

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**TITLE 8. CALIFORNIA CODE OF REGULATIONS**

General Industry Safety Orders
Section 3328(a)

Definition of Adequate Design

NOTICE IS HEREBY GIVEN that the Occupational Safety and Health Standards Board (Board) proposes to adopt, amend or repeal the foregoing provisions of Title 8 of the California Code of Regulations in the manner described in the Informative Digest, below.

PUBLIC HEARING

The Board will hold a public hearing starting at 10:00 a.m. on **August 20, 2015** in the **Auditorium** of the **State Resources Building, 1416 9th Street, Sacramento, California**. At this public hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest.

WRITTEN COMMENT PERIOD

Any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. The written comment period commences on **July 3, 2015** and closes at 5:00 p.m. on **August 20, 2015**. Comments received after that deadline will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments are to be submitted as follows:

By mail to Sarah Money, Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833; or

By fax at (916) 274-5743; or

By e-mail sent to oshsb@dir.ca.gov.

AUTHORITY AND REFERENCE

Labor Code Section 142.3 establishes the Board as the only agency in the State authorized to adopt occupational safety and health standards. In addition, Labor Code Section 142.3 requires the adoption of occupational and health standards that are at least as effective as federal occupational safety and health standards.

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT **OVERVIEW**

Section 3328 addresses the requirements that machinery and equipment are to be operated, serviced and maintained to reduce hazards and minimize the risk of failures. Subsection (a) specifically requires machinery and equipment to be adequately designed and not be operated under conditions of speeds, stresses, or loads which endanger employees. Subsection (e) of this section requires employers to use equipment designed to minimize the risk of falling or the failure of specified mechanical parts. However, Section 3328 does not clarify to the employer what is meant by the operative term “adequate design.”

In the Matter of the Appeal of Brunton Enterprises, Inc., Occupational Safety and Health Appeals Board Docket Nos. 08-R3D3-3445 through 3448 (Decision After Reconsideration dated October 11, 2014), the Division of Occupational Safety and Health had cited the employer under Section 3328(e), alleging that a dolly was not designed for the load, and that the dolly and its load were not secured to minimize the hazards caused by loosening and falling. However, the Administrative Law Judge dismissed this citation, stating that for the safety order to apply, it would have to be demonstrated that the dolly’s component parts were broken, loose or falling. The intent of subsection (e) is to have employers select equipment and machinery that by its overall design is engineered to be safe for its intended use (e.g. handling loads) and not to base the selection solely on whether individual components could fail or equipment or machinery could fall.

The proposed amendment to subsection (a) deletes the words “...of adequate design...” and replaces them with “...designed or engineered to safely sustain all anticipated loads...” essentially clarifying the meaning of the term, “adequate design.” The proposal will have the effect of clarifying the intent of Section 3328(a) to denote that machinery and equipment being used is capable of operating without failure under the loads imposed in a safe manner, and that this requirement applies to the entire equipment or machinery system inclusive of system component parts.

This proposed rulemaking action 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: (1) the requirement of the federal government and the Labor Code to the effect that the state’s regulations be at least as effective as their federal counterparts; and (2) the requirement that all state occupational safety and health rulemaking be channeled through a single entity (the Standards Board).

Anticipated Benefits

This proposal clarifies the meaning of the term “adequate design” by providing additional regulatory text with the requirement stated in subsection 3328(a) indicating machinery and equipment shall be designed to safely sustain all anticipated loads. This proposal assures the protection of health and safety of workers who routinely utilize or operate equipment and machinery.

The specific changes are as follows:

Section 3328. Machinery and Equipment.

This section addresses a number of safety issues related to the safe use and operation of machinery and equipment which include but are not limited to: operation under stress or load, inspection and maintenance, defective parts, and design, securing or covering critical components of machinery and equipment against breakage which could result in catastrophic failure and employee injury or fatality. Amendments are proposed to add regulatory text in subsection (a) that essentially replaces the term “adequate design” with regulatory text that clarifies that the machinery and equipment, by its inherent design, shall safely withstand all anticipated loads.

The proposal will clarify to the employer that for equipment and machinery to be adequate for its intended use by design, it has to be engineered to safely support and withstand all anticipated loads and stresses that could be placed on the equipment and machinery.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on Local Agencies and School Districts: None.

Cost or Savings to State Agencies: None.

Cost to any Local Government or School District which must be Reimbursed in Accordance with Government Code Sections 17500 through 17630: None.

Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None.

Cost or Savings in Federal Funding to the State: None.

Cost Impacts on a Representative Private Person Or Business:

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.

Statewide Adverse Economic Impact Directly Affecting Businesses and Individuals Including the Ability of California Businesses To Compete:

The Board estimates the economic impact to be less than \$10 million. 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 proposed amendment essentially explains the meaning of the term, “adequate design.” The intent of the amendment is to inform the regulated public that not using the proper equipment and machinery to handle anticipated loads or tasks for the job to be performed endangers employees. As long as employers follow the manufacturer’s instructions for maintaining and

operating the equipment, they can expect the equipment to perform as designed. Since the amendment is informational to what is already in effect, the proposal has no new or added effect upon the regulated public.

Significant Effect on Housing Costs: None.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulation does not impose a local mandate. There are no costs to any local government or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630.

SMALL BUSINESS DETERMINATION

The Board has determined that the proposed amendment will most likely not affect small businesses. The proposal essentially defines the concept of adequate design in terms of equipment and machinery use and operation.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Board estimates the economic impact to be less than \$10 million. 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 intent of the amendment is to inform the regulated public that not using the proper equipment and machinery to handle anticipated loads or tasks for the job endanger employees. As long as employers follow the manufacturer's instructions for maintaining and operating the equipment, they can expect the equipment to perform as designed. Since the amendment is informational to what is already in effect, the proposal has no new or added effect upon the regulated public.

Therefore, this rulemaking action will not impact the following:

- Creation or elimination of jobs within the State of California,
- Creation of new businesses or the elimination of existing businesses within the State of California,
- Expansion of businesses currently doing business within the State of California,
- Impact on the State's environment.

BENEFITS OF THE REGULATION

The amendment to the regulation would provide safety by informing employers to consider the type and capacity of machinery and equipment commensurate with the tasks to be performed.

The proposal helps prevent accidents and injuries that may occur in places of employment that use machinery and equipment routinely. Equipment failures due to overloading or stresses for which the equipment was not manufactured cause injuries, fatalities and destroy structures and equipment. The goal of this proposal is to highlight the importance of using the proper equipment for the job, thereby adding another layer of protection to the health and safety of California workers.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either 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 or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposal described in this Notice.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled public hearing or during the written comment period.

CONTACT PERSONS

Inquiries regarding this proposed regulatory action may be directed to Marley Hart (Executive Officer) and the back-up contact person Michael Manieri (Principal Safety Engineer) at the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833; (916) 274-5721.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF THE PROPOSED REGULATIONS AND RULEMAKING FILE

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the Initial Statement of Reasons, supporting documents, or other information upon which the rulemaking is based. Copies may be obtained by contacting Ms. Hart or Mr. Manieri at the address or telephone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public at least 15 days before the Board adopts the regulations as revised. Please request copies of any modified regulations by contacting Ms. Hart or Mr. Manieri at the address or telephone number listed above. The Board will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Hart or Mr. Manieri at the address or telephone number listed above or via the internet.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The Board will have rulemaking documents available for inspection throughout the rulemaking process on its web site. Copies of the text of the regulations in an underline/strikeout format, the Notice of Proposed action and the Initial Statement of Reasons can be accessed through the Standards Board's website at <http://www.dir.ca.gov/oshsb>.