

Memorandum

To : ALL STANDARDS BOARD MEMBERS

Date : January 12, 2009

From : **Occupational Safety and Health Standards Board**
David Beales, Industrial Relations Counsel III (Specialist)

Subject : **Marine Terminal Operations—Vertical Tandem Lifts**

The following information pertains to the proposed revisions of the California Code of Regulations, Title 8, Division 1, Chapter 4, Subchapter 7, Article 14, Section 3466(j)-(l) of the General Industry Safety Orders.

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

The Occupational Safety and Health Standards Board (Board) intends to adopt this proposed rulemaking action pursuant to Labor Code Section 142.3, which permits the Board to follow certain procedures when adopting standards that are substantially the same as federal standards addressing occupational safety and health issues.

The United States Department of Labor, Occupational Safety and Health Administration (OSHA) promulgated a regulation addressing the subject of this rulemaking. The federal rule is set forth as 29 Code of Federal Regulations Sections 1917.71(i)-(k). These provisions are additions to Section 1917.71, the provision that constitutes the basis of Section 3466 of Title 8. The federal final rule was published in the Federal Register on December 10, 2008 (Fed. Reg., Vol. 73, No. 238, pp. 75246-90).

The subject of the newly-adopted federal provisions is a procedure known as “vertical tandem lift” (VTL) utilized at marine terminals in connection with “intermodalism.” Intermodalism refers to the containerization of cargo, and it typically involves three key components: standardized containers with uniform corner castings, interbox connectors to secure the containers, and a type of crane that has specialized features for the rapid loading and unloading of the containers. VTL is a practice by which a container crane lifts two or more containers, one on top of the other, connected by a particular type of interbox connector known as a semi-automatic twist lock.*

VTLs presently are unregulated in California. The federal standard is more effective than the current State standard, because regulating VTL affords more protection than allowing the practice to be undertaken without regulation. The proposal uses the federal wording verbatim, except that cross references to State standards are substituted for cross references to various federal standards and the State system of enumeration and formatting is used.

With the changes made in accordance with this proposal, the proposed regulation is substantially the same as the final rule promulgated by Federal OSHA. When the Board adopts a standard substantially the same as a federal standard, Labor Code Section 142.3(a)(3) exempts the Board from the provisions of Article 5 (commencing with Section 11346) and Article 6 (commencing with Section 11349) of

* The explanations in this paragraph are derived from the discussion found at Fed. Reg., Vol. 73, No. 238, December 10, 2008, pp. 75246-47.

Chapter 3.5, Part 1, Division 3 of Title 2 of the Government Code; however, the Board is still providing a comment period and will convene a public hearing. The primary purpose of the written comments and the oral comments at the public hearing is to: 1) identify any clear and compelling reasons for California to deviate from the federal standard; 2) identify any issues unique to California related to this proposal which should be addressed in this rulemaking and/or a subsequent rulemaking; and 3) solicit comments on the proposed effective date. The responses to comments will be available in a rulemaking file on this matter and will be limited to the above areas.

The effective date is proposed to be upon filing with the Secretary of State as provided by Labor Code Section 142.3(a)(3). The regulation may be adopted without further notice even though modifications may be made to the original proposal in response to public comments or at the Board's discretion.

DOCUMENT RELIED UPON

Federal Register, Vol. 73, No. 238, December 10, 2008, pp. 75246-90.

This document is 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.

STRIKEOUT/UNDERLINE DRAFT PROPOSAL

See Attachment No. 1.

SIDE-BY-SIDE CODE COMPARISON WITH FEDERAL STANDARD

See Attachment No. 2.

COST ESTIMATES OF PROPOSED ACTION

At Federal Register, Vol. 73, No. 238, December 10, 2008, pages 75280 to 75287, a detailed discussion of the cost impact of the federal version of this proposal is presented. A preliminary economic analysis is cited estimating a compliance cost of \$4,000 per employer with stevedore operations. The federal analysis states that when the proposal is fully complied with, no future injuries or fatalities are expected to occur while performing VTL's. Thus, the per employer compliance cost appears minimal, and that cost may well be offset by the avoidance of injury-related costs. In addition, according to the federal materials, some employer savings are expected as a result of the use of VTL's.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulation 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 the proposed amendment will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this regulation 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 regulation does not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulation requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulation 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 regulation 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 amendments may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendments to the regulation 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.

Attachments