

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**FINAL STATEMENT OF REASONS**

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**MODIFICATIONS AND RESPONSE TO COMMENTS RESULTING FROM
THE 45-DAY PUBLIC COMMENT PERIOD**

There are no modifications to the information contained in the Initial Statement of Reasons except for the following substantive and/or sufficiently related modifications that are the result of public comments and/or Board staff evaluation.

Existing Section 3328 establishes requirements for machinery and equipment to be designed, operated and maintained to ensure employee safety. Existing subsection (e) requires that machinery and equipment components be designed, secured, or covered to minimize hazards caused by breakage, release of mechanical energy, or loosening and falling. This proposal would require that machinery and equipment components be designed and secured or covered (or both) to minimize hazards unless the employer can demonstrate that doing so would be inconsistent with the manufacturer's recommendations or would impair employee safety.

Modifications are proposed to change the term "loosening and falling" to "loosening and/or falling." The proposed modification is necessary to clarify the Board's intent and reduce the potential for future challenges by the Appeals Board.

Summary and Response 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.

MODIFICATIONS AND RESPONSE TO COMMENTS RESULTING FROM
THE 15-DAY NOTICE OF PROPOSED MODIFICATIONS

No further modifications to the information contained in the Initial Statement of Reasons are proposed as a result of the 15-day Notice of Proposed Modifications mailed on December 15, 2010.

Summary and Response to Written Comments:

Mr. Ken Nishiyama Atha, Regional Administrator-Region IX, Occupational Safety and Health Administration (Federal OSHA), by letter dated December 22, 2010.

Comment:

Federal OSHA indicated that it had completed its review of the proposed standard and the modification 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.

ADDITIONAL DOCUMENTS RELIED UPON

None.

ADDITIONAL DOCUMENTS INCORPORATED BY REFERENCE

None.

DETERMINATION OF MANDATE

This standard does not impose a mandate on local agencies or school districts as indicated in the Initial Statement of Reasons.

ALTERNATIVES CONSIDERED

The Board invited interested persons to present statements or arguments with respect to alternatives to the proposed standard. No alternative considered by the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the adopted action.