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Attachment No. 2

INITIAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Division 1, Chapter 4, Subchapter 7, Article 25,
Section 3650 of the General Industry Safety Orders

Powered Industrial Trucks–Excessive Loads

SUMMARY

This rulemaking proposal is the result of an Occupational Safety and Health Appeals Board (OSHAB) Decision, dated August 29, 2012, in the Matter of Otis Elevator Company Docket Nos. 10-R3D2-3832 and 3833. The Division of Occupational Safety and Health (Division) cited the employer under Section 3650(l) of the General Industry Safety Orders for failure to secure an excessively high load on a forklift. According to the Division, the overall load was excessive because it exceeded the height of the mast. OSHAB held that “excessive” is a relative term that requires a foundational comparison. Further, OSHAB opined that any size load can shift, shake or fall but does not establish that the load was of excessive width, length, or height. The Division did not present evidence regarding a norm to which a comparison could be made to show that the load was of excessive width, length, or height for the forklift in question. The citation was dismissed and the penalty vacated as the Division was unable to meet its burden to establish a violation of Section 3650(l).

This rulemaking action proposes amendments to Section 3650(l) to delete the restrictive phrase “... of excessive width, length or height...” and focus on the load’s stability and security rather than its size or dimensions. The proposal adds language to follow the industrial truck manufacturer’s recommendations for securing a load against displacement. The proposed amendment is intended to ensure that all loads on powered industrial trucks are secured to prevent instability that may result in the loss of the load and potentially injuring employees in the vicinity. The proposal adds to the clarity of the standard and enhances employee safety. Equivalent federal OSHA regulations do not address oversized loads but rather the industrial truck’s capacity to handle a load.

Title 8 addresses the operation of equipment and machinery (generically) under conditions of loading or speeds which could endanger employees as stated in Section 3328(a). However, although Section 3328 is not specific to powered industrial truck operation, it is consistent though with and complements this proposal.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

This regulatory proposal is intended to provide worker safety at places of employment in California.

This proposed rulemaking action:

- Is based on the following authority and reference: Labor Code Section 142.3, which states, at Subsection (a)(1) that the Board is “the only agency in the state authorized to adopt occupational safety and health standards.” When read in its entirety, Section 142.3 requires that California have a system of occupational safety and health regulations that at least mirror the equivalent federal regulations and that may be more protective of worker health and safety than are the federal occupational safety and health regulations.
- More closely aligns Title 8 with the equivalent federal standard by emphasizing the stability and security of the load rather than its size or dimensions. Differs from the existing federal regulation in that the equivalent federal regulation does not refer to the manufacturer’s recommendation for specific instructions. The proposal will ensure a safer method of load security to avoid worker injuries from load displacement.
- 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 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).
- Is the least burdensome effective alternative. The proposal eliminates any confusion or doubt as to the type or size of load to secure from falling or tipping. The amendment clarifies the intent that all loads placed on powered industrial trucks are to be secured and not create an instability hazard. The inclusion of language to follow the manufacturer’s recommendations for securing the load against displacement provides industry standard best practices for the given equipment.

Section 3650. Industrial Trucks. General.

Existing Section 3650 specifies the operation, design, construction and maintenance of industrial trucks. Existing subsection (l) states that, “Loads of excessive width, length or height shall be so balanced, braced and secured as to prevent tipping and falling.” The proposed amendment removes the load descriptive language and maintains the requirement for load security and stability. Language is added to subsection (l) to require that loads be secured against displacement in accordance with the manufacturer’s recommendations. The proposal will provide clarity to employers and enforcement personnel that any load transported on powered industrial trucks shall be stable and secured from displacement.

DOCUMENTS RELIED UPON

1. OSHAB Decision, dated August 29, 2012, in the Matter of the Appeal of Otis Elevator Company, Docket Nos. 10-R3D2-3832 and 3833.
2. U.S. Department of Labor, Occupational Safety and Health Administration, Occupational Safety and Health Standards, 29 CFR 1910.178(o), <http://www.osha.gov>.

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.

DOCUMENTS INCORPORATED BY REFERENCE

None.

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.

Economic Impact Analysis

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 simplifies the existing standard by eliminating language that adds confusion and uncertainty as to what constitutes an excessive size load. The amendments define how a load should be secured and provides direction to follow the

manufacturer's recommendations to prevent displacement of the load. The Board believes the proposal will have insignificant, if any, adverse cost impact upon employer's operations.

Therefore, the adoption of the proposed amendments to these standards 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.

This regulatory proposal is intended to provide worker safety at places of employment in California.

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.)

The 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.)

The proposed regulation does not impose unique requirements on local governments. All - state, local and private employers 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. However, no economic impact is anticipated.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

The proposed regulation will not have any effect on the creation or elimination of California jobs or the creation or elimination of California businesses or affect the expansion of existing California businesses.

Benefits of the Regulation:

The proposal would allow businesses, small or large, clear direction in the proper method of ensuring that loads on industrial trucks are safely and securely positioned. The adoption of this proposal will promote worker safety by specifying safe practices already developed by the manufacturer of the powered industrial truck.

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, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.