

**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 17, Article 17, Section 7016(c)
of the Mine Safety Orders

Brakes on Haulage Vehicles-Maintenance**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 substantive and sufficiently related modifications that are the result of public comments and/or Board staff evaluation.

Section 7016 contains requirements for equipping and maintaining haulage vehicles used in mining operations. Subsection (c) pertains to brakes and other holding devices and requires that they be maintained in good condition. The proposal would essentially define the phrase "good condition" by stating that they be inspected and maintained as recommended by the manufacturer where such recommendations are available.

Modifications are proposed to reword the proposal to add the words "inspected and" before the word "maintained," and the words "as recommended by the vehicle manufacturer" after the word "condition." Subsection (c) is further modified to add a new sentence to read: "If the vehicle manufacturer's recommendations are no longer available, the required inspection, maintenance and repairs shall be performed by a qualified person."

The proposed modifications are necessary to clarify to the employer that brake inspection must be performed as part of the maintenance process and that in the absence of brake inspection, repair and maintenance recommendations from the vehicle manufacturer, brake inspection, repair and maintenance is to be performed by a qualified person. This will ensure that in the event the manufacturer's recommendations are not available, the vehicle's brake system will be in a safe, functional mode.

Summary and Response to Oral and Written Comments:I. Written Comments

Mr. Bradley D. Closson, CRAFT Forensic Services, by letter dated October 26, 2007

Comment:

Mr. Closson stated the proposal requires clarification because it is unclear what manufacturer's recommendation is to be followed, the vehicle manufacturer, brake manufacturer or otherwise. He also indicates that the proposal as written does not require the maintenance of brakes in good condition if the manufacturer's recommendations are unavailable.

Response:

The Board agrees with Mr. Closson and proposes to modify the proposal by adding the word "vehicle" before "manufacturer," to delete the phrase "where such recommendations are available" and to add the "qualified person" requirement in the event that manufacturer recommendations are unavailable.

Ms. Nancy Moorhouse, Vice President, Director of Safety, Teichert Construction, by letter dated November 19, 2007

Comment:

Ms. Moorhouse stated she supports the proposed modifications to Section 7016(c) to be consistent with Section 3328(b).

Response:

The Board acknowledges Ms. Moorhouse's support for the proposal and thanks her for her comment and participation in the Board's rulemaking process.

Ms. Teresa A. Harrison, Acting Regional Administrator, Region IX, U.S. Department of Labor, by letter dated December 3, 2007

Comment:

Ms. Harrison stated that Federal OSHA has no specific guidance to ensure brakes are suitable to stop the vehicle. Therefore, the proposed standard is more effective than the federal standard.

Response:

The Board notes federal OSHA's opinion that the proposed amendments to Section 7016(c) are more effective than the counterpart federal standard.

II. Oral Comments

Oral comments received at the December 13, 2007, Public Hearing in Sacramento, California.

Dr. Jonathan Frisch, Occupational Safety and Health Standards Board member

Comment:

Dr. Frisch expressed concern that the phrase “where such recommendations are available” is ambiguous and unnecessary.

Response:

The Board concurs and as noted in the response to Bradley Closson’s written comment, proposes to clarify and modify the proposal to delete the phrase “where such recommendations are available.”

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 January 30, 2008.

Summary and Response to Written Comments:

Mr. Bradley D. Closson, CRAFT Forensic Services, by e-mail dated February 19, 2008

Comment:

Mr. Closson recommends that the proposed wording be modified to change “good condition” to “operational condition.” He believes the wording would address a practical level of compliance assessment, the safety issues of bakes and correctly reflect the intent of the manufacturer’s recommendation for inspection and maintenance.

Response:

This comment is beyond the scope of the changes proposed in the Notice of Proposed Modification to California Code of Regulations and therefore no modification is necessary in response to this comment.

ADDITIONAL DOCUMENTS RELIED UPON

None.

ADDITIONAL DOCUMENTS INCORPORATED BY REFERENCE

None.

DETERMINATION OF MANDATE

These standards do 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 standard. 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.