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FINAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Chapter 4, Subchapter 7, Article 19, Sections 3541 – 3546, 3548, and 3549
of the General Industry Safety Orders

Automotive Lifts

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 sufficiently related modifications that are the result of public comments and/or Board staff evaluation.

Section 3543. Marking Required.

Section 3543 contains the labeling/marking requirements for automotive lifts. Proposed subsection 3543(a)(4) pertains to older lifts manufactured before August 17, 1994, and would require the date of manufacture be labeled on a lift. Written comments indicate that providing the manufacture date for some very old lifts installed up to 60 years ago is problematic because manufacturing companies have gone out of business and such information is not available. A modification is proposed to permit the option of marking either the installation or manufacture date on these lifts. The revision is necessary to provide an option for the employer that is consistent with the current provisions of this subsection.

Section 3549. Descent Speed.

Section 3549 requires that all elements of any lift which control the speed of descent shall be so maintained that such speed will not exceed 20 feet per minute. Written comments were received stating that parallelogram and scissors style lifts do not descend at a constant rate due to the change in mechanical advantage of the elevating/lowering structure. The current standard requires instantaneous measurement of descent speed at the most rapid point of travel, a very impractical requirement not calculated to be of benefit to the user. A modification is proposed that would require the “average” descent speed to not exceed 20 feet per minute. The proposed modification is necessary to provide a practicable means to limit lift descent speeds and is also consistent with the provisions in the American National Standards Institute (ANSI)/Automotive Lift Institute (ALI) ALCTV-1998 standard that address lift lowering speed.

Summary and Response to Oral and Written Comments:

I. Written Comments

Colorado Automotive Equipment Repair by email dated August 16, 2004.
Mr. G. Douglas Linberg, President, Norriton Hydraulics Incorporated by letter dated August 18, 2004.
Garage Equipment Corp by facsimile dated August 18, 2004.
Mr. Timothy Norris, Lube Air Systems by letter dated August 19, 2004.
Mr. Bob Fenzel, Owner, Northcoast Hydraulics by email dated August 18, 2004.
Ms. Lula Kogan, DES-Lift Inc., by facsimile dated August 18, 2004.
Mr. Bruce Anderson, President, Autolifters of America, Inc., by facsimile dated August 19, 2004.
Mr. Steven A. White, President, S.A. White Enterprises, Inc., by facsimile dated August 18, 2004.
Mr. Todd Downing by email dated August 18, 2004.
Mr. P. A. Tinaro Jr., President/Owner, Shore Equipment Company by facsimile dated August 18, 2004.
Manson Ryals, Lift King of Florida, Inc., by facsimile dated August 17, 2004.
Ms. Betty Johansen, Controller/Corporate Secretary, Iowa Fabrication & Design, Inc., by letter dated August 13, 2004.
Mr. Karl Huf, V.P., Melrose Technologies by facsimile dated August 17, 2004.
Mr. Claude Joannette, President, Equi-Pros CFJ by facsimile dated August 16, 2004.
Mr. Greg Smith, Equipment Sales by email dated August 16, 2004.
Mr. Jim Keeny, President, MTF Equipment Sales, Inc., by letter dated August 12, 2004.
Mr. Roger H. Ford, Sales Engineer, Double Check Company, Inc., by letter dated August 11, 2004.
Mobil Hydraulics by facsimile dated August 16, 2004.
Mr. Tom Alangatren, Mechanical contractor and lift installer, Aire-Draulic Service by facsimile dated August 12, 2004.
Mr. Andy Tallman, Chairman, Norco Industries, Inc., by facsimile dated August 12, 2004.
Mr. John P. Rydberg, President, American Material Handling, Inc., by facsimile dated August 12, 2004.
Mr. Stephen White, President, ARESCO, Inc., by facsimile dated August 12, 2004.
Mr. Jeff J. Pratto, President, Pratto Sales, Inc, by facsimile dated August 12, 2004.
Ms. Lauris C. Kelly, President, Kelly Sales Corporation by facsimile dated August 12, 2004.
Mr. Randy Brown, Chairman - C.E.O., Complete Hydraulic Service & Sales, Inc., by facsimile dated August 13, 2004.
Mr. Anthony H. Smoorenburg, A.S.H. Automotive Service Equipment by email dated August 12, 2004.
Ms. Helen Underwood, Clifford Underwood Hydraulique by facsimile dated August 11, 2004.
Mr. Gary Wainwright, Weco Inc., by email dated August 11, 2004.
Mr. Bruce R. Kass, President, Maintenance Plus by letter dated August 11, 2004.
Mr. Daniel B. Jones, President, Northwest Equipment Sales by facsimile dated August 11, 2004.

Mr. Charles P. Galenas, Business Development Manager, Pundock Construction by facsimile dated August 11, 2004.
Mr. E. Bradley Hahn, Chairman, Globe Lift, LLC by letter dated August 12, 2004.
Mr. John B. LoRusso, President, Barlo Equipment Corporation by facsimile dated August 11, 2004.
Mr. Douglas W. Climenhaga, President, SVI International Inc., by letter dated August 12, 2004.

Similar (grouped) Comments:

Similar letters were received from all of the above-named commenters expressing support for the proposal as noticed for public comment. The commenters agree that the construction and testing requirements of the ANSI/ALI ALCTV-1998 standard for Automotive Lifts – Safety Requirements For Construction, Testing and Validation are reasonable and could be adopted. However, the commenters do not agree with the validation requirements of the standard. The commenters believe that adopting validation requirements will limit the choices of their customers with respect to safe proper lift selection, cost alternatives and application specific requirements. Costs associated with validation may have a negative impact on lift purchasers, smaller automotive lift suppliers, the scope of the entire product line, and lift safety.

Response to similar (grouped) comments:

These commenters support the standard as proposed and have expressed opposition to the Board on taking any further amendment to the proposal that includes the ALCTV 1998 validation provisions. Section 9.3 "Validation" of the ANSI/ALI ALCTV-1998 standard (ALCTV- 1998 standard) contains validation requirements that state in order to conform to the ALCTV standard, third party certification programs shall be administered by a Nationally Recognized Testing Laboratory (NRTL).

The Automotive Lift Institute (ALI) offers a program that fulfills this requirement. However, ALI correspondence clarifies that one does not have to be a member of ALI to have products certified by a NRTL. A NRTL is a laboratory which has been designated or recognized by the Department of Labor, Occupational Safety and Health Administration (federal OSHA) and must meet the requirements contained in federal standards located in 29 CFR 1910.7 pertaining to the recognition process for NRTLs. ALI indicates that one can have their products certified by any of the current eighteen NRTLs recognized or designated by federal OSHA.

The validation provisions require that all automotive lift models shall be tested for operational and physical conformance to the ALCTV-1998 standard. The testing must be witnessed by a NRTL. Section 9.3.3 of the validation provisions require that manufacturing facilities of the lift producer shall meet the quality control requirements set forth in the standard. Quality control conformance must be verified on an ongoing and continuing basis by frequent factory surveillance and plant visitation by the NRTL.

These commenters have expressed opposition (as outlined in the above summary of comments) to incorporating by reference the validation requirements of the ALCTV- 1998 standard. The

Petition (Board File No. 438) submitted by ALI requested that the Board adopt the provisions of the ALCTV-1998 standard. However, the proposal does not include the validation requirements of the ALCTV-1998 standard. Section 3542 of the proposal would require that new automotive lifts manufactured after the effective date of the standards be installed in accordance with the manufacturer's instructions and meet the provisions of ALCTV-1998, Section 8, "Construction" and Section 9.2 "Testing" requirements for automotive lifts. The Board does not believe that further modification to the proposal is necessary as a result of these comments. The Board thanks these commenters for their comments and participation in the Board's rulemaking process.

Mr. Chris Woodson, Autolift Services by facsimile dated August 19, 2004.

Comment No. 1:

Mr. Woodson states he has 40 plus years of experience in the automotive lift and equipment industry. He is the owner of a small family owned business. Mr. Woodson agrees that the construction and testing provisions of the ALCTV-1998 standard should be included in the proposal and he opposes the validation requirements.

Response:

See the above response to similar (grouped) comments.

Comment No. 2:

Mr. Woodson states the lift industry would be better served by the following: 1) Require all lift companies to be licensed, 2) Require ALI to have contractors as members provided they have 20 years of experience and eligibility open to those interested, and 3) Require mandatory safety inspections of lifts, like the commercial trucking, elevator, and crane industries. 4) Require licensed inspectors that would have to pass a state certified test, and 5) Require lock out/tag out procedures for work or repairs on defective equipment, and require instructions for the end user on safety and operation of lift equipment. He argued, "Installations, repairs, modifications and lack of service by unqualified technicians, illegal aliens and unlicensed contractors is where the real problem is."

Response:

Provisions that would require special licensing, state certification or minimum years of experience for all lift companies is outside the scope of this rulemaking action as these issues were not addressed in the proposal noticed for public comment. Regarding comments about the qualifications of service technicians and suggested mandatory inspections, proposed subsection 3542(d) would require the operation, inspection and maintenance of automotive lifts to be performed by a qualified person in accordance with the procedures recommended by the manufacturer. Existing General Industry Safety Orders (GISO) section 3314 currently addresses

effective lock out/tag out procedures for repair work. Therefore, the Board does not believe modification to the proposal is necessary as a result of this comment.

Comment No. 3:

Mr. Woodson stated that third party validation will not help a car mechanic that is working under a three year old lift that has not been inspected, properly maintained and repaired by a qualified technician.

Response:

See the response to comment No. 2. The Board thanks Mr. Woodson for his comments and participation in the Board's rulemaking process.

Mr. Michael Rudert, President, Professional Automotive Equipment, Inc., by facsimile dated August 19, 2004.

Comment No. 1:

The majority of Mr. Rudert's comments are the same as those previously summarized for similar (grouped) comments.

Response:

See the Board's response to similar (grouped) comments.

Comment No. 2:

Mr. Rudert also stated his company distributes products produced by both ALI member manufacturers and non-member manufacturers. Mr. Rudert stated 16 ALI members are listed on the ALI website when last checked. Looking at their products, one sees a number of non-listed [not third party NRTL tested] products available by ALI member manufacturers. He further opines that even ALI members cannot afford the validation expenses involved with limited run hoists or hoists they do not want listed.

Response:

ALI requires 70% of the lift products shipped to be NRTL certified to maintain ALI membership. Therefore, there are likely to be lifts available from ALI members that have not been certified by a NRTL. It is noted that the validation provisions in the ALCTV-1998 standard, Section 9.3 would require that all lift models must be certified. However, the proposal does not include the validation requirements of the ALCTV-1998 standard. Therefore, the Board does not believe modification to the proposal is necessary as a result of this comment. The Board thanks Mr. Rudert for his comments and participation in the Board's rulemaking process.

Mr. Joe Schmidt, Westside Equipment, by email dated August 12, 2004.

Comment:

Mr. Schmidt requested that the Board not adopt the recommendations in Petition No. 438 [submitted by ALI for the Board to adopt the provisions of the ALCTV-1998 standard] unless all lift manufacturers are involved. Mr. Schmidt questioned when the smaller manufacturers are gone, how the consumer would be able to afford the tool of their business.

Response:

Mr. Schmidt's comment suggests a process to involve all lift manufacturers to achieve an outcome on the petition. The Board involved lift manufacturers in its process. The comment on the petitions outcome was not correlated to the proposal to be able to issue a response. The Board thanks Mr. Schmidt for his participation in the Board's rulemaking process.

Mr. Stan Poweska, President, PKS Equipment & Engineering Inc., by letter dated August 16, 2004.

Comment No. 1:

Mr. Poweska's company and its independent California distributors support the proposed changes to Title 8. Mr. Poweska concurs that the testing requirements of the ALCTV-1998 standard are reasonable and should be adopted into law. The letter urges the Board to adopt the proposal.

Response:

The Board thanks Mr. Poweska for his support of the proposal.

Comment No. 2:

Mr. Poweska stated opposition to the State of California adopting ALI's recommendation to allow only the ALI certification program to validate [third party certify by a NRTL] automotive lift products.

Response:

The validation requirements, Section 9.3 of the ALCTV-1998 standard are not proposed for adoption. Further, ALI, in their correspondence, has made it clear that one need not use the ALI program to fulfill the validation requirements of the ALCTV-1998 standard. See the response to similar (grouped) comments.

Comment No. 3:

A number of paragraphs are related to ALI membership issues, market strategies, and the standards and policies of ALI.

Response:

These comments are not directly related to the proposal and its amendments to the existing provisions within the GISO, Article 19, "Automotive Lifts." Therefore, the Board is unable to address these comments. The Board thanks Mr. Poweska for his comments and participation in the Board's rulemaking process.

Mr. Steve J. Prater, Worth Equipment Parts & Service Co, Inc., by facsimile dated August 16, 2004.

Comment No. 1:

The first page of Mr. Prater's letter discusses ALI membership issues/policies, marketing strategies, and that not all participants in ALI have all of their lift models listed (tested by a third party NRTL).

Response:

Discussion of ALI membership issues/policies, marketing strategies etc., is not directly related to the proposal and therefore, the Board is unable to respond to these comments. With respect to NRTL testing of lift models by ALI participants, see the response to Mr. Rudert's written Comment No. 2.

Comment No. 2:

Mr. Prater states support for adoption of the construction and testing requirements of the ALTCV-1998 standard, and disagrees that the validation requirements of the ALTCV-1998 standard should be adopted.

Response:

See the response to similar (grouped) comments.

Comment No. 3:

Mr. Prater infers that validation of lifts must go through an ALI program.

Response:

See the response to similar (grouped) comments.

Comment No. 4:

Mr. Prater opines that adoption of the entire ALCTV-1998 standard would result in limited lift selection for unique customer requirements and that California businesses would suffer.

Response:

See the response to similar (grouped) comments and the responses to Comments Nos. 3 and 5 from Mr. Fox's ALI letter dated August 10, 2004.

The Board thanks Mr. Prater for his comments and participation in the Board's rulemaking process.

Ms. Scarlett Prater, Worth Equipment Parts & Services Co, Inc., by facsimile dated August 17, 2004.

Ms. Prater's comments that are related to the proposal make the assumption that lift validation must be obtained through the ALI program. An attachment to the comment letter shows that Underwriter's Laboratory (UL) certified several lift models of one manufacturer.

Response:

See the response to similar (grouped) comments. UL is recognized by federal OSHA as a NRTL. Therefore, a manufacturer can have its lifts certified by UL and meet the validation requirements, although not part of this proposal, of the ALCTV-1998 standard without ALI membership. The Board thanks Ms. Prater for her comments and participation in the Board's rulemaking process.

Mr. Larry A. Gross, CEO, Backyard Buddy Corp., by facsimile dated August 16, 2004.

Comment:

Mr. Gross commented about various ALI membership and policy issues. He opposes any requirements for third part testing of lifts by a NRTL.

Response:

ALI membership and policy issues are outside the scope of the proposal and therefore, the Board is unable to respond to these comments. With respect to certification of lifts by a NRTL, see the response to similar (grouped) comments. The Board thanks Mr. Gross for his comments and participation in the Board's rulemaking process.

John Gabriel, CEO, Liftmaster, by letter dated August 16, 2004.

Mr. Gabriel wrote that mandating the ALI petition into law will damage the lift industry and the lift market. The letter discusses various codes and standards that Liftmaster products meet. Liftmaster sells lift products manufactured by American Lift Equipment Company, Inc., that are UL certified/tested. Mr. Gabriel discussed estimated costs of third party testing of lift models and

believes such testing would impact customer costs and manufacturers' profitability. The letter also discussed a number of issues associated with ALI membership, and various marketing issues within the lift industry.

Response:

See the response to similar (grouped) comments which explains the proposal as it relates to the commenter's concern about the ramifications of the ALI petition. Also, see the responses to written Comments Nos. 3 and 5 from Mr. Fox's ALI letter dated August 10, 2004. Other comments do not address the language or provisions of the proposal and therefore, the Board is unable to respond to these comments. The Board thanks Mr. Gabriel for his comments and participation in the Board's rulemaking process.

Mr. E.K. (Chic) Fox, Automotive Lift Institute, by letter dated July 19, 2004.

Comment:

Mr. Fox summarized the results of a formal ballot taken within ALI membership to determine the position of its members regarding the recommendation by ALI that all lifts be certified by a NRTL to verify compliance with the ALCTV-1998 standard. There was some small membership opposition to the recommendation and ALI tallied the opposition relative to the number (percentage) of lifts shipped in 2003 by its members.

Response:

The Board thanks ALI for this information.

Mr. E.K. (Chic) Fox, Automotive Lift Institute, by letter dated August 10, 2004.

Comment No. 1:

Mr. Fox submitted ALI comments for the August 19, 2004, Public Hearing relative to the proposal primarily in question and answer format. The letter initially explained the ALI organization, how it promotes safety for lift users and the consensus process by which American National Standards Institute (ANSI) standards are developed. Three ANSI/ALI standards were noted that pertain to automotive lifts that are furnished to promote and encourage occupational safety and health departments of all states to embrace these standards. He stated that few states have had an interest in adopting standards [such as those pertaining to automotive lifts][1] that are not federal OSHA requirements. Some states have adopted the International Building Code (IBC), which does reference the ALCTV-1998 standard.

Response:

[1] Wording in [brackets] is added by Board staff for clarification.

The Board acknowledges that federal OSHA standards do not specifically address automotive lifts and that few states address automotive lift safety in their health and safety standards. Board staff is aware that Oregon OSHA in its General Industry Safety Orders for material handling in Subdivision N, Rule 38(b) requires automotive lifts to be operated in accordance with the manufacturer's recommendations and those of ANSI/ALI B153.1-1990[2]. This 1990 ANSI/ALI standard in Section 5 states it is the manufacturers' responsibility to perform quality-control testing/inspection of components and assemblies. The Board staff is not aware of any state that incorporates by reference the entire ALCTV-1998 standard in its occupational safety and health standards.

Comment No. 2:

Mr. Fox explained the ALI certification program including the standard applying to manufacturers, ANSI/ALI ALCTV-1998, that requires testing and validation by an independent third party and specifies that this independent third party be a federal OSHA, NRTL. He stated that this means that any lift manufacturer can get a lift "certified" by a qualified NRTL, as there are currently 18 NRTL laboratories in the U.S. and no requirement to use the ALI certification program. He stated that there is no restraint of trade and that lifts be certified in order to meet all of the requirements of the ALCTV-1998 standard.

Response:

The Board thanks ALI for the explanation of the certification program for automotive lifts, not part of the current proposal.

Comment No. 3:

ALI participated in the August 13, 2004, advisory committee meeting pertaining to this rulemaking action. ALI disagreed with Board staff conclusion that there was not a consensus at the meeting to adopt the ALCTV standard (including the certification/validation provisions) in its entirety. ALI pointed out its own membership majority supports the ALCTV standard for adoption in its entirety and that the committee representation that developed and approved the ALCTV-1998 ANSI standard had consensus.

[2] California references this standard in existing GISO Section 3542(b).

Response:

The advisory committee minutes in this matter reflect numerous and lengthy unresolved discussion and debate regarding the merits of incorporating by reference the entire ALCTV standard not only from a cost impact perspective, but the necessity of the validation requirements. There are also numerous written comments that support adoption of the standard as proposed.

Comment No. 4:

The sections of the [ALCTV standard] selected for inclusion in the proposal omitted important sections of the ALCTV standard, not just the objectionable "certification" (validation) requirements.

Response:

It is not uncommon in Title 8 safety orders that national consensus standards are incorporated by reference in part by applicable sections. The proposal includes the construction and testing portions of the ALCTV standard. The documentation requirements of the ALCTV standard are omitted because they contain a number of shipping and installation instructions and requirements for the manufacturer and also include NRTL certification-labeling requirements in conflict with the proposal.

Comment No. 5:

The history of why ALI decided to require independent third party certification in the ALCTV standard was provided with the rationale that the certification is the only way the purchaser can feel confident the lift is compliant with the standard. Mr. Fox noted similarities between the certification required by the ALCTV-1998 standard and that required for pressure vessels by the ANSI/ASME Boiler and Pressure Vessel Code, or the required listing of electrical appliances by NRTLs. ALI suggested the purchaser requires assurance that a lift complies with the ALCTV-1998 standard and recommended that for new lifts, the proposal incorporate by reference all provisions of the ALCTV-1998 standard.

Response:

Section 3542(c) of the proposal incorporates by reference the provision that new lifts meet the Section 8, "Construction" and Section 9.2 "Testing" requirements. There is overall agreement that lifts meeting these provisions would pass any third party NRTL testing. The proposal requires new lifts to be labeled with a statement of compliance that the lift was manufactured to conform to the requirements of the ALCTV-1998 standard, Section 8, "Construction" and Section 9.2 "Testing" provisions.

Notwithstanding correspondence and calculations from ALI and Rotary Lift that NRTL certification of higher production lifts when amortized over the number of lifts sold should not be a hardship, some smaller manufacturers or producers of lower volume lifts have indicated that certification would affect their ability to compete in California. Other concerns were expressed at the advisory

committee meeting that changes or modifications to a lift could result in additional certification being required depending on the type of modification or the NRTL company involved. The validation provisions in the ALCTV-1998 standard require ongoing and continuing frequent factory surveillance and plant visitation by the NRTL that could result in additional costs beyond initial certification.

The Board must establish the necessity, as required by the Administrative Procedure Act, for including certification/validation provisions of the ALCTV-1998 standard. Federal OSHA does not have standards specific to the design and operation of automotive lifts. While California has comprehensive standards relating to automotive lifts contained in the GISO, Article 19, these are minimum standards only and do not prohibit an employer from meeting certification/validation provisions of the ALCTV-1998 standard. Finally, the Board is not aware of a history of any accidents in California involving lifts that have resulted as a consequence of failure due to inadequate design or manufacturing. Given the numerous lifts that are used and the number of vehicles that are hoisted each day, there is not a significant history of automotive lift accidents. Stakeholders in the lift industry have indicated that accidents, when they do occur, are usually associated with poor lift maintenance and missed inspections, lack of experience or training, and not following the manufacturer's recommendations. Therefore, the Board does not believe modification to the proposal is necessary as a result of this comment.

Comment No. 6:

ALI requested modifications to Section 3549, Descent Speed, that requires that all elements of any lift which control the speed of descent shall be so maintained that such speed will not exceed 20 feet per minute.

The comment described parallelogram and scissors style lifts which do not descend at a constant rate due to the change in mechanical advantage of the elevating/lowering structure. The current standard would require instantaneous measurement of descent speed at the most rapid point of travel, a very impractical requirement not calculated to be of benefit to the user.

Response:

Board staff concurs with this comment and a modification is proposed that would require the "average" descent speed to not exceed 20 feet per minute.

Comment No. 7:

ALI stated that there is no negative impact to anyone resulting from its recommended modifications to the proposal, except manufacturers of automotive lifts whose impact would be minimal because responsible manufacturers have their lifts certified.

Response:

See the response to Comment No. 5.

Comment No. 8:

Under a heading titled "Other considerations," ALI questioned how the employer determines whether personal protective equipment (PPE) complies with the applicable consensus standards required in Article 10 of the GISO. ALI also suggested that the employer and employee can rely on certified PPE because of the efforts of organizations such as the "certification program" of Safety Equipment Institute, the National Fire Protection Agency, The Fire Fighter's Union, ANSI and other responsible authorities having jurisdiction that recognize the consensus standard process.

Response:

These comments relating to PPE are not related to the proposal. However, PPE is often labeled as meeting the provisions of the appropriate national consensus standard that addresses its design criteria. While testing of products is included in many ANSI standards for PPE, quality control and testing, in many instances, is the responsibility of the manufacturer.

The Board thanks ALI for their efforts and taking the initiative to originate this rulemaking action by the submission of Petition File No. 438. The Board thanks Mr. Fox and ALI for their comments and participation in the Board's rulemaking process.

At the August 19, 2004, Public Hearing in this matter, Mr. Rick Heath, representative for the Automotive Lift Institute, delivered letters dated August 18, 2004, from Mr. E.K. (Chic) Fox, ALI with several attachments (related to an industry memo from SVI Inc.) and two additional letters to the Board from Mr. Gary Kennon, Vice President, Rotary Lift Consolidated, dated August 25, 2003, and November 18, 2003.

Mr. E.K. (Chic) Fox, representing the Automotive Lift Institute, by letter dated August 18, 2004.

Comment No. 1:

This letter brought attention to a letter writing campaign that according to Mr. Fox was initiated by another automotive lift organization. The letter commented about ALI membership issues, competition, and the opinion of others in the automotive lift industry. Page two urged the Board to re-read the section titled, Why require third party "Certification" from an earlier communication to the Board from ALI.

Response:

The Board is unable to respond to comments unrelated to the recommended wording of the proposal. Regarding comments about requiring third party certification of lifts, see the response to Comment No. 5 from the letter from Mr. Fox, ALI, dated August 10, 2004.

Mr. Gary Kennon, Vice President, Rotary Lift Consolidated, dated August 25, 2003, (submitted at the August 19, 2004, Public Hearing).

Comment No. 1:

Mr. Kennon participated in the August 13, 2004, advisory committee related to this rulemaking action. He emphasized that when employees stand beneath heavy equipment, everything should be done [such as third party certification] to make the product as safe as possible.

Response:

See the response to Comment No. 5 from the letter from Mr. Fox, ALI, dated August 10, 2004.

Comment No. 2:

Mr. Kennon summarized areas of objection expressed by advisory committee members opposed to mandated third-party certification/validation of automotive lifts. With respect to the lack of accidents, injuries or fatalities in the lift industry, Mr. Kennon emphasized that no industry wants to be reactive in their approach to safety. With respect to concerns/problems associated with third party certification of heavy duty inground lifts, Mr. Kennon commented that these lifts represent a small percentage of total lifts sold and provided rationale that concluded certification for these types of lifts is possible if the manufacturer is willing. Mr. Kennon provided calculations that suggest mandated third party certification of lifts would not result in undue hardship to the lift industry and would not cause manufacturers to leave the California marketplace. Mr. Kennon pointed out that California is not the only area considering adoption of the requirement to have lift products certified by a third party. Similar requirements either are being considered or exist in communities such as St. Louis, Missouri, and the state of Oregon.

Response:

See the responses to Comments Nos. 3 and 5 from the letter by ALI dated August 10, 2004. With respect to the state of Oregon's occupational safety and health standards for automotive lifts, see the response to Comment No. 1 from the letter by ALI dated August 10, 2004, regarding Oregon's reference to ANSI/ALI B153.1-1990. This ANSI/ALI standard in Section 5 states it is the manufacturers' responsibility to perform quality-control testing/inspection of components and assemblies. The Board does not believe further modification to the proposal is necessary as a result of this comment.

Comment No. 3:

Mr. Kennon discussed rationale for a three-year, phase-in period before compliance with third party certification of lifts is required.

Response:

The proposal does not incorporate by reference the certification/validation provisions of the ALCTV-1998 standard. Therefore, the Board does not believe further modification to the proposal is necessary as a result of this comment.

The Board thanks Mr. Kennon for his comments and participation in the Board's rulemaking process.

Mr. Gary Kennon, Vice President, Rotary Lift Consolidated, by letter dated November 18, 2003, (submitted at the August 19, 2004, Public Hearing).

Comment:

Mr. Kennon's letter expressed disappointment that the draft proposal mailed subsequent to the August 13, 2004, advisory committee did not include requirements for third party certification of automotive lifts by an NTRL. The letter also discusses various marketing issues and attaches a publication from another automotive lift organization.

Response:

With respect to comments regarding the merits of requiring third party certification of lifts, see the responses to written Comments Nos. 3 and 5 from Mr. Fox, ALI, dated August 10, 2004. The Board finds comments on certain marketing issues/tactics outside the scope of the proposal. The Board does not believe further modification to the proposal is necessary as a result of this comment. The Board thanks Mr. Kennon for his comments and participation in the Board's rulemaking process.

Mr. Phil Leak, Phil Leak Company, by letter dated August 13, 2004.

Comment:

The Phil Leak Company commented that his company has been in the lift business for over 40 years. He further stated that his company sells, installs and services both surface-mounted and in-ground lifts. His firm believed in the interests of safety that third party testing (certification by a NRTL) should be required to verify compliance with the ALCTV-1998 standard. A manufacturer doing their own testing to confirm that it meets ANSI standards may be prejudiced towards favorable results, not be familiar with the ALCTV-1998 standard, and/or not be sufficiently knowledgeable or have sufficient equipment to thoroughly and accurately perform proper testing.

Mr. Leak believed that ALI requires certification by a company called Intertek Testing Services/ETL Semko and requested that certification of lifts by UL also be acceptable.

Response:

With respect to comments regarding the merits of requiring third party certification of lifts, see the responses to written Comments Nos. 3 and 5 from Mr. Fox, ALI, dated August 10, 2004. The ALCTV-1998 standard does not require certification by a specific NRTL, and certification by UL would be acceptable in meeting the provisions of the ANSI standard [See the response to similar (grouped) comments.]. The Board does not believe further modification to the proposal is necessary as a result of this comment. The Board thanks Mr. Leak for his comments and participation in the Board's rulemaking process.

Mr. Thomas P. Biesiada, President, Tri County Tool & Supply by undated letter received on August 18, 2004.

Comment:

Mr. Biesiada's company stated he has over 20 years experience as a lift distributor. He stated his support of third party testing, but independent companies like UL should be able to perform the testing. Mr. Biesiada's letter discussed technical problems associated with one company that has had its product tested or certified and stated that the major problems that need to be addressed are lift inspection and training of service and installation personnel as well as lift operators. He commented that most accidents are the result of no or poor operator training or no or poor maintenance.

Response:

See the response to Mr. Leak's written comment by letter dated August 23, 2004. The Board staff concurs with Mr. Biesiada's comments regarding the causation of most accidents. The Board does not believe further modification to the proposal is necessary as a result of this comment. The Board thanks Mr. Biesiada for his comments and participation in the Board's rulemaking process.

Mr. John C. Vocke, Attorney, Pacific Gas & Electric Company (PG&E), by letter dated August 16, 2004.

Comment:

Mr. Vocke stated that PG&E maintains approximately 100 automotive lifts, some installed during the 1940's and the most recent in 2002. Section 3543(a)(4) as proposed would require that older lifts installed prior to August 17, 1994, be marked with the date of manufacture. The current standard requires the date of installation to be labeled. PG&E recommended this subsection be modified to permit that the marking/labeling include the date of installation or manufacture.

He stated that the reason for this recommendation is that many automotive lifts in place throughout California are presently marked with the date of installation when the date of manufacture is unavailable. He commented that lifts that have been maintained properly have a long lift span, and

some PG&E lifts were installed approximately 60 years ago. He further commented, in many instances, the manufacturers of these older lifts are defunct. A number of lifts were manufactured by companies that have been out of business for decades. Thus, determining the date of manufacture for a specific lift may be impossible. Since the lifts are required to be marked with either a Division approval number or a statement of ANSI compliance, PG&E submitted that an option to mark the date of manufacture or installation does not adversely affect the safety of the automotive lift.

Response:

Board staff concurs with this comment and a modification is proposed for Section 3543(a)(4) that would require a marking showing the date of installation or manufacture. The Board thanks Mr. Vocke for his comments and participation in the Board's rulemaking process.

Mr. Robert Pepmeyer, President, Quag's Equipment LLC by email dated August 12, 2004.

Comment No. 1:

Mr. Pepmeyer stated that he is an independent equipment distributor and represents four lift manufacturer companies; Challenger, Nussbaum, Whip, and Globe. He commented that Challenger is an ALI member, Nussbaum lifts are tested to European standards, Whip Industries lifts are tested by UL, which has no affiliation with any lift organization, and Globe lifts are made to meet ANSI standards but are not third party tested. Mr. Pepmeyer stated he would not sell any lift product that he deemed to be unsafe and he fully supports universal safety standards that provide assurance to the end user.

Response:

The Board thanks Mr. Pepmeyer for this information.

Comment No. 2:

Mr. Pepmeyer stated he does not support third party testing by any organization representing special interests. If third party testing is required by law then he said that it should be done by an independent testing agency. The comments implied that only one NRTL program affiliated with ALI is acceptable to meet the provisions of the ALCTV-1998 standard.

Response:

See the response to similar (grouped) comments and see Comment No. 2 from Mr. Fox's ALI letter dated August 10, 2004. The Board does not believe further modification to the proposal is necessary as a result of this comment. The Board thanks Mr. Pepmeyer for his comments and participation in the Board's rulemaking process.

Mr. Larry Williams, President, Southern Industrial/Auto Lift and Equipment by email dated August 13, 2004.

Comment:

Mr. Williams commented on his experiences representing a number of lift companies. He discussed various marketing and political issues within the lift industry. He urged the Board to listen to the people who sell lifts, and who work on and keep lifts safe for all users.

Response:

See the response to similar (grouped) comments. The Board is unable to respond to marketing issues outside the scope of the wording in the proposal. The Board does not believe further modification to the proposal is necessary as a result of this comment. The Board thanks Mr. Williams for his comments and participation in the Board's rulemaking process.

Mr. W. Gary McGee, President, Whip Industries by email dated August 16, 2004.

Comment:

Mr. McGee stated that he attended the advisory committee on this matter and commented that federal OSHA does not have standards addressing automotive lifts. Mr. McGee noted that ALI representatives at the meeting agreed that any lift that meets the design and construction criteria of the ALCTV-1998 standard will meet the validation criteria of the standard as well. He stated that the validation process is very costly and certain manufacturers may have very desirable products that do not have the volume required to amortize these costs. He commented that Whip Industries conducts extensive in-house testing to confirm and validate the design and construction of lifts prior to offering lift models to the consumer and the acceptance of the ALI petition will limit choices and force good reliable manufacturers to increase their costs and will eliminate competition in the marketplace. Mr. McGee urged the Board to adopt the proposed changes recommended by the advisory committee.

Response:

Mr. McGee addresses a number of issues discussed at the advisory committee on this matter. See the responses to Comments Nos. 3 and 5 from Mr. Fox's letter dated August 10, 2004. The Board does not believe further modification to the proposal is necessary as a result of this comment. The Board thanks Mr. McGee for his comments and participation in the Board's rulemaking process.

Mr. Steve Stich, Western All Tool Equipment Co., by facsimile dated August 19, 2004.

Comment:

With respect to the adoption of automotive lift standards, Mr. Stich suggested referring to the Transatlantic Cooperation Documents attached to his letter. He wrote that these documents state that the U.S. and European Union have agreed to honor each other's safety and technical standards and it is his understanding that efforts should be made to make U.S. and European standards equivalent to each other. He noted that the European community has an excellent set of safety standards.

Response:

The Board thanks Mr. Stich for this background information on U.S. and European standards. However, consideration of European standards was not included in the public notice for this rulemaking and would be outside the scope of this rulemaking action. The Board does not believe further modification to the proposal is necessary as a result of this comment. The Board thanks Mr. Stich for his comments and participation in the Board's rulemaking process.

II. Oral Comments

Oral comments received at the August 19, 2004, Public Hearing in Oakland, California.

Mr. Frederick "Rick" Heath, representing the Automotive Lift Institute

Comment No. 1:

Mr. Heath presented a broad summary of ALI's and ANSI's reasons for updating national standards for automotive lifts. He stated that ALI is requesting that the Board update Title 8 to reference the most recent ANSI/ALI standards for automotive lifts, including the provisions for third party certification of lifts performed by a National Recognized Testing Laboratory (NRTL).

Response:

See the responses to written Comments Nos. 3 and 5, from Mr. Fox's letter dated August 10, 2004.

Comment No. 2:

Mr. Heath stated that ALI polled their membership and, through formal ballot returns, determined that 96% favor requiring independent third party certification. He read into the record the excerpts from ALI's August 10, 2004, comment letter that were under the heading, "Why require independent third party certification." The written letter under this heading reflected the history of why ALI decided to require independent third party certification in the ALCTV standard and noted that third party certification is the only way the purchaser can feel confident the lift is compliant with the ANSI standard. The comment stated there are similarities between the certification required by the ALCTV-1998 standard and that required for pressure vessels by the ANSI/ASME Boiler and

Pressure Vessel Code, or the required listing of electrical appliances by NRTLs. ALI suggested the purchaser requires assurance that a lift complies with the ALCTV-1998 standard and recommended that, for new lifts, the proposal should incorporate by reference all provisions of the ALCTV-1998 standard.

Mr. Heath concluded his comments by stating that product standards establish a benchmark for product safety, extending to product design, manufacturer, process quality control, and testing. ALI established its "Certification Program" so that purchasers and users of automotive lifts would not have to "take the word of the seller" to be confident that lift products meet the provisions of the ANSI/ALI ALCTV-1998 standard.

Response:

See the comment and response to Mr. Fox's letter dated July 19, 2004. Also, see the responses to written Comments Nos. 1, 3 and 5, from Mr. Fox's letter dated August 10, 2004.

The Board thanks Mr. Heath and ALI for their time, attendance at meetings, comments and participation in the Board's rulemaking process.

Mr. Doug Climenhaga, President, representing SVI/Globe Lifts.

Comment No. 1:

Mr. Climenhaga made lengthy comments regarding industry concerns related to ALI membership. He also noted that a manufacturer must have the lift models that compromise 70% of its sales tested by ALI's third party testing partner, the ETL.

Response:

ALI confirms that it now requires 70% of lift products shipped to be certified (third party tested by a NRTL) in order to maintain ALI membership. Other comments regarding ALI membership issues are outside the scope of this proposal.

Comment No. 2:

Mr. Climenhaga indicated that there is no necessity for incorporating ALI's recommendations into the standards. As a rule, people have not been hurt or killed by automotive bus or truck lifts. He questioned why this proposal was being presented to the Board.

Response:

The proposal would result in the updating of the existing standards contained in the GISO, Article 19, "Automotive Lifts." The proposal deletes outdated provisions, language and definitions, and is also necessary to require new lifts be constructed and tested by manufacturers/producers in accordance with the provisions in the ALCTV-1998 standard. Mr.

Climenhaga participated in the advisory committee deliberations and his August 12, 2004, letter stated support for the proposal as noticed for public comment. The proposal does not include the third party certification/validation provisions of the ALCTV-1998. Therefore, the Board does not believe further modification to the proposal is necessary as a result of this comment.

Comment No. 3:

Mr. Climenhaga stated that should the Board adopt ALI's recommendations, fair trade in California would be restricted and the business climate destroyed. He asked that the Board not adopt any standards created through ANSI by the ALI with respect to automotive lifts.

Response:

See the response to similar (grouped) comments. Mr. Climenhaga's August 12, 2004, letter states support for the proposal as noticed for public comment. Also, see the response to Comment No. 5 from Mr. Fox's letter dated August 10, 2004. The Board does not believe further modification to the proposal is necessary as a result of this comment.

The Board thanks Mr. Climenhaga for his time, attendance at meetings, comments and participation in the Board's rulemaking process.

Mr. Craig Heidenthal, representing Service Tech Tool & Equipment.

Comment:

Mr. Heidenthal stated that third party certification and testing of lifts is not needed.

Response:

See the response to Comment No. 5 from Mr. Fox's letter dated August 10, 2004. The Board thanks Mr. Heidenthal for his comments and participation in the Board's rulemaking process.

Mr. Gary Kennon, Chairman, ALI.

Comment:

Mr. Gary Kennon, Chairman, ALI, addressed public concerns that ALI has an economic advantage by implementing their recommendations. He stated that an average lift sells for $3,000 - $3,500, including installation, the average cost to certify a lift by third party certification cost is approximately $6,000, and if rounded to $10,000 and a company sells 1,000 lifts, the amortized cost would be $10.00 per lift. He stated by adding $10.00 per lift does not give a large player an advantage.

He stated that ALI's purpose in submitting their petition and requesting amendments to the automotive lift standards is to proactively ensure that products being sold meet current national standards.

Response:

See the responses to Comment Nos. 3 and 5 from Mr. Fox's letter dated August 10, 2004. The Board thanks Mr. Kennon for his comments and participation in the Board's rulemaking process.

Dialogue between Board members, Staff and the Public.

Comment No. 1:

Board Member Larry Gotlieb asked staff if there are federal standards or if fed/OSHA has considered similar standards.

Response:

George Hauptman, Senior Safety Engineer, responded that there are no federal standards and that fed/OSHA is not developing standards at this time.

Comment No. 2:

Board member Gotlieb asked if the advisory committee discussed injuries.

Response:

Mr. Hauptman indicated that there is not a significant history of injuries associated with automotive lifts in California and that most accidents, including injuries and fatalities, have to do with lifts not being maintained, operated or inspected in accordance with the manufacturer's recommendations.

Comment No. 3:

Board Member Jesse Navarro questioned if it is accurate that ALI only represents less than 1% of the industry as indicated in several comment letters. Mr. Rick Heath responded that ALI is a manufacturer's trade association and while there are thousands of installers and sellers of automotive lifts throughout the country, a business must be a manufacturer to belong to ALI. He went on to stress that the third party certification program is a service to the industry.

Response:

The Board thanks Mr. Heath for his response.

MODIFICATIONS AND RESPONSE 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 February 22, 2005.

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 as indicated in the Initial Statement of Reasons.

ALTERNATIVES CONSIDERED

The Board invited interested persons to present statements or arguments with respect to alternatives to the proposed standards. No alternative considered by the Board 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 adopted action.