

**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 7, Article 7, Section 3328(b)  
of the General Industry Safety Orders

**Machinery and Equipment, Used and Operated****SUMMARY**

This rulemaking proposal is the result of an Occupational Safety and Health Appeals Board (OSHAB) Decision in the Matter of S & S Services, Docket Nos. 08-R2D1-2131 and 2132 dated June 17, 2010, and the OSHAB Denial of the Division of Occupational Safety and Health (Division) Petition for Reconsideration in that matter. The Division issued a serious violation citation under Section 3328(b) for using a personnel lift without installing the outriggers as recommended by the manufacturer. As stated in the OSHAB Decision, the use of the lift without its outriggers is not in accordance with the manufacturer's operating instruction and led to the lift becoming unstable and toppling resulting in serious employee injury. However, the improper use of the lift as described in the Decision does not violate Section 3328 which only requires employers to ensure that manufacturer's inspection and maintenance recommendations are followed. As a result, the Administrative Law Judge held that the Division did not prove the alleged violation of Section 3328(b).

This proposal is needed in addition to Section 3328(a), since Section 3328(a) is limited to dangers relating to "speeds, stresses, or loads," while manufacturers' recommendations might well address additional hazards associated with the machinery or equipment to which the recommendations apply.

**SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION**

This regulatory proposal is intended to provide worker safety at places of employment in California.

This proposed rulemaking action:

- Is based on the following authority and reference: Labor Code Section 142.3, which states, at Subsection (a)(1) that the Board is “the only agency in the state authorized to adopt occupational and health standards.” When read in its entirety, Section 142.3 requires that California have a system of occupational safety and health regulations that at least mirror the equivalent federal regulations and that may be more protective of worker health and safety than are the federal occupational safety and health regulations.
- Differs from existing federal regulations, in that the federal regulations do not have specific provisions dealing with systems for machinery and equipment except as it pertains to a particular machine, tool or component.
- Is not inconsistent or incompatible with existing state regulations. This proposal is part of a system of occupational safety and health regulations. The consistency and compatibility of that system’s component regulations is provided by such things as the requirement of the federal government and the Labor Code to the effect that the State regulations be at least as effective as their federal counterparts.
- Is the least burdensome effective alternative responding to a lack of guidance as it pertains to the use or operation of machinery and equipment. This proposal directs users to follow the manufacturer’s recommendations when using or operating machinery and equipment unless otherwise directed by other Title 8 standards that may be more stringent or provides alternatives not mentioned by the manufacturer.

Section 3328. Machinery and Equipment.

Existing Section 3328 establishes requirements for machinery and equipment to be adequately designed, operated and maintained to ensure employee safety. However, Section 3328(b) is silent in regard to the use or operation of machinery and equipment in accordance with the manufacturer’s operating instructions. This deficiency could result in the unsafe use of equipment or machinery leading to serious injury or fatality. The proposed amendment adds the words “used and operated” to ensure that machinery and equipment is used and operated in accordance with the manufacturer’s recommendations. The subsequent exception to subsection (b) gives notice that other Title 8 standards may permit the operation of machinery and equipment in a manner that may deviate from the manufacturer’s recommendations in which case those specific standards have precedence. The proposed amendment is necessary to provide clarity for employers, promote consistency among Title 8 standards and ensure that machinery and equipment is used and operated safely.

DOCUMENTS RELIED UPON

1. OSHAB Decision, Docket Nos. 08-R2D1-2131 and 2132, dated June 17, 2010.

2. Division Petition for Reconsideration, Docket Nos. 08-R2D1-2131 and 2132, dated July 22, 2010.
3. OSHAB Denial of the Division Petition for Reconsideration, Docket Nos. 08-R2D1-2131 and 2132, dated September 9, 2010

These documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

#### 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.

##### Economic Impact Analysis

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 expands the scope of the standard to direct users to follow the manufacturer's recommendations when using or operating machinery and equipment as they would during inspection and maintenance.

Therefore, the proposed regulations will not have any effect on the creation or elimination of California jobs or the creation or elimination of California businesses or affect the expansion of existing California businesses.

This regulatory proposal is intended to provide worker safety at places of employment in California.

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.)

This proposed standard 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, this 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.)

This proposed standard does not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standards.

**EFFECT ON SMALL BUSINESSES AND RESULTS  
OF THE ECONOMIC IMPACT ASSESSMENT**

The Board has determined that the proposed amendments may affect small businesses. However, no adverse economic impact is anticipated. The proposal would provide businesses, small or large, clear direction in the use and operation of machinery and equipment as recommended by the manufacturer. This regulatory proposal will promote worker safety by specifying safe practices already developed by the manufacturer of the machinery and equipment.

**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, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.