

State of California
Department of Industrial Relations
M e m o r a n d u m

To : ALL STANDARDS BOARD MEMBERS

Date : November 19, 2012

From : **Occupational Safety and Health Standards Board**
Marley Hart, Executive Officer

Subject: Termination of Rulemaking Action-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, Used and Operated.

Unless otherwise directed, Board staff intends to terminate the subject rulemaking action. This rulemaking was initiated as a result of the Occupational Safety and Health Appeals Board's Decision in the Matter of S &S Services. The proposed rulemaking was heard at the August 16, 2012, Public Hearing in Sacramento, California.

During the public hearing, oral comments were received stating that the proposed amendment to Section 3328(b) to include the words "used and operated" in accordance with the manufacturer's recommendations would unduly burden employers to revise their procedures for using every piece of equipment owned. Other comments indicated that some stakeholders perceived that manufacturer's recommendations are more intended to prevent product liability than to promote safety. Stakeholders asserted that existing regulations addressed the problem, but compliance personnel cited the wrong provision. After further evaluation, Board staff has determined that existing language addresses the hazard that was the subject of the proposal.

Consequently, the regulatory text contained in Section 3328(b) will be retained.

cc: Ellen Widess, Chief, DOSH
Deborah Gold, Deputy Chief of Health, DOSH
Patrick Bell, Principal Engineer, DOSH Research & Standards Unit
Mike Manieri, Principal Engineer, OSHSB

Attachment: August 16, 2012, Public Hearing Comments