petitioner). The Petitioner requests the Board to amend Title 8, California Code of Regulations, Section 3314 to exempt cord and plug connected electrical equipment completely from Section 3314 and not just subsections (c) and (d) or replace Section 3314 in its entirety with language contained in the corresponding Federal Occupational Safety and Health Administration (OSHA) regulation.

Labor Code section 142.2 permits interested persons to propose new or revised regulations concerning occupational safety and health and requires the Board to consider such proposals, and render a decision no later than six months following receipt. Further, as required by Labor Code section 147, any proposed occupational safety or health standard received by the Board from a source other than the Division of Occupational Safety and Health (Division) must be referred to the Division for evaluation, and the Division has 60 days after receipt to submit an evaluation regarding the proposal.

SUMMARY

The Petitioner states that California Occupational Safety and Health Administration (Cal/OSHA) has misinterpreted the "*cord and plug*" exception to apply only to subsections (c) and (d) in Section 3314 and that the exception in reality applies to the entire section. According to the Petitioner, the exception should be re-written so that it applies to the entire regulation to remove ambiguity.

In addition, the Petitioner states that the language of the "*cord and plug*" exception in the federal regulation, Title 29 Code of Federal Regulations (CFR) section 1910.147, is easier to read and understand. The petition would purportedly benefit Cal/OSHA, employers and employees by making the regulation easier to comprehend.

DIVISION'S EVALUATION

Title 8, Section 3314 contains requirements for protecting employees from injury due to the unexpected energization, release of stored energy, or start-up of equipment during cleaning,

repairing, servicing, setting-up and adjusting. Operational guarding and protective devices may be disabled or otherwise fail to protect employees during these activities.

The exemption in Section 3314 pertains to electrical equipment which is energized through a cord plugged into an electrical outlet and can be completely de-energized by unplugging the equipment. Such equipment, referred to as cord and plug equipment, is exempt from subsections (c) and (d) of Section 3314 if the plug is under the exclusive control of the employee who is working on the equipment. The exemption is referred to as the “*cord and plug*” exception. Such equipment is still required to comply with all remaining subsections of Section 3314.

The language of the “*cord and plug*” exception in Section 3314 is clear that it applies only to subsections (c) and (d). The title of the exception is “*EXCEPTIONS to subsections (c) and (d).*” The plain language of the regulation is obvious and there is no ambiguity that the exception may apply to other subsections of Section 3314.

The California Occupational Safety and Health Appeals Board agreed with Cal/OSHA that the exception only applies to subsections (c) and (d) of Section 3314 in the following decision: *Syar Industries, Cal-OSHA App. 13-1876-1880, Decision (July 24, 2015)*.

The language of the “*cord and plug*” exception is different in Title 8 than the federal OSHA regulation. Federal OSHA exempts the entire regulation while Title 8 exempts only subsections (c) and (d). However, the Title 8 exception is clear and easily understandable. There are no possible changes which would make the scope of the exception more comprehensible.

Cal/OSHA has long recognized the inherent danger of working around energized machinery. Cal/OSHA has an extensive history of investigating lacerations, amputations, crushing injuries, electric shock and deaths from failure to properly de-energize equipment during adjustments, cleaning, maintenance or repairs. Subsections (e) through (l) are either inapplicable to cord and plug equipment or provide important and necessary employee protection.

The Petitioner is correct that the “*cord and plug*” exception in Section 3314 is not identical to the corresponding federal OSHA regulation, 29 CFR 1910.147. Title 8 is more protective than the federal OSHA standard. The additional protection is necessary as cord and plug equipment encompasses a wide variety of machinery, many of which expose employees who work on the equipment to serious hazards. Because it may be easier to control hazards on cord and plug equipment does not nullify the need for safe work procedures and practices.

Cal/OSHA recommends that the Petitioner's request to amend Title 8 Section 3314 to expand the “*cord and plug*” exception be denied.

STAFF'S EVALUATION

There is a need to control the release of stored energy and the unexpected energization or start-up/re-start-up of high rotating speed equipment such as pedestal/bench grinders, drill presses, mixers, meat slicers, cutting saws, blenders, and portable power tools to significantly reduce risk of serious injury to employees.

Excluding cord and plug connected equipment from the requirements of Section 3314 hazardous energy control standards would reduce the present level of safety protections provided by Section 3314 since it protects employees from inadvertent re-energized equipment causing extreme injuries to employees from electrical shock, burns, cuts and amputations.

Board staff advises against deleting Section 3314 in its entirety and replacing it with federal section 29 CFR 1910.147. Section 3314 and related energy control requirements contained in others parts of Title 8 exist to go beyond equivalence to federal standards in order to provide California workers with additionally protective enforceable Title 8 standards.

It is Board staff's recommendation that the Petitioner's request to amend Title 8, California Code of Regulations, Section 3314, Exception 2, cord and plug regulations be denied. It is Board staff's recommendation that the Petitioner's alternative request to insert 29 CFR 1910.147 into the California code to fully replace Section 3314 also be denied.

CONCLUSION AND ORDER

The Occupational Safety and Health Standards Board has considered the petition of Mr. Rob Neenan, President/CEO, California League of Food Processors, to exempt cord and plug connected electrical equipment completely from Section 3314 and not just subsections (c) and (d) or replace Section 3314 in its entirety with language contained in the corresponding Federal OSHA regulation. Having carefully read and considered the petition, Division Evaluation, and Board Staff Evaluation, the petition is hereby DENIED.