



## Pacific Maritime Association

# SAFETY BULLETIN 99-1

April 14, 1999

## 1999 Regulatory Outlook

### INFORMATION

The purpose of this Safety Bulletin is to outline the known regulatory and legislative safety initiatives that are underway that may affect PMA employers in 1999. This information is not all inclusive and is constantly changing. Separate bulletins will be issued on the individual regulations when additional notification or action is necessary.

### Federal Legislative Outlook:

Sen Enzi has re-introduced a bill to provide for third party consultants with a provision that if employed, companies get immunity from OSHA enforcement. OSHA supports the third party assistance part but continues its opposition to the compliance link. At a recent March hearing, the bill drew fire from the AFL-CIO and Democrats who see the proposal as "handcuffing OSHA's ability" to penalize employers.

#### OSHA initiatives in Congress:

Whistle blower protection. OSHA has concerns for whistle blowers. Currently, whistle blowers have only 30 days to file with OSHA for this protection. OSHA believes this time period needs to be longer. After the investigation, there is a decision to settle or go to court. There are too few OSHA attorneys to handle individual court cases, so taking an individual's case is not always the highest priority. Mr Jeffress is trying to get: more time to file; more private attorneys; and a change so that cases will be heard by ALJs rather than in a district court. Further, OSHA feels that remedies are not adequate. If a case has merit, OSHA can not currently order the company to take person back temporarily. OSHA can only demand re-instatement after the case is concluded. Even if the case is successful with back pay and re-instatement, OSHA feels that it is too late, employees have gone months with out pay. Per Mr. Jeffress, Cong Ballenger and Sen Kennedy support these points. A draft bill titled the Protect Employees Against Reprisals Act of 1999 has been introduced by Sen Wellstone (D Minn). Mr. Jeffress feels they can come to terms to pass this new legislation.

Senate and House bills to cover public sector employees. Currently it is an misdemeanor for a public employee to knowingly violate a safety and health rule that results in death of a public worker. New legislation would make this a felony.

### California State Legislative Initiatives

AB 1127 (Steinberg) Be a Manager Go to Jail "enhanced"

It seems that each session a Bill is introduced that increases the fines and jail terms for a manager who willfully violates State OSH regulations. This bill basically does three things. First it increases the penalties for violation of OSH statutes. It makes a "knowing" violation a felony and increases penalties and jail time accordingly. It further defines a corporation and makes the corporation as well as individuals liable. Secondly, the act defines responsibilities in a multi employer workplace and sets penalties for failure to follow the regulations, or abate hazardous situations. Thirdly, it mandates enforcement of certain ergonomic provisions that are outlined in the act. The act reduces the trigger for an ergonomic plan from two injuries to one. It broadens the definition of an ergonomic injury (i.e. a fatality, a lost workday injury, a non lost workday injury that result in a transfer to another job etc.) to include most injuries.

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## The Federal OSHA Agenda

Mr. Charles Jeffress Under Secretary of Labor for Occupational Safety and Health from his remarks at MACOSH and in the Journal of Safety and Health.

Mr Jeffress outlined his four priorities for 1999:

Enforcement Program "A significant program is needed to reduce injuries and deaths. His goal is to reduce the number of "significant cases" from last year.

Partnership Partnerships and the "VPP" program will be stressed in an effort to recognize best programs around the country.

Education and outreach expansion. Mr. Jeffress has a strong belief in education and outreach. Next year (if the Federal Budget passes) there will be new Fed OSHA people in the Area offices strictly focused on education and outreach.

Expedited rulemaking. Mr. Jeffress has commissioned 10 Regulatory Development Teams. The purpose is to focus OSHA policy makers on standards processes so teams have more confidence in getting directly to the end regulatory goal. The Teams will streamline sequential regulatory reviews by having all functions and disciplines on the team at once so attorneys, economists etc opinions are included "up front" and final reviews go faster. Mr Jeffress wants to maximize public involvement through outreach, and hearings. MACOSH the Maritime Affairs Committee on Occupational Safety and Health is one way to get involved.

## Pending Federal and State Rulemaking

Fed OSHA:

Powered Industrial Truck Rules: The final PIT rules have been published, however a Petition for Review has been filed by NMSA . NMSA will meet with OSHA and attempt to negotiate a favorable written agreement as to how these regulations will be implemented within the longshore industry.

Personal Protective Equipment:

These rules describe "who pays" for Personal Protective Equipment. They grew out of a legal suit from Union Tank. OSHA had previously required payment only in a compliance document, and had not followed formal rulemaking procedures. The Proposed Rule was published on March 31, 1999. It basically requires the employer to pay for all Personal Protective Equipment except for prescription eyewear, and safety toed shoes capable of being worn off the job. These regulations are currently open for comment. Please see PMA SB 99-4.

Vertical Tandem Lifting of Containers:

This segment of the 29 CFR 1917 regulations for terminals has been the topic for study and hot debate since January of 1998. OSHA had hoped for a consensus within our industry to enable them to quickly publish regulations. However a consensus has not been reached. OSHA is likely to publish a Proposed Vertical Tandem Lift rule sometime this year. This is the number two item on the Maritime Regulatory Development team's plate. In the interim, the letter authorizing SeaLand to conduct vertical tandem lifts (AKA the "Gurnham Letter") is being used as field policy guidance by OSHA

Federal Safety and Health Plan:

OSHA is planning to issue a Proposed Rule on a Federal Safety and Health Plan by September 1999. Critics of the plan point out that it is very broadly written so interpretation and enforcement will be major issues. MACOSH petitioned Mr. Jeffress to consider the draft Safety and Health Plan for the shipyard Industry as a model for a "vertical standard" for maritime industries. At present, the Shipyard Model is being compared with the Draft National Plan.

Federal Ergonomics Rule:

Despite efforts to delay publication of the Proposed Rules for the National Ergonomic Standard, OSHA is pushing ahead. Significantly, the Draft Standard is written so only one incident triggers implementation of an ergonomic program. The Draft Standard currently allows for full wages and seniority for the employee unable to work with and ergonomic injury until they are cured. While the maritime industries are not currently included in the new standard, they will be once NIOSH completes it's ergonomic study for the Shipyard Industry. At the recent

MACOSH, it was determined that the Longshoring industry should also be included in the study. Due to timing and study team capacity, it will not be possible to conduct an ergonomic study within the Longshore segment until the Shipyard segment is completed. However preliminary site studies will be performed. Even though there is no specific rule yet, enforcement officers may attempt to make a case for ergonomic injuries under the general duty clause.

#### Cooperative Compliance Program:

This program was successfully challenged by the Chamber of Commerce. Industry groups opposed the CCP, arguing that it's "cooperative" label was misleading given that employers who rejected OSHA's offer for cooperation faced a full scale inspection. The courts forced OSHA to halt the program in February 1998. In a recent ruling, the D.,C. Circuit Court ruled against OSHA and decided that the CCP directive was substantive rather than procedural and must go through the regulatory rulemaking process.

#### Injury and Illness Record keeping Requirements:

Proposed Rules for Injury and Illness Record keeping were published in 1995. OSHA is still working to finalize them. No additional information has been presented on their approach or the response to the comments. No information is available as to any adjustments that will need to be made to company or PMA record keeping.

Fed OSHA has an excellent website at <http://www.osha.gov>

#### Federal Highway Regulations

##### Requirements for the Inspection, Repair and Maintenance of Intermodal Container Chassis and Trailers

The FHWA, responding to a petition from the American Trucking Association, has issued an Advance Notice of Proposed Rulemaking (ANPRM) "Request for Comments" on the ATA allegation that their drivers do not have the ability to do a full and adequate inspection of intermodal equipment driven off terminals. The petition alleges that equipment is poorly maintained and seeks to make the terminal responsible for the safety of the issued equipment. See PMA SB 99-2. Comments are due by April 19, 1999.

#### U.S. Coast Guard

The Coast Guard is pursuing regulations for ballast water exchange aimed at eliminating the introduction of non indigenous species.

The Coast Guard periodically updates its hazardous materials regulations to remain in alignment with IMO guidelines.

#### Cal OSHA

##### Implementation of 29 CFR 1917:

CAL OSHA has submitted a Side by Side analysis between their regulations and 29 CFR 1917 to Fed OSHA for review. California believes that their regulations already cover the requirements in the Federal Regulations. The Side by Side was submitted to Fed OSHA in September 1997. PMA has filed CASPA with Fed OSHA requesting that Cal-OSHA be required to follow a vertical standard similar to 1917.

##### Powered Industrial Truck Regulations adoption of Federal Rules:

Even before the dust has settled on the petition for review of the Federal Rules, Cal OSHA has moved to adopt them. A hearing has been scheduled by the California Standards Board on May 20<sup>th</sup> in Los Angeles to determine why they should not be directly adopted. The proposed language is exactly the same as the Fed OSHA Language. The new state regulations will be placed into Title 8 at Chapter 4, Subchapter 7, Article 95, Section 3668.

The Cal OSHA Regulatory Agenda also includes the following Regulatory Projects for 1999 that may affect our industry:

Update of the Personal Protective Equipment Sections 1515-1517

Emergency Action Plan refinement: 7/99

Certification of Crane Operators 8/99

Chain and sprocket drive guarding requirements 9/99

The California Department of Industrial Relations has an excellent website at <http://www.dir.ca.gov> From this website you can link to any of the branches of Cal OSHA. Or go to Cal OSHA directly at [http://www.dir.ca.gov/DIR/OS&H/occupational\\_safety.html](http://www.dir.ca.gov/DIR/OS&H/occupational_safety.html)

##### California Air Resources Control Board (CARB) diesel emissions guidelines:

CARB is presently developing risk management guidance for the local air quality management districts. Last year CARB was persuaded to look only at particulate matter within diesel exhaust instead of listing the whole diesel exhaust as a toxic air contaminant (TAC.) The resolution called for CARB to develop risk management guidelines for air pollution control districts in granting permits or otherwise regulating emissions from certain diesel engines. The guidelines will apply only to stationary engines at the present time, however, the underlying risk assessment methodology will serve as a model for subsequent guidelines addressing all diesel fueled equipment.

## WISHA Regulatory Agenda

The WISHA regulatory agenda was discussed with Mr. Mike Wood Senior Program Manager of WISHA policy and Technical Services

### Longshore and Marine Terminals: (Chapter 296-56 WAC)

WISHA is currently finishing their regulations to implement the 29 CFR 1917 Federal Rules. Comments were submitted by PMA in December 1998. The new rules will be based and formatted similar to the Federal Rules. They are scheduled to go into effect in March 1999.

### Minor re-connection to the First Aid Regulations:

The first aid regulations in the longshoring section were deleted during the implementation of 1917. WISHA updated their First Aid Rules in June of 1998 in Chapter 296-24 of the Washington Administrative Code. They will be updating our rules to link to this section.

### Respiratory Protection Rules:

WISHA is adopting new respiratory Protection Rules. These rules are generally based on the Federal Rules. Adoption is scheduled for May 1999, with the effective date being September 1999. See PMA Safety Bulletin 99-3

### Work Related Musculoskeletal Disorders (WRMSD) Prevention (AKA Ergonomics):

WISHA is going ahead with their own Ergonomics program despite the pending Federal Regulations. Public Rule development conferences were held around the state in October 1998. A advisory committee was formed early in 1999 to assist in the development of these rules. They are proceeding independently from the Feds. In addition, "they have not been and will not be influenced by California's Ergonomic Plan."

### Penalties and Re-assumptions:

The penalties in the WISHA Operations Manual will be codified in WAC Rules. The timeline has not been determined.

### Accident Prevention Plan:

WISHA is publishing a reference list in Chapter 296-24 WAC of all the applicable cites in the various WISHA standards that must be considered while drafting the Accident Prevention Plan. These are not new requirements, however we need to check to ensure older plans have not overlooked any requirements. These new regulations were due to be effective in March 1999. PMA has distributed this information to employers in Washington.

### Review of Crane Requirements:

Based on petition from Crane Safety Association, WISHA is conducting a review of Crane Operating requirements. This review may lead to crane operator licensing regulations.

### Powered Industrial Truck Training Requirements: Chapter 296-24 WAC

WISHA will be adopting the Federal PIT Rules. The timeline has not yet been determined.

WISHA has an excellent web site at <http://www.wa.gov/lni>