

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Attachment No. 2

INITIAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS

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

Industrial Trucks, General (Blue Signal Protection)**SUMMARY**

Section 3650, subsection (t) sets forth operating rules pertaining to industrial trucks and tow tractors. Section 3650(t)(23) concerns the loading and unloading of rail cars and provides in part that blue flags or lights are to be displayed in accordance with Public Utilities Commission (PUC) standards. However, there are no such PUC standards. This proposal would replace the reference to the nonexistent PUC standards with references to other appropriate standards. The proposal is necessary in order to give force and effect to the blue flag/blue light portion of Section 3650(t)(23).

This rulemaking is initiated in response to the action taken by the Occupational Safety and Health Standards Board (Board) on April 19, 2007 granting Petition File No. 489. The Petitioner, Ric Morrison of the Sunset Molding Company, requested that the blue flag/blue light provision found in the current version of Section 3650(t)(23) be amended to match industry practice. He stated that the absence of PUC blue flag/blue light standards creates a quandary for employers as to what they are required to do.

When railroad cars are loaded or unloaded, there is a danger that the cars will move and injure employees working in proximity to the cars. Section 3650(t)(23) contains provisions intended to ensure that the railroad cars remain stationary. The blue flags and blue lights indicate to rail workers that a car that has been immobilized is not to be coupled to other cars, equipment or locomotives, or otherwise disturbed in a way that would cause the car to move.

The Federal Railroad Administration (FRA) has promulgated rules regarding the use of blue lights and blue flags. These rules provide practical guidance to employers regarding blue flag/blue light use. Section 3333 of the General Industry Safety Orders (GISO) also provides such guidance. Therefore, those FRA and GISO provisions are proper replacements for the reference in Section 3650(t)(23) to the nonexistent PUC rules.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

Section 3650. Industrial Trucks. General

This standard contains a variety of industrial-truck-related provisions. The provisions in subsection (t) pertain to the safe operation of industrial trucks and tow tractors. The standard states that, in order to keep railroad cars from moving during loading and unloading, the car brakes are to be set and wheel chocks and/or other positive stops are to be used. The standard also states that blue flags or lights are to be used in accordance with applicable PUC standards.

There are no such PUC standards. FRA blue flag/blue light standards are found at Title 49, Code of Federal Regulations (CFR) Part 218, Subpart B. Of those provisions, 49 CFR Section 218.27 is particularly relevant to the operations that are the subject of Section 3650(t)(23), such as loading and unloading on industrial sidings and industrial railway systems. Section 3333 of the General Industry Safety Orders (GISO) also pertains in part to blue flag/blue light use. This proposal would delete the erroneous PUC reference and replace it with references to Section 218.27 and to GISO Section 3333. Also Section 218.27 would be incorporated by reference into Section 3650(t)(23). In this way, the proposal is intended to create a meaningful standard that will actually promote worker safety. In addition, it is proposed to add the word “blue” before the word “lights” in Section 3650(t)(23), thereby removing any ambiguity as to which lights are the subject of the standard.

DOCUMENTS RELIED UPON

1. OSHSB Petition 489 Decision, adopted April 19, 2007.
2. OSHSB Petition 489, by Ric Morrison, received November 2, 2006.
3. Public Utilities Commission General Order 108, adopted January 20, 1960.

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

1. Title 49, Code of Federal Regulations, Section 218.27.

This document is too cumbersome or impractical to publish in Title 8. Therefore, it is proposed to incorporate the document by reference. Copies of this document 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.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC
IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made a determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because this

standard does not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed standard does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed standard does not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendment may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendment to this standard will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.