

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**FINAL STATEMENT OF REASONS**

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Section 3650(t)(17)
of the General Industry Safety Orders

Powered Industrial Truck Operation-Exception**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 non-substantive and sufficiently related modifications that are the result of public comments and/or Board staff evaluation.

Section 3650. Industrial Trucks. General.

Section 3650 contains design and construction standards addressing PITs, the operation by authorized drivers, and 33 operating rules and instructions (subsection t). Subsection (t)(17) states that “when the operator of an industrial truck is dismounted and within 25 feet (7.6 meters) of the truck which remains in the operator's view, the load engaging means shall be fully lowered, controls placed in neutral, and the brakes set to prevent movement”. The exception to (t)(17) states “forks on fork-equipped industrial trucks may be in the raised position for loading and unloading if the forks are raised no more than 42 inches above the level where the operator/loaders are standing, and the power is shut off, controls placed in neutral and the brakes set. If on an incline, the wheels shall be securely blocked”.

Amendments were proposed to specify that PIT forks may be in the raised position for loading and unloading by the operator, if the forks are raised no more than 42 inches above the same level on which the PIT is located rather than where the operator/loaders are standing. The term “forks” was replaced with “load engaging means”.

In response to public comments, modifications are proposed to delete the term “load engaging means” for replacement by the more familiar term “forks” in the Exception for clarity.

Summary of and Responses to Written and Oral Comments:**I. Written Comments**

Mr. Bradley Closson, Craft Forensic Services, by e-mail transmission to the Occupational Safety and Health Standards Board (Board) dated October 28, 2016.

Comment #1:

Mr. Closson stated that the hazard of instability recited, as the basis for necessity for the proposed amendments is not necessarily true for all types of powered industrial trucks (PIT) addressed in Section 3650. It appears the proposal may not be applicable to some of those types of PIT.

Response:

The proposal does not apply to other types of PIT's that are designed to perform high lift operations such as tele-handlers, order pickers or stock pickers as cited in Section 3650. The proposal applies to fork-equipped industrial trucks.

For clarify the Board proposes to modify the exception to Section 3650(t)(17) by deleting the term "load engaging means" which can apply to a broader classification of powered industrial trucks, and replace with the term "forks".

Comment 2:

Mr. Closson stated that the documents relied upon which formed the basis of necessity for the proposed amendments were not provided for review to evaluate the validity of the safety enhancements proposed. He mentioned that the scope of the federal regulation expressed in 29 CFR1910.178 is narrow and does not address all of the other types of PIT's addressed in Section 3650.

Response:

The Board notes that page two of the Initial Statement of Reasons contains a section titled: "*Technical, Theoretical and or Empirical Studies, Reports or Documents Relied Upon by the Board*", which lists the e-mail and internal correspondence between Board staff and the Division of Occupational Safety and Health staff, are part of the rulemaking package and available for public inspection at the Standards Board's office. Links to the documents referenced by Mr. Closson are also included on the OSHSB website.

The Board fails to see the significance of Mr. Closson's comment relating to the scope of the Federal vs. State standard. The Board is aware that there are variations in scope between many State and Federal standards. However, with regard to these specific proposed amendments, which apply to powered industrial trucks that utilize forks as their load engaging means, the Board does not believe the variation in scope has any material impact upon the implementation of the exception by employers and therefore rejects this portion of Mr. Closson's comment.

Comment #3:

Mr. Closson stated that some equipment addressed in Section 3650 never sits within 42 inches of the loading and unloading operation and that there are types of PIT's that are designed for high lift elevation and placement of materials/equipment. Consequently, the proposal would appear to be inconsistent with those other types of PIT operations.

Response:

Again, the Board wishes to emphasize that the exception to Section 3650(t) is aimed specifically at the type of PITs referred to as a forklift by virtue of it being equipped with forks and not the other “species” of PITs addressed by Section 3650. Section 3650 was intended to broadly address other types of PIT’s, some that are designed for high lift, placement and pick up of materials, side loaders and rail guided. However, as stated in the Board’s response to comment No. 1, the exception to Section 3650(t)(17) is intended to apply to hi-low, forklift trucks. Therefore, the Board believes the proposal is not inconsistent with other types of PIT operations, and does not warrant additional modification, other than proposed in Response to Comment #1.

The Board thanks Mr. Closson for his comments and participation in the Board’s rulemaking process.

Ms. Amber Rose, CIH, Area Director, U.S. Department of Labor, Occupational Safety and Health Administration, Oakland Area Office, Region IX, by letter dated November 14, 2016.

Comment:

Ms. Rose stated that the proposal appears to be commensurate with federal standards addressing this issue and that Federal OSHA has sanctioned what is provided by the Title 8 exception as evidenced by a Letter of Interpretation, dated January 29, 1991.

Response:

The Board notes Federal OSHA’s acceptance of the proposal, and thanks Ms. Rose for her comments.

Mr. Gary Cross, Dunaway and Cross, Counsel for the Industrial Truck Association (ITA), by e-mail transmission to the Board dated December 13, 2016.

Comment#1:

Mr. Cross suggested clarifying which industrial trucks Subsection (t)(17) applies to. He stated that there could be confusion over industrial trucks where the operator rides upward standing on an elevating platform. It appears the ITA’s perspective is that the proposal is restricted to industrial trucks where the operator has a seated operating position.

Response:

The Board notes that Section 3650 is titled “Industrial Trucks. General.” and that the term “Industrial Truck” is defined in Section 3649 and is all inclusive of the various PIT’s individually addressed under Section 3650(a). Section 3650(a) lists the various PIT national consensus standards and includes but is not limited to: low and high lift trucks, guided vehicles, personnel and burden carriers and industrial tow tractors. Subsection (t) applies to operating rules for industrial trucks (i.e. the common forklift truck) and tow tractors. Rule 17 applies to the broad classification known as industrial trucks. However as stated in the responses to Mr. Brad

Closson, the exception to Subsection (t)(17) applies to industrial trucks equipped with forks, therefore, the proposal has been modified accordingly.

Comment #2:

The ITA states that it appears the intent of deleting the phrase “where the loaders/operators are standing” in favor of “by the operator” is to clarify that the exception applies when the operator works alone. If this is the case, the ITA does not see the need for this limitation. While it might appear to create safety coordination issues by having other employees assist the operator to load/unload material from the forks, the ITA believes that concern is outweighed by the benefit of the operator working with assistance. The ITA finds no explanation for this change in the Initial Statement of Reasons (ISOR) and suspects that this effect is intentional. The ITA suggests that Cal-OSHA review the implication of the amended wording to determine if it is consistent with what was intended.

Response:

The proposed amendment is not to clarify that the exception applies when the operator works alone. The proposed amendment deleting the phrase “where the operators/loaders are standing” is to clarify that the forks can be raised 42 inches above the same level where the forklift truck is parked; and that loading and unloading takes place on that level rather than a level where employees are standing which could be a level above. The Board notes that the Initial Statement of Reasons, does in fact, state that “Amendments are proposed to specify that the PIT forks may be in the raised position for loading and unloading by the operator, if the forks are raised no more than 42 inches above the same level on which the PIT is located rather than where the operators/loaders are standing”.

Eliminating “where the loaders/operators are standing” also ensures that the person(s) involved in the loading/unloading operation are on the same level as the forklift truck and not on a level above, with the forks elevated to that level from the level below.

The Board believes the proposed amendment is consistent with this intent and that the exception is necessary, therefore, the Board believes that no modification of the proposal is necessary.

Comment: 3 (a) and (b)

- (a) The ITA stated that it agrees with the clarification that the forks are only permitted to be raised 42 inches above the level the forklift truck is parked on.
- (b) They also agree with substituting the term “load engaging means” for “forks”, although the term forks is used elsewhere in Section 3650(t).

Response:

- (a) The Board acknowledges the ITA’s support for amended language pertaining to the elevation of the forks 42 inches above the level the forklift is parked.
- (b) With regard to the use of the term “load engaging means”, oral comments from stakeholders have requested the restoration of the more familiar term “forks” instead of

the less familiar term “load engaging means”. The proposal will be modified to restore the term “forks” and delete the term “load engaging means” in the exception to (t)(17) for clarity.

Comment: 4 (a) and (b)

- (a) The ITA agrees with proposed language specifying that the operator is to remain in the seat of the forklift truck except when actively loading/unloading. The ITA stated that (t)(17) clearly prohibits the operator from being out of the driver’s seat unless the forks are lowered. With that in mind, the last sentence in the amended exception requiring the operator to be in the driver’s seat when the forks are raised, except when loading and unloading, is redundant and the Board may wish to consider deleting it.
- (b) The ITA closed by expressing uncertainty over the meaning of the amended exception and that further revision may be necessary.

Response:

- (a) The Board acknowledges the ITA’s support for amended language that clarifies the need for the operator to remain in the driver’s seat except when actively loading and unloading. The Board disagrees with the ITA that the last proposed amended sentence in the exception is redundant. The Board is of the opinion that there is benefit to clarifying as a condition to the exception that the forklift operator is permitted to be either in the operators position with forks lowered or performing loading/unloading with forks raised not more than 42 inches, power shut off, wheels securely blocked on inclines.
- (b) The Board believes the proposed amendments will eliminate any confusion over the maximum elevation of the load in relation to the level the work is being performed when the forks are raised the prescribed 42 inches. Additionally the amended exception makes clear to the employer that the operator is only allowed out of the driver’s seat with forks raised for loading/unloading operations.

The Board believes no further modification of the exception, to address the aforementioned issues by the ITA are necessary and would like to thank the ITA for their comments and participation in the Board’s rulemaking process.

Mr. Nicholas Magana, by email transmission to the Standards Board dated December 15, 2016.

Comment:

Mr. Magana asked whether the forklift operator could be out of the seat of the forklift truck with the forks elevated 42 inches to perform functions other than loading and unloading such as banding, tying down the load (load stabilization)?

Response:

Clearly, stabilizing the load is important and is addressed by other Title 8 standards, such as Section 3559(b), which requires the use of a load backrest extension (LBE), and Section 3704, which requires all transported loads to be secured against displacement. If load stabilization is necessary, the operator must lower the forks to the ground. The exception is specific to only allowing the operator to be out of the seat for loading and unloading operations, when the forks are raised.

The Board thanks Mr. Magana for his comment and participation in the Board's rulemaking process.

Ms. Marti Fisher, California Chamber of Commerce, The Coalition (Associated General Contractors of California, California Cotton Growers Association, California Cotton Ginners Association, California Farm Bureau Federation, California Framing Contractors Association, California Professional Association of Specialty Contractors, Residential Contractor's Association, Western Agricultural Processors Association, and Western Steel Council), by letter dated December 13, 2016.

Comment (a) and (b)(1-3):

- (a) Ms. Fisher and the Coalition asked that the familiar term "forks" in "fork-equipped" be retained instead of the less familiar "load engaging means".
- (b) Other grammatical suggestions to the exception were requested. Specifically:
 - 1. Deletion of the phrase "... same level on which the industrial truck is located..." and replace with "...surface underneath the..",
 - 2. Deletion of the phrase "at all times" and replace with "whenever its forks", and
 - 3. Deletion of the word "will" and replace with "must" be in its seat".

Response:

- (a) The Board accepts the comment to delete the term "load engaging means" in favor of the more familiar "forks". The Board proposes to modify the proposal as requested.
- (b) (1) The Board does not accept this comment since it may be able to construe that the phrase "surface underneath" as a level or floor below the one the forklift is actually located on. It is clearer and less ambiguous to say "same level on which the industrial truck is located".
 - (2) The Board agrees with this comment to the extent that the phrase should read smoothly as "...whenever the forks..." and will propose to modify this part of the sentence accordingly.
 - (3) Use of the term "must" although found frequently in Federal OSHA regulatory syntax is not commonly used in Title 8. The phrase "must be in its seat" is also awkward. The Board does not accept this comment and believes no modification of the proposal as suggested in comment (b)(3) is necessary.

The Board thanks Ms. Fisher, and the Coalition organizations for their comments and participation in the Board's rulemaking process.

II. Oral Comments

Oral comments received at the December 15, 2016, Public Hearing in Sacramento, California.

Ms. Marti Fisher, representing California Chamber of Commerce.

Comment:

Ms. Fisher stated that in the interest of clarity, the proposal be modified to delete the term "load engaging means" for replacement by the more understandable term "forks".

Response:

The Board accepts this comment from Ms. Fisher and has modified the proposal as requested.

The Board thanks Ms. Fisher for her comment and participation in the Board's rulemaking process.

Mr. Bruce Wick, CALPASC, Mr. Steve Johnson, Alliance Roofing, Mr. Bryan Little, California Farm Bureau, Mr. John Bobis, The Bobis Group, Mr. Kevin Bland, California Framing Contractors Association and Western Steel Council.

Comment:

The aforementioned commenters echoed the comment of Ms. Fisher with regard to the use of the term "load engaging means".

Response:

See response to Ms. Marti Fisher, of the California Chamber of Commerce.

The Board thanks the aforementioned commenters for their comment and participation in the Board's rulemaking process.

MODIFICATIONS AND RESPONSES 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 May 22, 2017.

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.

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 (1) more effective in carrying out the purpose for which the action is proposed; or (2) would be as effective as and less burdensome to affected private persons than the adopted action, or (3) would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Board staff was unable to come up with any alternatives or no alternatives were proposed by the public that would have the same desired regulatory effect.