

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Attachment No. 2

INITIAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Chapter 4, Subchapter 7, Article 25, Section 3663
of the General Industry Safety Orders

Maintenance of Industrial TrucksSUMMARY

The Occupational Safety and Health Standards Board (Board) received a memorandum from the Division of Occupational Safety and Health (Division), dated July 27, 2001 with attached Cal/OSHA Form 9, Request for New, or Change In Existing, Safety Order, regarding GISO Section 3663, which addresses the maintenance of industrial trucks, such as but not limited to, industrial truck repair operations conducted in proximity to open flame, maintenance of water mufflers, keeping industrial trucks clean, care of truck batteries, etc. The Division's memorandum stated that currently, Section 3663 does not require the same protection or requirements as specified in 29 Code of Federal Regulations (CFR) 1910.178, and requested that the Board adopt the language from the federal standard verbatim. The Division identified two federal requirements, 29 CFR 1910.178 (q)(6) and (q)(12), which address alterations to industrial trucks and industrial truck fuel conversions that are not addressed in Section 3663. These two federal regulations are important in terms of employee safety to: 1) ensure that when repaired, the integrity of the truck is not compromised through the use of incompatible parts which do not meet the manufacturer's specifications; and, 2) ensure that gas fuel conversions are performed in a manner that will ensure the truck will operate safely, specific to the type of fuel used, and that only approved conversion equipment is used. The Division also suggested an editorial revision to existing Section 3663(e) to clearly emphasize to the employer that all industrial truck replacement parts are to be equal in safety to the original parts being replaced, consistent with counterpart federal language contained in 29 CFR 1910.178(q)(5).

This proposed rulemaking action incorporates the aforementioned federal language essentially verbatim, while maintaining consistency with existing Title 8 format as follows:

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

Section 3663. Maintenance of Industrial Trucks.

Section 3663 contains regulations which address the maintenance of industrial trucks including, but not limited to, truck repair operations conducted in proximity to open flames, maintenance of water mufflers, keeping trucks clean, care of batteries, etc.

Existing subsection (e) requires replacement truck parts to be equivalent in safety to the original part(s) they replace. A revision is proposed to specify that all replacement parts shall be equivalent in safety to the part(s) being replaced, consistent with 29 CFR 1910.178(q)(5). The proposed revision is necessary to emphasize clearly to employers that any and all truck parts that are replaced must provide safety equivalent to the parts being replaced so that the truck is maintained in a safe operating condition. The proposed revision is also necessary to ensure that the state's standard is at least as effective as its federal counterpart regulation.

New subsection (g) is proposed, taken from 29 CFR 1910.178(q)(6), that will prohibit the alteration of trucks to the extent that the relative positions of parts are different from what was originally received from the manufacturer, and prohibit the addition of extra parts not provided by the manufacturer, or the elimination of parts except as provided in proposed new subsection (h), which regulates the conversion of truck fuel systems. In addition, new subsection (g) prohibits additional counterweighting of fork trucks unless it is approved by the truck manufacturer. Proposed new subsection (g) is necessary to ensure that the state's standard regarding maintenance of industrial trucks is at least as effective as its federal counterpart regulation, and that industrial trucks are not altered in a manner inconsistent with manufacturer specifications.

New subsection (h) is proposed, taken from 29 CFR 1910.178(q)(12), which permits industrial trucks originally approved for the use of gasoline for fuel to be converted to liquefied petroleum gas fuel, provided the conversion yields a truck that is equipped with the features specified for LP or LPG* operation and that the conversion equipment is approved. The proposed new language is necessary to ensure that the state's standard regarding maintenance of industrial trucks is at least as effective as its federal counterpart regulation, and that truck conversions contain only approved equipment and result in a truck that embodies the features specific to the type of fuel to be used.

*Board staff notes that the federal language refers to "LPS" vs. "LPG"-designated trucks and proposes to make the state standard reference "LPG", since it is unclear what is meant by "LPS". "LPG" stands for liquefied petroleum gas and is a commonly used industry term. "LPS", however, is not an industry-used term and could not be identified in any national consensus standard or reference.

DOCUMENTS RELIED UPON

1. Division of Occupational Safety and Health, Memorandum from John Howard, Chief, to the Occupational Safety and Health Standards Board, dated July 27, 2001, with attachments.
2. Federal OSHA, 29 CFR Part 1910.178(q)(5), (6), and (12).

These documents are 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.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

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

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial 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.

Cost Impact on Private Persons or Businesses

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.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulation does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this regulation does not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

This proposed regulation does not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulation requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulation does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

This proposed regulation does not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses.

ASSESSMENT

The adoption of the proposed amendments to this regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

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.