

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833
(916) 274-5721
FAX (916) 274-5743
Website address www.dir.ca.gov/oshsb



NOTICE OF PROPOSED MODIFICATIONS TO
CALIFORNIA CODE OF REGULATIONS

TITLE 8: Division 1, Chapter 4, Subchapter 7, Article 7, Section 3328
of the General Industry Safety Orders

Machinery and Equipment

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 proposed standard in which further modifications are being considered.

On November 18, 2010, the Standards Board held a Public Hearing to consider revisions to Title 8, Section 3328 of the General Industry Safety Orders. The Standards Board received oral and written comments on the proposed revisions. The standard has been modified as a result of these comments and Standards Board consideration.

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

Any written comments on these modifications must be received by 5:00 p.m. on January 4, 2011, at the Occupational Safety and Health Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, California 95833 or submitted by fax to (916) 274-5743 or e-mailed to oshsb@dir.ca.gov. This proposal will be scheduled for adoption at a future Business Meeting of the Occupational Safety and Health Standards Board.

The Occupational Safety and Health Standards Board's rulemaking file on the proposed action is open to public inspection Monday through Friday, from 8:00 a.m. to 4:30 p.m. at the Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, California.

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

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Marley Hart, Executive Officer

Date: December 15, 2010

PROPOSED MODIFICATIONS
(Modifications are indicated in bold,
underline wording for new language.)

STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Attachment No. 1

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PROPOSED STATE STANDARD,
TITLE 8, DIVISION 1, CHAPTER 4

General Industry Safety Orders, Article 7. Miscellaneous Safe Practices

Amend Section 3328(e) to read as follows:

§3328. Machinery and Equipment.

(a) Machinery and equipment shall be of adequate design and shall not be used or operated under conditions of speeds, stresses, or loads which endanger employees.

(b) Machinery and equipment in service shall be inspected and maintained as recommended by the manufacturer where such recommendations are available.

(c) Machinery and equipment with defective parts which create a hazard shall not be used.

(d) Machinery and equipment designed for a fixed location shall be restrained so as to prevent walking or moving from its location.

(e) Machinery and equipment components shall be designed, and secured, or covered (or both) to minimize hazards caused by breakage, release of mechanical energy (e.g., broken springs), or loosening and/or falling unless the employer can demonstrate that to do so would be inconsistent with the manufacturer's recommendations or would otherwise impair employee safety.

(f) Any modifications shall be in accordance with (a) and with good engineering practice.

(g) Machinery and equipment in service shall be maintained in a safe operating condition.

(h) Only qualified persons shall be permitted to maintain or repair machinery and equipment.

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

SUMMARY AND RESPONSE TO COMMENTS

SUMMARY AND RESPONSES TO ORAL AND WRITTEN COMMENTS

I. Written Comments

Mr. Ken Nishiyama Atha, Regional Administrator-Region IX, Occupational Safety and Health Administration (Federal OSHA), by letter dated November 8, 2010.

Comment:

Federal OSHA indicated that it had completed its review of the proposed standard. Federal OSHA stated that Section 3328, Machinery and Equipment, as proposed, appears to be commensurate with Federal Standard 29 CFR 1910.212(b).

Response:

The Board thanks Federal OSHA for their review of the proposal, comments and participation in the Board's rulemaking process.

II. Oral Comments

Oral comments received at the November 18, 2010, Public Hearing in Costa Mesa, California.

Mr. Guy Prescott, Board Member

Comment:

Mr. Prescott expressed concern regarding the narrow parameters used by the Appeals Board regarding regulatory language, stating that there could be a problem if, at some time in the future, something comes loose and flies, rather than falls. He suggested modifying the language to state, "loosening and/or falling" in order to clarify the Board's intent.

Response:

Board staff has reviewed the recommendation by Mr. Prescott regarding regulatory language that could present a problem in future decisions by the Appeals Board. Mr. Prescott's suggestion to modify the term "loosening and falling" to "loosening and/or falling" has merit and would clarify the Board's intent and reduce the potential for future challenges by the Appeals Board. The Board agrees that the modification to the regulation is necessary.