

**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 25,
Section 3650 of the General Industry Safety Orders.

Powered Industrial Trucks–Excessive Loads**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 sufficiently related substantive modifications that are the result of public comments and/or Board staff evaluation.

Section 3650. Industrial Trucks. General.

Section 3650 addresses the design, use and operation of industrial trucks. Existing subsection (1) requires that, “Loads of excessive width, length or height shall be so balanced, braced, and secured as to prevent tipping and falling.” The proposed amendment of subsection (1) removes the restrictive phrase, “...of excessive width, length or height...” from the sentence and maintains the requirement that loads be balanced, braced, and secured to prevent tipping and falling.

A modification is proposed to amend proposed section 3650(1) to read: “Loads shall be so balanced, braced, **or** secured as to prevent tipping and falling.” The proposed modification is necessary to allow some flexibility for employers, operators and enforcement personnel when determining whether loads are stabilized to prevent tipping and falling.

The initial proposal added a second sentence requiring that loads be secured against displacement in accordance with the truck manufacturer’s recommendations. New language is proposed to replace the second sentence with federal OSHA’s 29 CFR 1910.178(o)(1) verbiage. Federal language requires only stable or safely arranged loads will be handled and that caution be exercised when handling off-center loads which cannot be centered. The proposed modification is necessary to reduce potential confusion or lack of guidance if the manufacturer’s recommendations are not available, the manufacturer is no longer in business or inconsistent guidance is provided when one manufacturer’s equipment is used with another manufacturer’s attachments.

SUMMARY AND RESPONSE TO WRITTEN AND ORAL 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 29 CFR 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 29 CFR 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 he is shocked by the outcome of the Appeals Board's decision. He said 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.

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 September 9, 2013.

I. Written Comments

Mr. Gary Cross, Dunaway & Cross, Counsel to the Industrial Truck Association, in an e-mail, dated September 20, 2013.

Comment:

The Industrial Truck Association supports the modifications as set forth in the notice dated September 9, 2013.

Response:

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

Mr. David Shiraishi, Area Director, Region IX, OSHA, U.S. Department of Labor, by letter dated September 26, 2013.

Comment:

Mr. Shiraishi stated that Federal OSHA has reviewed the modifications to the proposal and found the proposed standard 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. William Jackson, Board Member, in an e-mail, dated September 16, 2013.

Comment:

Mr. Jackson commented that he is concerned that the inclusion of the language from the federal standard does not provide additional clarity, but seems to reduce the clarity of the original proposal. Mr. Jackson is specifically concerned that neither forklift operators, employers or enforcement personnel could agree on what action is required or prohibited by the newly proposed last sentence, "*Caution shall be exercised when handling off-center loads which cannot be centered.*" Mr. Jackson stated that in some cases a word for word adoption of the comparable federal language helps the Board meet the "*at least as effective as*" requirements, in this case he does not think even Fed OSHA could explain what that sentence requires of an employer. Mr. Jackson believes the Board must specify what it means when it directs "*caution shall be exercised.*" According to Mr. Jackson, the regulation should provide the regulated community and compliance personnel enough information for them to easily understand and agree on when enough caution has been exercised. As he commented during the hearing, Mr. Jackson thinks it is very important that the Board decide what is required and clearly state that in the regulation. The Standards Board should not be depending on the Appeals Board to at some time in the future tell employers and compliance personnel what they think the regulation means.

Response:

Board staff researched the use of the phrase "*Caution shall be exercised...*" as taken from the counterpart federal language in Title 8 and has ascertained that such or similar phrasing is commonly used throughout Title 8 [e.g. General Industry Safety Orders (GISO), Section 3326(i), "care shall be taken", Elevator Safety Orders, Section 3107(c)(8), "care shall be taken", GISO, Section 5195(e)(2)(B)(7), "special care shall be taken"]. It is also used in the American National Standard, (ANSI) B56.1-2009 for Low and High Lift Trucks, and federal regulations [29 CFR (OSHA), 40 CFR (EPA) and 49 CFR (DOT)].

Board staff consulted the Appeals Board regarding any decisions pertaining to the use of this language and where employer confusion over what constituted compliance was at issue, and found none.

Given the results of the research, the Board believes that deletion of the federal language as used in the modified amendment is not warranted, and therefore, no modification is necessary.

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 as and less burdensome to affected private persons than the adopted action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.