

# Memorandum

**To** : All Standards Board Members

**Date** : December 12, 2000

**From** : **Occupational Safety and Health Standards Board**  
Michael J. Manieri, Jr., Principal Safety Engineer

**Subject** : **Marine Terminals**

At the September 21, 2000 Public Hearing, the Occupational Safety and Standards Board considered revisions to California Code of Regulations, Title 8, General Industry Safety Orders, Sections 3465(a), 3472 and 3475, Marine Terminals.

Labor Code Section 142.3(a)(3) exempts the Board from providing a comment period when adopting a standard substantially the same as a federal standard. However, as indicated in the Notice and Informative Digest, the Board still provides a comment period for the purpose of identifying only issues related to the following three areas: 1) any clear and compelling reasons for California to deviate from the federal standards; 2) any issues unique to California related to this proposal which should be addressed in this rulemaking and/or subsequent rulemaking; and, 3) to solicit comments on the proposed effective date.

As a result of public comments, there were no changes made to the original proposal.

## **SUMMARY OF WRITTEN AND ORAL COMMENTS**

There were no written comments received.

### I. Oral Comments

Oral comments received at the September 21, 2000 Public Hearing, Los Angeles, California.

Mr. Mark MacDonald, representing the Pacific Maritime Association (PMA).

#### Comment:

Mr. MacDonald stated that the PMA supports the Occupational Safety and Health Standards Board (Board) staff's proposed language. Mr. MacDonald also indicated that the PMA utilizes a safety code that was initially developed in 1929 as a voluntary industry code and with periodic review during re-negotiations, has since been a part of the collective bargaining process between the PMA and its employees. Mr. MacDonald noted that the federal regulation addressing marine terminals was issued on July 25, 1997 and, at that time, PMA had participated with federal OSHA via the advisory committee process to develop language for Parts 1917 and 1918. Mr. MacDonald notes there is dual

jurisdiction between the State of California and federal OSHA at marine terminals and longshoring operations. Consequently, PMA is subject to federal regulations Parts 1917 and 1918.

Mr. MacDonald stated that he would like to discuss issues unique to California related to the federal regulations Parts 1917 and 1918 and asked the Board to recognize the PMA/ILW relationships with regard to the PMA industry code and 29 CFR 1917 and 1918 and the fact that there is dual jurisdiction in California. Mr. MacDonald suggested the Board consider adopting the federal 29 CFR 1917 verbatim so that it will be clear to the industry which regulations apply. At present, the PMA uses two sets of rules, which makes it difficult to reference and carry around.

Response:

The Board acknowledges Mr. MacDonald's (PMA's) support for the proposed regulatory language.

With respect to the issue of dual jurisdiction by California and federal OSHA at marine terminal/longshoring operations, the Board is not in the position at this time to offer an opinion either way as to the prudence of dual jurisdiction in this case except to say that the condition of dual jurisdiction between federal OSHA and Cal-OSHA at marine terminal/longshoring sites has been in effect for many years. It is a fact that conditions of dual jurisdiction between federal and state OSHA authorities and even between Cal-OSHA and other state agencies exists in other areas involving worker safety (e.g., military installations, federal installations, vapor recovery systems, pesticides).

The Board believes the issue of dual jurisdiction between federal OSHA and California at marine terminals/longshoring operations merits an in-depth review and evaluation and therefore, suggests Mr. MacDonald and PMA petition the Board to consider this matter. Such an evaluation by the Division of Occupational Safety and Health (Division) and Board staff could lead to the convening of an advisory committee to consider amendment of existing state marine terminal/longshoring standards and/or adoption of federal language.

The Board would like to thank Mr. MacDonald for his participation in the Board's rulemaking process and appreciates the PMA's interest in the safety and health of California workers.

Mr. Jere Ingram, Occupational Safety and Health Standards Board, Chairman, Mr. Mark MacDonald, PMA.

Comment:

Mr. Ingram asked Mr. MacDonald why federal OSHA is present at marine terminals if they have delegated enforcement authority to the state. Mr. MacDonald replied that there is dual jurisdiction and there are a number of areas at the ship site where cranes are used that may be subject to both state and federal OSHA enforcement. Mr. MacDonald indicated that if a ship board crane is over the top of the ship and an accident occurs, both federal OSHA and Cal-OSHA may become involved.

Response:

The Division publishes an internal set of documents for use by its compliance personnel known as the Division Policy and Procedures Manual (Manual). Contained within the manual is Policy and Procedure (P&P) C-11 which addresses the issues of jurisdiction and interagency cooperation.

Essentially, policy C-11 states that it is the express written policy of the Division to assert jurisdiction over every place of employment in California, to enforce and administer all laws and lawful standards and orders and special orders regarding the life, safety and health of every employee in such a place of employment, unless the Division does not have subject matter or territorial jurisdiction over the employment or place of employment.

Policy C-11 states explicitly who has jurisdiction over federal employees, national parks, military installations, transportation of hazardous materials, explosives manufacturing, etc. Policy C-11 requires California compliance personnel to refer all complaints and accidents involving maritime activities on navigable waters such as longshoring operations, all vessels from the shore side of the means of access to said ships, marine vessel construction, all afloat shipbuilding, and off shore drilling, etc., to federal OSHA.

Clearly, based on policy C-11, an accident involving a shore based crane operating above an afloat ship would be the jurisdiction of Cal-OSHA. However, injuries and collateral accidents occurring on board an afloat ship would be the responsibility of federal OSHA.

Once again, the Board thanks Mr. MacDonald for his participation in the Board's rulemaking process and as stated earlier suggests that if the PMA wishes to explore this issue further with the Board staff and the Division, it consider using the petition process.

**DETERMINATION OF MANDATE**

These regulations do not impose a mandate on local agencies or school districts as indicated in the June 20, 2000 Staff Development Memorandum.