

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**INITIAL STATEMENT OF REASONS**

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Section 3389(a) of the General Industry Safety Orders

Life Rings and Personal Flotation Devices (PFD) in Marine Terminal Operations**SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION**

The purpose of the proposal is to amend Section 3389(a) of Title 8, California Code of Regulations, to require both a life ring and a personal flotation device (PFD) in marine terminal operations where employees are exposed to the hazard of drowning. The proposal would render the state standard at least as effective as the federal counterpart standards, 29 CFR 1917.26(f) and 1917.95(b)(1).

Federal and state standards applicable to life rings and PFDs, differ in that the federal standards require both a life ring and a PFD in marine terminal operations. Whereas, the counterpart state standard (which is inclusive of marine terminal operations) requires employers to provide a life ring or a PFD, but not necessarily both. Therefore, the state standard is not commensurate with the federal counterpart standards in terms of the life ring and PFD requirement.

Since Labor Code Section 142.3 requires the adoption of occupational safety and health standards that are at least as effective as federal occupational safety and health standards, it is necessary to amend the state standard to require both the life ring and PFD in marine terminal operations.

Section 3389(a)

This section requires employers to provide life rings or PFDs to employees whose work exposes them to the hazard of drowning. It contains an exception statement, which excludes those employees who conduct flume patrols over flumes that are equipped with caps from having to wear a PFD or have a readily accessible life ring.

Amendments are proposed to delete the term “conveniently” and replace with the term “readily” to be commensurate with the comparable federal standard and thus ensure employees will be able to utilize a life ring quickly in case of an emergency. Further amendments are proposed for

clarity to revise the wording in the exception to exclude employees who conduct flume patrols from having to wear a PFD or use a life ring when the flume is equipped with caps sufficient to effectively guard against drowning.

The Board proposes to add a new subsection (a)(1) to make both a life ring and a PFD mandatory in marine terminal operations regulated by Article 14 of the GISO, where employees are exposed to the hazard of drowning. The proposed subsection (a)(1) is necessary to ensure that the state standard is at least as effective as the federal standard. California marine terminal employees will be further protected by the use of both a life ring and PFD.

REFERENCE TO COMPARABLE FEDERAL REGULATION

Federal OSHA's requirements for life rings and PFDs in marine terminal operations are provided within the vertical Maritime standard CFR 29. Section 1917.26(f) provides requirements for life rings and Section 1917.95(b)(1) provides requirements for the PFD.

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

1. Federal Register, Volume 65, No. 127, pages 40936 – 40951, June 30, 2000.
This document is available online at the Federal OSHA website:
<https://www.gpo.gov/fdsys/pkg/FR-2000-06-30/pdf/00-16545.pdf>
2. Federal Register, Volume 62, No. 143, pages 40190 and 40192, July 25, 1997.
This document is available online at the Federal OSHA website:
<https://www.gpo.gov/fdsys/pkg/FR-1997-07-25/pdf/97-19381.pdf>
3. Pacific Coast Maritime Safety Code, International Longshore and Warehouse Union, and Pacific Maritime Association, 2014 Revision.
This document is available online at:
http://apps.pmanet.org/pubs/laboragreements/PCMSC_2014_web.pdf_050916.pdf
4. US Census Bureau, Industry Statics Portal, 2012 NAICS: 4883 - Support activities for water transportation.
This document is available online at:
<https://www.census.gov/econ/isp/sampler.php?naicscode=4883>
5. U. S. Small Business Administration Table of Small Business Size Standards.
This document is available online at:
https://www.sba.gov/sites/default/files/files/Size_Standards_Table_2017.pdf

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.

PETITION

This proposal is 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 require PFDs for marine terminal employees whose work exposes them to hazards of drowning. This proposal will not mandate the use of any new specific technologies or equipment.

ECONOMIC IMPACT ANALYSIS/ASSESSMENT

Precompiled employment data could not be obtained for jobs in marine terminal operations where employees may be exposed to hazard of drowning. Board Staff asked several stakeholders for their respective employment data and number of employees that could be impacted by the proposed regulation; however, complete information was not provided.

The Federal Register containing the Final Rule on Longshoring and Marine Terminals, Volume 62, No. 143, July 25, 1997, states on page 40190 that federal OSHA used employment data for the Standard Industry Classification (SIC) 4491 – Marine Cargo Handling class to estimate the economic impact of the final rule on marine terminal operations. Likewise, the Board is also

using employment data for the Marine Cargo Handling industry class, which is classified as the North American Industry Classification System (NAICS) 488320 industry class, to estimate the number of employees employed in California marine terminal operations. Per the US Census Bureau data, there were 75 employers employing approximately 15,000 employees belonging to this industry class in California in 2016. Of the 75 employers, 28 are members of the Pacific Maritime Association (PMA), who employs 12,000 of the 15,000 employees. The remaining 47 are non-PMA employers.

The Pacific Coast Marine Safety Code (Code), which is a collective bargaining agreement between PMA and the International Longshore and Warehouse Union (ILWU), covers approximately 80% ($12,000 / 15,000 = 80\%$) of marine terminal employment in California. As the Code requires both the life ring and the PFD, the 28 PMA member employers are already compliant with the proposed regulation, and do not need to purchase any new life rings or PFDs. Outreach to non-PMA marine terminal employers shows that the terminals where the non-PMA employers operate already have life rings. Therefore, non-PMA employers will only need to ensure they have an adequate number of PFDs for their employees.

The 47 non-PMA employers have approximately 3,000 employees. Using a liberal assumption that PFDs would need to be purchased for all employees, and that PFDs cost \$48 each, the total cost of this proposal is estimated to be approximately \$144,000.

Employers are not expected to incur any new cost for training as the training on the use of life rings and PFDs is already included in the employer's existing GISO Section 3203 Injury and Illness Prevention Program (IIPP).

The proposal is also expected not to significantly impact the following as the scope of business activities in marine terminal operations would remain unchanged:

- The creation or elimination of jobs within the State of California,
- The creation of new businesses or the elimination of existing businesses within the State of California, and
- The expansion of businesses currently doing business within the State of California.

BENEFITS OF THE PROPOSED ACTION

The proposal is expected to save marine terminal employees from potential injury and death caused by drowning by having readily available life rings and PFDs for the employees' protection. The proposal also renders the state standard at least as effective as the federal

standard, to the extent that Title 8 will include a requirement that both life rings and PFDs be provided in the workplace.

**EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE
ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES**

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses/individuals, including the ability of California businesses to compete with businesses in other states. Evidence supporting non-significant economic impact to state businesses is provided under the “**ECONOMIC IMPACT ANALYSIS/ASSESSMENT**”.

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

No reasonable alternatives to the proposal were identified or brought to the Board’s attention. The proposal is the best alternative since it renders the state standard commensurate with the federal standard, and also utilizes equipment (PFD) that is effective and most commonly used.