

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833
(916) 274-5721
FAX (916) 274-5743
www.dir.ca.gov/oshsb

**TITLE 8. CALIFORNIA CODE OF REGULATIONS**

General Industry Safety Orders

Section 3389(a)

(Published on August 31, 2018)

Life Rings and Personal Flotation Devices (PFD) in Marine Terminal Operations

NOTICE IS HEREBY GIVEN that the Occupational Safety and Health Standards Board (Board) proposes to adopt, amend or repeal the foregoing provisions of Title 8 of the California Code of Regulations in the manner described in the Informative Digest, below.

PUBLIC HEARING

The Board will hold a public hearing starting at 10:00 a.m. on **October 18, 2018** in the **Auditorium** of the **State Resources Building, 1416 9th Street, Sacramento, California**. At this public hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest.

WRITTEN COMMENT PERIOD

In addition to written or oral comments submitted at the public hearing, written comments may also be submitted to the Board's office. The written comment period commences on **August 31, 2018** and closes at 5:00 p.m. on **October 18, 2018**. Comments received after that deadline will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments can be submitted as follows:

By mail to Sarah Money, Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833; or

By e-mail sent to oshsb@dir.ca.gov.

AUTHORITY AND REFERENCE

Labor Code Section 142.3 establishes the Board as the only agency in the State authorized to adopt occupational safety and health standards. In addition, Labor Code Section 142.3 requires the adoption of occupational and health standards that are at least as effective as federal occupational safety and health standards.

**INFORMATIVE DIGEST OF PROPOSED ACTION/
POLICY STATEMENT OVERVIEW**

Section 3389(a) of Title 8, California Code of Regulations requires at least one life ring or a personal flotation device (PFD) where employees are exposed to the hazard of drowning. A new subsection (a)(1) is added to specifically address the hazards of drowning that may exist at marine terminals regulated by Article 14 of the General Industry Safety Orders (GISO). The federal counterpart standards require both the life ring and the PFD in marine terminal operations. 29 CFR 1917.26(f) requires a life ring where the employees' work exposes them to the hazard of drowning, and 29 CFR 1917.95(b)(1) requires a PFD for those employees who are engaged in work in which they may be pulled into the water while working under certain conditions (working in isolation, etc.).

New subsection (a)(1) will ensure that the Title 8 life ring and PFD standards for marine terminal operations are commensurate with the federal standards.

Anticipated Benefits

This proposal is intended to save marine terminal employees from potential drownings. Requiring both a readily accessible life ring and a PFD provides employees the needed protection from a drowning hazard. In the absence of one or the other, as allowed in the current state standard, the protection against drowning may not be adequate at times.

The proposal renders the state standard at least as effective as the federal standard.

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 PFDs 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.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on Local Agencies and School Districts: None.

Cost or Savings to State Agencies: None.

Cost to any Local Government or School District Which Must be Reimbursed in Accordance with Government Code Sections 17500 through 17630: None.

Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None. This proposal is not expected to cause any fiscal impact on local governments. Municipality owned ports such as the ports of Oakland and Long Beach are only chartered by their respective cities who act as property landlords. They are staffed and operated by employees who work for PMA member marine terminal and longshoring companies (private entities). Those employers are responsible for day to day operations including the use of all equipment, and worker safety in accordance with the PMA Code book which already requires PFD's and life rings.

Cost or Savings in Federal Funding to the State: None.

Cost Impacts on a Representative Private Person or Business:

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).

**Statewide Adverse Economic Impact Directly Affecting Businesses and Individuals:
Including the Ability of California Businesses to Compete:**

The Board has made an initial determination that this proposal is not expected to result in a statewide adverse economic impact directly affecting businesses/individuals since the cost of the proposed rulemaking (\$144,000) would be less than 0.004% of the revenue for the industry (over \$3.6 billion in 2012 as per US Census Bureau data), and also significantly less than the potential monetized benefit resulting from the prevention of employee injuries and fatalities due to drowning. The proposal is not expected to cause any adverse impact in terms of the ability of California businesses to compete with businesses in other states.

Significant Effect on Housing Costs: None.

SMALL BUSINESS DETERMINATION

Federal OSHA estimated approximately 90% of the employers belonging to the marine cargo handling industry class were small businesses (Federal Register Volume 62, No. 143, July 25, 1997, page 40192). Available Bureau of Labor Statistics (BLS) data for NAICS 4883 - Support Activities for Water Transportation (data not available for NAICS 488320) shows that in California, at least 86% of the businesses in 2012 were small businesses based on the revenue limit criteria provided by the US Small Business Administration. Using the federal estimate of 90% it is estimated that 68 employers are small businesses (75 x 90%).

Of these 68 small businesses, it is estimated that 21 are PMA member employers and the remaining 47 are non-PMA employers. As the PMA member employers are already compliant with the proposed regulation, only the 47 non-PMA member small businesses are expected to incur costs as a result of the proposed rulemaking. However, this proposal is not expected to result in any adverse economic impact on individual small businesses since the maximum cost of the proposed rulemaking is expected to be small, approximately \$3,050 (\$144,000 / 47) per

business. It is reasonable to speculate that this cost per business could be less since not all the employees may be exposed to the hazard of drowning, and the PFD does not have to be exclusively worn by one particular employee, as it may be shared or reused by other employees.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The proposed regulation will not have any significant effect on the creation or elimination of California jobs or the creation of new businesses or the elimination of existing California businesses or affect the expansion of existing California businesses. Staff estimates that each of the 47 non PMA employers could incur a cost of \$3,050 for the PFDs.

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.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either 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 than the proposal described in this Notice.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled public hearing or during the written comment period.

CONTACT PERSONS

Inquiries regarding this proposed regulatory action may be directed to Lara Paskins (Staff Services Manager I) and the back-up contact person is Michael Manieri (Principal Safety Engineer) at the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833; (916) 274-5721.

**AVAILABILITY OF STATEMENT OF REASONS, TEXT OF THE PROPOSED
REGULATION AND RULEMAKING FILE**

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, the Initial Statement of Reasons, supporting documents, or other information upon which the rulemaking is based. Copies may be obtained by contacting Ms. Paskins or Mr. Manieri at the address or telephone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulation substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public at least 15 days before the Board adopts the regulation as revised. Please request copies of any modified regulation by contacting Ms. Paskins or Mr. Manieri at the address or telephone number listed above. The Board will accept written comments on the modified regulation for at least 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Paskins or Mr. Manieri at the address or telephone number listed above or via the internet.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The Board will have rulemaking documents available for inspection throughout the rulemaking process on its web site. Copies of the text of the regulation in an underline/strikeout format, the Notice of Proposed Action and the Initial Statement of Reasons can be accessed through the Standards Board's website at <http://www.dir.ca.gov/oshsb>.