

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**FINAL STATEMENT OF REASONS**

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Chapter 4, Subchapter 7, Article 14, Section 3469
of the General Industry Safety Orders

Powered Industrial Truck Training for Marine Terminals

There are no modifications to the information contained in the Initial Statement of Reasons.

SUMMARY AND RESPONSE TO ORAL AND WRITTEN COMMENTSI. Written Comments

There were no written comments received.

II. Oral Comments

Oral comments received at the June 21, 2001 Public Hearing, Oakland, California

Ms. Elizabeth Treanor, Director, representing Organization Resources Council (ORC),
Jere Ingram, Chairman, Occupational Safety and Health Standards Board (OSHSB).

Comment:

Ms. Treanor stated that ORC generally does not support the referencing of a CPL (federal compliance document) in the regulations. Ms. Treanor added that she generally encourages the Board to state the text in the regulation instead of referencing the CPL. However, in this particular case where a well-defined industry is already well aware of the requirements of the settlement agreement that is contained in the federal CPL, she supports Board staff's proposed language.

Response:

The Board acknowledges Ms. Treanor's support for the proposed language and thanks her for her participation in the Board's rulemaking process.

Mr. Baruch Fellner, Gibson, Dunn & Crutcher, Pacific Maritime Association (PMA).

Comment:

Mr. Fellner stated that he supports the proposed regulation before the Board. Mr. Fellner also indicated that he appreciated the comments expressed by Ms. Treanor of ORC with regard to incorporation by reference. Mr. Fellner acknowledged that the proposal recognizes the essence of the settlement agreement, the uniqueness of California's marine industry and the Powered Industrial Truck standard. Mr. Fellner added that he noticed that there was no Standard Industrial Classification (SIC), specifically 4491, in the language of the proposed change. Mr. Fellner suggested adding to the proposal a reference to the SIC code for marine terminals.

Finally, Mr. Fellner complimented Mr. MacLeod and Mr. Manieri for a superb job as well as those in the Division of Occupational Safety and Health. Mr. Fellner acknowledged that the task of expeditiously recognizing the federal settlement agreement in Title 8 was indeed a difficult task well achieved by the Standards Board and the Division. The PMA is appreciative of the efficiency and job well done.

Response:

The Board acknowledges Mr. Fellner's support of the proposal. With regard to the issue of including the SIC Code 4491 into the proposed language, Board staff believes the proposal's application to marine terminals is sufficiently clear given the fact that Section 3469 is contained within Article 14. Marine Terminal Operations and the proposal clearly states that it applies to marine terminal operations. In addition, the term "marine terminal" is defined in detail in Section 3460. Definitions to Article 14. Consequently, the Board believes no modification of the proposed language is necessary with regard to including a reference to SIC Code 4491.

The Board acknowledges Mr. Fellner's positive comments regarding the quality of the work performed by Board staff and the Division in bringing the proposed language to the Public Hearing for comment and consideration by the Board.

Mr. Jere Ingram, OSHSB, Chairman, Mr. Baruch Fellner, Gibson, Dunn and Crutcher.

Comment:

Chairman Ingram stated that he was concerned that compliance documents can change frequently. Chairman Ingram asked Mr. Fellner if he would like to return at a future Public Hearing to revisit the documents (Federal OSHA CPLs) as they change. Mr. Fellner responded that provided the settlement agreement continues to be incorporated by reference as proposed by Board staff, the proposal is fine the way it currently reads. Mr. Fellner stated that he believes there is no reason to revisit those issues.

Response:

The Board agrees with Mr. Fellner and would like to thank him for his participation in the Board's rulemaking process.

DETERMINATION OF MANDATE

This regulation does 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 regulation. 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.