

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**INITIAL STATEMENT OF REASONS**

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Section 3328(a)
of the General Industry Safety Orders

Definition of Adequate Design**SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION**

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 risks of falling or the failure of specified mechanical parts. However, Section 3328 does not clarify 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 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 the 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.

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 is necessary to clarify 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.

TECHNICAL, THEORETICAL AND/OR EMPIRICAL STUDIES, REPORTS OR DOCUMENTS RELIED ON BY THE BOARD

1. Occupational Safety and Health Appeals Board Decision After Reconsideration, dated October 11, 2014, in the Matter of the Appeal of Brunton Enterprises, Inc., Docket Nos. 08-R3D3-3445 through 3448.

This document is 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.

PETITION

This proposal was not the result of a petition.

ADVISORY COMMITTEE

The proposal was developed without the assistance of an advisory committee.

FIRE PREVENTION STATEMENT

This proposal does not include fire prevention or protection standards. Therefore, approval of the State Fire Marshal pursuant to Government Code Section 11359 or Health and Safety Code Section 18930(a)(9) is not required.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

ECONOMIC IMPACT ANALYSIS/ASSESSMENT

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 explains the term, “adequate design.” The intent of the amendment is to clarify for the regulated public that not using equipment or machinery that has been designed or engineered to safely handle all anticipated loads or tasks 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 clarifies and explains what is already in effect, the proposal has no new or added effect upon the regulated public.

Based on the above, 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 PROPOSED ACTION

The amendment to the regulation would provide safety by informing employers of the need to consider the type and capacity of machinery and equipment commensurate with the tasks to be performed. The proposal will help 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 it was not manufactured cause injuries, fatalities, and destruction of structures and equipment.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING SMALL BUSINESSES/AND OR BUSINESSES

The Board has determined that the proposal may affect small businesses. However, no significant economic impact is anticipated. The proposal is a technical clarifying amendment which will help to assure that the employer understands and considers a very important physical principal when selecting and using machinery and equipment to lift, transport and handle loads. The proposal will enhance safety by ensuring that material handling equipment is selected and used on the basis of its engineered characteristics to handle loads safely and thus prevent catastrophic failure which could result in serious employee injury or fatality.

The proposed does not create additional requirements for small business employers. By complying with Title 8 standards such as Section 3328 given the clarification the proposal brings, employers could likely avert a catastrophic equipment failure and the consequential loss of manpower, production and equipment which translates into potential savings.

**REASONABLE ALTERNATIVES TO THE PROPOSAL AND THE BOARD'S
REASONS FOR REJECTING THOSE ALTERNATIVES**

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.