

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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



NOTICE OF PROPOSED MODIFICATIONS TO
CALIFORNIA CODE OF REGULATIONS

TITLE 8: Division 1, Chapter 4, Subchapter 7, Article 25,
Section 3650 of the General Industry Safety Orders

Powered Industrial Trucks—Excessive Loads

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 standard in which modifications are being considered as a result of public comments and/or Board staff consideration.

On August 15, 2013, the Standards Board held a Public Hearing to consider adding a new section to Title 8, General Industry Safety Orders. The Standards Board received written and oral comments on the proposed revisions. The standard has been modified as a result of these comments and Board consideration.

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

A copy of this document is available for review during normal business hours at the Standards Board Office located at the address listed below.

Any written comments on these modifications must be received by 5:00 p.m. on September 30, 2013, 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 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.

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

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Date: September 9, 2013

Marley Hart, Executive Officer

PROPOSED MODIFICATIONS

Modifications are indicated in bold, underline wording for new language and bold ~~strikeout~~ for deleted language.)

**STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD**

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

Amend Section 3650 to read:

§3650. Industrial Trucks. General.

(l) Loads ~~of excessive width, length or height~~ shall be so balanced, braced, **and or** secured as to prevent tipping and falling. ~~Loads shall be secured against displacement in accordance with the industrial truck manufacturer's recommendations~~**Only stable or safely arranged loads shall be handled. Caution shall be exercised when handling off-center loads which cannot be centered.**

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

SUMMARY AND RESPONSE TO COMMENTS

SUMMARY AND RESPONSE TO ORAL AND WRITTEN COMMENTS

I. Written Comments

Mr. David Shiraishi, Area Director, Region IX, OSHA, U.S. Department of Labor, by letter dated August 15, 2013.

Mr. Shiraishi stated that Federal OSHA has reviewed the proposal and found it to be commensurate with the federal standard.

Response:

The Board thanks Mr. Shiraishi for his comment and participation in the Board's rulemaking process.

Mr. John McCullough, Assistant Vice President, Wells Fargo Insurance Services USA, Inc., by letter dated August 15, 2013.

Comment:

Mr. McCullough stated that the proposed amendments of the existing language, mainly deleting the phrase, "of excessive width, length or height," would create citable situations if the requirements to balance, brace and secure the load is maintained. Mr. McCullough listed several examples of situations where forklift operators would be cited or placed in a predicament to determine whether a load is balanced, braced and secured. Mr. McCullough suggested that in the amended phrase "...balanced, braced, and secured..." the word "**and**" should be replaced with the word, "**or**" to read, "...balanced, braced, **or** secured." He stated that using Federal OSHA's language in Section 1910.178(o)(1) might be more workable.

Response:

The Board recognizes the potential predicaments for employers, operators and enforcement personnel as to what constitutes a braced, balanced and secured load. The Board agrees and accepts Mr. McCullough's comments and recommendations. Thus, the proposal will be modified to replace the word "**and**" with the word "**or**" in the noted phrase above. In addition, the proposed second sentence of the amendment will be replaced with the Federal OSHA language stated in Section 1910.178(o)(1) to provide greater clarity and ensure that only stable and safely arranged loads are handled. As a result, the reference to the truck manufacturer's recommendations is negated and eliminates concerns for consistency, specificity, and availability for a forklift manufacturer's recommendations.

The Board thanks Mr. McCullough for his comments and participation in the Board's rulemaking process.

Mr. Gary Cross, Dunaway & Cross, Counsel to the Industrial Truck Association, in an e-mail, dated August 9, 2013.

Comment:

Mr. Cross commented that the proposal to tie the requirement for securing loads per the manufacturer's recommendations will not make the requirement clearer. Manuals differ in wording used to address the topic of securing loads, and when it comes to the concepts of excessive loads and off-center loads, the actual formulation of the message and level of detail will differ. The International Truck Association (ITA) believes that the language in Federal OSHA's 29 CFR 1910.178(o) best states the guidance for securing loads and is a good formulation. The ITA believes that the manufacturer's recommendations produce diverse statements that cause confusion and do not provide the precise and unique guidance for each loading situation. Mr. Cross recommends that the Board adopt the federal language as stated in 29 CFR 1910.178(o)(1) rather than rely on the manufacturer's recommendations.

Response:

See response to Mr. McCullough's comments above. The Board thanks Mr. Cross for his comments and participation in the Board's rulemaking process.

Ms. Allyson Rathkamp, Government Affairs Representative, California League of Food Processors, by letter dated August 9, 2013.

Comment:

Ms. Rathkamp expressed concern that the regulation's first sentence requiring that loads be balanced, braced, **and** secured would create multiple problems in determining whether the load meets all three criteria. Ms. Rathkamp questions the validity of following the manufacturer's recommendations for securing a load. According to Ms. Rathkamp, manufacturers may not have specific requirements against load displacement or might not even address the issue. Other concerns involve the manufacturer going out of business or not providing any recommendations. Additionally, which manufacturer's recommendations would apply if attachments from one manufacturer are used in another manufacturer's forklift? Ms. Rathkamp stated that the federal standard, 29 CFR 1910.178.(o)(1) seems to be a more workable alternative and suggests convening an advisory committee to clarify the proposed regulation.

Response:

See response to Mr. McCullough's comments above. The Board thanks Ms. Rathkamp for her comments and participation in the Board's rulemaking process.

II. Oral Comments

Oral comments received at the August 15, 2013, Public Hearing in Sacramento, California.

Mr. Kevin Bland, Attorney, representing the Residential Contractors Association, California Framing Contractors Association, and the Western Steel Council, and Mr. Bruce Wick of CALPASC, who echoed Mr. Bland's comments.

Comment:

Mr. Bland stated that there is an issue with the language in the first sentence of the proposal where loads are required to be balanced, braced, and secured. He said that this statement, as written, requires employers to do all three of those things and gives the Division grounds to cite employers if they do not do all three. He said that striking this sentence completely and then modifying the second sentence to state that loads should be secured by proper piling or other means to secure it against dangerous displacement in accordance with the industrial truck's manufacturer's recommendations would give employers a way to comply and address the hazard, as well as follow the manufacturer's requirements.

Response:

See response to Mr. McCullough's written comments above. The Board thanks Mr. Bland and Mr. Wick for their comments and participation in the Board's rulemaking process.

Mr. David Harrison, Board Member

Comment:

Mr. Harrison stated that excessive width, length, and height should be stricken, but he is not sure about adding the industrial truck manufacturer recommendations. He stated that he would like to see some examples of some language that might come out of those recommendations. He also said that he does not see why requiring loads to be just balanced and secured is not good enough. He feels that is plenty to ensure workplace safety and that it is something that the Division can enforce.

Response:

See response to Mr. McCullough's written comments above.

Mr. William Jackson, Board Member

Comment:

Mr. Jackson stated that Mr. Bland's comments are really important and that it is appropriate for the Board to solve problems when the regulation does not explain what excessive loads means. He said that there are lots of loads that, when balanced, do not need any other security other than gravity, and that the proposal, as written without the modifiers, requires employers to do all three things. He stated that this proposal also adds another standard for employers to follow because, in addition to requiring them to do those three things, they will now be required to secure the load against displacement in accordance with the manufacturer's recommendations, which could cause further problems. He said that the Board needs to decide what it wants to do, what it means, and it should say so in the regulation.

Response:

See response to Mr. McCullough's written comments above.

ADDITIONAL DOCUMENTS RELIED UPON

None.

ADDITIONAL DOCUMENTS INCORPORATED BY REFERENCE

None.

DETERMINATION OF MANDATE

This regulation 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 regulation. 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 and less burdensome to affected private persons than the adopted action.