

05-02: 2002 Regulatory Outlook

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2002 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 2002. This information may not be all inclusive. It is constantly changing. Separate bulletins or updates will be issued on the individual regulations when additional notification or action is necessary.

Legislative Outlook 2002

SECURITY:

Due to the events of September 11, action on the Maritime Security has been accelerated. Senate Bill 1214 (Hollings Bill) has passed. The companion House Bill HB 3983 (Young Bill) also has passed. Many waterfront associations including the PMA, NMSA and NAWA took part in the hearings workshops and meetings to guide the bills and regulations. It is anticipated that the joint committee will report out in September.

At the forefront of these discussions is increased cargo security and controls of personnel working or visiting terminals. U.S. Customs and the U.S. Coast Guard are working on regulations for cargo security. TSA/DOT is working on proposals for a nationwide - transportation workers ID card. The worker background check is still a very controversial topic. DOT hopes to have specifics in place by the anniversary of September the 11th the current estimate is that the law will be in place by January 1, 2003.

TRUCKERS:

In an effort to reduce congestion and pollution Assemblyman Lowenthal introduced AB 2650 into the California Legislature. The bill provides for fining the terminals \$250 per truck if the trucks are not processed through the gate within 30 minutes of arrival. Alternatively, the fines would be waived if the terminals kept open with fully manned gates two hours before and two hours after the peak rush hours . (essentially 16 hours per day and encompassing 3 shifts under the current ILWU contract.) (There is as yet no definition as to when the peak rush hours are!) There have been several recent amendments to this bill;

1) Delay for scheduling system. Allow an exemption from the bill for any marine terminal that implements a scheduling or appointment system and sunset this exemption on July 1, 2003. Rationale: the author understands that implementing a new system to reduce idling time could take some time and is offering this to give the terminals some flexibility to work the bugs out of their system. After numerous meetings with various stakeholders it is the author's understanding that if an efficient system is put in place a terminal could greatly reduce it's wait time.

2) Additional amendment for longer gate hours. Currently the bill allows for an exemption for a terminal open 2 hours before and after peak commuter hours, this amendment would add the following:

· A terminal operator shall be exempt from the fines in the bill, if they are at a port that processes less than 3 million TEU (twenty-foot equivalent unit) containers annually and the terminal has fully staffed gates 65 hours 5 days a week.

· A terminal operator shall be exempt from the fines in the bill, if they are at a port that processes more than 3 million TEU's annually and the terminal has fully staffed gates 70 hours 5 days a week.

· Terminals that implement an appointment system for trucks. This exemption lasts till July 1, 2003, and the provision sunsets on January 1 2004

Rationale: the author has found that some terminals are currently open longer hours and those terminals have shorter lines, specifically, one terminal operator has showed the author's office statistical evidence that 99% of their trucks do not wait 30 minutes or longer outside of the gate. The terminal indicated that they worked very hard to specifically reduce their wait time and that their company is very concerned with extended wait times.

Indications are that this bill still has some problems and may yet have more modifications. PMSA is leading the information and lobbying effort on this bill.

State Senator Romero introduced SB 1507 as originally proposed this bill would have mandated that terminals conduct intermodal roadability inspection programs and inspect the chassis every time it left the terminal. This provision was subsequently dropped and this option was kept as one of two options for inspection chassis. We were able to get support from the CHP who stated that they new of no problems with chassis coming from terminals, they have subsequently changed their opinion following their inspections of terminals in LA/LB. However the bill still contains the requirement that the terminal be liable for all defects in the chassis for some or part of the time it is in use outside the terminal. This bill has had several amendments and continues to pass through committees The requirements for liability have been modified but still hold the company releasing the unit to the trucker responsible for all damage and liability that was not the drivers fault. PMSA is leading the information and lobbying effort on this bill. It is currently believed that this bill will be successful.

In an as yet unnumbered Federal bill we anticipate that the ATA will again try to make the terminals responsible for a full inspection of the chassis every time it leaves the terminal and for all damage and fines on the condition of the unit for a period after it leaves the terminal. NMSA and NAWA are the watchdogs waiting for this bill to emerge again.

Regulatory Outlook 2002

OSHA

Record keeping rules: The major record keeping rules changes were implemented effective Jan 1, 2002. However the Occupational Safety and Health Administration issued another rule that revises the criteria for recording work-related hearing loss. Beginning Jan. 1, 2003, employers will be required to record work-related hearing loss cases when an employee's hearing test shows a marked decrease in overall hearing. Employers can make adjustments for hearing loss caused by aging, seek the advice of a physician or licensed health care professional to determine if the loss is work-related, and perform additional hearing tests to verify the persistence of the hearing loss. Under the new rule, the criteria will record 10-decibel shifts from the employee's initial hearing test when they also result in an overall hearing level of 25 decibels. The old criteria recorded 25-decibel shifts.

OSHA is seeking public comments on a proposed one-year delay of the recordkeeping rule's definition of musculoskeletal disorders (MSDs), and whether to include MSDs and hearing loss columns on the OSHA Form 300 Log of Occupational Injuries and Illnesses. Written comments on the agency's proposal to delay the recordkeeping rule's definition of "musculoskeletal disorders (MSDs), and whether to include MSDs and hearing loss columns on recordkeeping forms, must be submitted by August 30, 2002, in triplicate to the Docket Office, Docket R-02B, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Ave. NW, Washington, DC, 20210, (202) 693-2350.

Issue: PMA has modified electronic record keeping software to ensure conformance. PMA will modify the software so that hearing loss may also be properly coded. Employers must use terminal codes on all payroll entries so the information on the OSHA 300A Summary will come out right.

OSHA Safety and Health Plan proposed rules NPRM should be published in December 2002. These regulations are similar in scope to the California IIPP plans.

Issue: Effects of these regulations should be minimal as California and Washington already have similar requirements.

Ergonomics: OSHA final rules were disapproved by PL 107-5 on 4/23/2001. OSHA has advised that they will not issue any new regulations but utilize guidelines and existing regulations to the same effect.

Issue: PMA needs to monitor OSHA activities to determine how they might apply existing regulations.

Powered Industrial Truck Training Requirements 29 CFR 1910.178(l) and the OSHA-NMSA Federal settlement.

Issue: The joint NMSA-OSHA national settlement for the marine cargo handling industry has been implemented. All the grandfathering provisions have been utilized. All new operators must be trained prior to operating a particular type of PIT. Retraining of operators who operate poorly or who caused or contributed to an accident resulting injury or property damage is still required. California and Washington State are also implementing these rules.

Employer payment for PPE 29 CFR 1910.132: Generally, OSHA standards require that protective equipment (including personal protective equipment (PPE)) be provided and used when necessary to protect employees from hazards that can cause them injury, illness, or physical harm. The Agency has proposed to revise its PPE standards to clarify who is required to pay for required PPE and under what circumstances. OSHA is considering its options and reviewing the record and has not determined its next course of action.

Issue: PMA needs to monitor any actions on this proposal

Maritime Advisory Committee on Occupational Safety and Health

The 2-year charter for MACOSH expired in May 2002. Notice was filed in June that it will be re-chartered and the process is in place to do this. It is anticipated that they will have their first meeting before the end of the year under this new charter.

Pending MACOSH Issues:

MACOSH is sponsoring a NIOSH study on ergonomics issues in the marine cargo handling industry. It has not been started due to the work on the shipyard ergo study, and due to lack of funding.

Issue: PMA needs to monitor this study.

MACOSH: Container Pedestal fall protection; OSHA is focused on the fall hazards for lashers working on container pedestals.

Issue: OSHA has no solutions, but advises that employers are responsible for eliminating unguarded edges and or providing fall protection. PMA is working with NMSA to attempt to develop suggested solutions. The outcome and application of the proposed CG Cargo Securing proposed rules may supersede OSHA jurisdiction in this area. Currently the PMA has a tentative agreement with the ILWU that will address this problem if it makes it into the PCMSC.

MACOSH: Root Cause Accident Prevention; this project's focus is on the main root cause of accidents cause, which is the individual workers failure to follow training and or to follow the Federal, State or Contractual safety rules.

MACOSH: OSHA is continuing to study operational aspects of Vertical Tandem Lifting. ISO recently revised it's standards in ISO 3874:1997 to address the structural aspects of VTL. ICHCA is currently developing operational safety guidelines for VTL. OSHA will use MACOSH input in formulating future proposed regulations governing VTL. OSHA plans to reopen the comment period prior to issuance of a final rule. The final rule is scheduled to be released by December 2002.

Issue: PMA needs to monitor and provide input to any proposed regulations. In the meantime, the "Gurnham Letter" provides the interim guidance for VTL from OSHA.

MACOSH : It is anticipated that the ILWU will continue to push for OSHA regulations for diesel emissions in the work place as per their demands at PCMSC negotiations.

National Maritime Safety Association

Forklift Variance

NMSA supported Cooper T. Smith in their suit against OSHA for failing to have a forklift capacity plate for the "modification" of installing an attachment onto their forklift under 29 CFR 1910. Although the citation was dismissed, NMSA is studying whether to pursue a variance for this regulation to ensure continued consistent application

Issue. PMA needs to support the variance when submitted.

NMSA initiative for one OSHA on the waterfront.

Issue: Attempt to establish a singular Federal OSHA jurisdiction on marine cargo handling facilities.

Coast Guard

Vessel Notice of Arrival USCG-Docket 2002-11865; The Coast Guard proposes permanent changes to its notification of arrival and departure requirements for commercial vessels greater than 300 gross tons bound for or departing from ports or places in the United States, by incorporating most of the temporary changes made following the September 11, 2001, terrorist attacks. This includes lengthening the usual notification period from 24 to 96 hours prior to port entry, requiring submission of reports to a central national clearing- house, suspending exemptions for vessels operating in compliance with the Automated Mutual Assistance Vessel Rescue System, for some vessels operating on the Great Lakes, and vessels on scheduled routes, and requiring information about persons onboard these vessels. The CG is consolidating the notice of departure and notice of arrival; requiring electronic submission of cargo manifest information to U.S. Customs Service; and requiring additional crew and passenger information. Comments and related material must reach the Docket Management Facility on or before August 19, 2002.

Cargo Securing Manual Proposed Regulations

Issues: Proposed Rules supercede OSHA regulations at 29 CFR 1918.85 (j); they do not address pedestal safety; they are not specific about when securing must be completed; and they don't address "loose gear" inspections for inter-box connectors used to tandem lift containers. Comments on the proposed rules closed March 1st. 2001. There is no indication when any future action will be taken on these rules. U.S. Coast Guard Navigation and Vessel Inspection Circular 10-97 (NVIC 10-97), "Guidelines for Cargo Securing Manual Approval," provides interim guidance for U.S. flag vessel compliance with the SOLAS requirements.

Security Guidelines

The U.S. Coast Guard has issued security requirements for all waterfront facilities on the West Coast under Pacific Area Instruction 16611 dated January 28, 2002. Letters have been issued by COTPs from Seattle to Los Angeles outlining slightly different implementation procedures. Each waterfront facility is required to develop a security plan, which must subsequently be approved by the U.S. Coast Guard. Implementations dates vary but plans if required must be submitted by April 30, 2002. The Coast Guard has been reviewing these plans with the various terminals. The Coast Guard has also submitted several papers to IMO on Port, Vessel and Container security and credentialing of seafarers. Expect the Coast Guard to issue regulations for port and terminal security rapidly after the signing of the Port security Legislation

RSPA

RSPA-01-10568 (HM-207B); Hazardous Materials: Retention of Shipping Papers; Final rule; Published 07/12/2002; Effective Date: August 12, 2002; 67 FR 46123. RSPA is amending the Hazardous Materials Regulations to require shippers and carriers to retain a copy of each hazardous material shipping paper, or an electronic image thereof, for a period of 375 days after the date the hazardous material is accepted by a carrier. EFFECTIVE DATE: This final rule is effective on August 12, 2002.

FMCSA-02-11650 (HM-232A) TITLE: Security Requirements for Motor Carriers Transporting Hazardous Materials; Advance notice of proposed rulemaking (ANPRM); Published 7/16/2002, 67 FR 46622. The Research and Special Programs Administration and the Federal Motor Carrier Safety Administration are examining the need for enhanced security requirements for the motor carrier transportation of hazardous materials. The two agencies are seeking comments on the feasibility of specific security enhancements and the potential costs and benefits of deploying such enhancements. Security measures being considered include escorts, vehicle tracking and monitoring systems, emergency warning systems, remote shut-offs, direct short-range communications, and notification to state and local authorities. Submit comments by October 15, 2002

RSPA-02-12064 (HM-232) TITLE: Hazardous Materials: Security Requirements for Offerors and Transporters of Hazardous Materials; Notice of proposed rulemaking (NPRM); Published 5/2/2002, 67 FR 22028. The Research and Special Programs Administration is proposing new requirements to enhance the security of hazardous materials transported in commerce. Proposals include a requirement for motor carriers registered with the agency to maintain a copy of their current registration certificate on each motor vehicle. RSPA further proposes to require shipping papers to include the name and address of the consignor and consignee and the shipper's DOT Hazmat Registration number, if applicable. In addition, RSPA proposes to require shippers and carriers of certain highly hazardous materials to develop and implement security plans. RSPA also proposes to require hazardous materials shippers and carriers to assure that their employee training includes a security component. Comments closed July 3, 2002.

EPA

Published Final Rules on Heavy Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements "2007 Standards" in the Federal Register on Jan 18, 2001.

Issue: EPA rules only apply to highway vehicles. California CARB has indicated they will follow the Federal EPA time table for implementation of ULSD and retrofits. CARB may apply these requirements to off road vehicles. EPA rules require ULSD (15ppm) sulfur diesel in 2006 and new low emission engine requirements for over the road trucks to take advantage of this fuel and other new technology starting in 2004, with full implementation in 2007.

Issue: PMA needs to monitor the actions of EPA CARB and other air quality regulatory agencies and advise members.

California

Cal-OSHA Standards Board Proposed Regulations for 2001

Below is the list of "proposed" rules that the Standards Board has listed for possible rule making in 2001. Not all of the below rules will be acted on but all these proposed regulations must be monitored for the possible effect they might have on our Industry.

Throwing or Dropping Materials:

The proposed regulations would limit throwing or dropping anything from a worksite with out the proper precautions that no one below would get hit. Adoption Scheduled 8/02. Possible industry focus: Crane mechanics working above in container cranes equipment.

Lock Out Tag Out

The standards board is commissioning an Advisory committee to study both Title 8 and Federal rules and update them. The advisory committee is supposed to meet in May. A notice of rulemaking is to be issued in 8/02. PMA and Industry will participate in this advisory committee.

Steel chains and slings:

OSHA proposed that the existing regulation be updated to reflect the current tables and information of today's conditions. This proposed regulation could have significant impact on our break-bulk operations. A notice of rulemaking is to be issued in 7/02, hearings are to be held in 8/02.

Testing of Load sustaining Devices:

A notice of rulemaking is to be issued in 10/02.

Crane operator qualifications:

The Longshore Industry is still exempted from this proposed rule. A notice of rulemaking is to be issued in 6/02.

Crane warning devices:

This proposed regulation would clarify outdated rules concerning crane auto stops, as the crane reaches rated load limits. It would also require warning bells and signals when the crane approached the max limit load. A notice of rulemaking is to be issued in 10/02.

Design and ID of test weights for cranes

A notice of rulemaking is to be issued in 11/02.

Free rigging of powered industrial trucks:

This proposed regulation addresses jury-rigged devices and other non-official attachments to forklifts that have no formal safe working load. The proposal could cover such things as Torpedoes for steel ships, Glass racks, drum, roll and pipe special attachments etc. A notice of rulemaking is to be issued in 11/02.

Traffic Control

A notice of rulemaking is to be issued in 7/02 and a hearing scheduled for 8/02.

Inspection and maintenance of cranes:

Cal OSHA wants to clean up language on existing regulations, regarding the inspection of cranes by qualified individuals. This will include daily inspections. We need to watch what they define as qualified individuals etc. This went to OAL 4/02.

Gas and Electric Welding systems and operation:

This was to go to OAL 7/02.

Explosive regulations review and reorganization:

This regulation would consolidate existing rules and regulations concerning the handling, transportation, and use of Explosives. Need to monitor so new rules are not added during this consolidation process that affect our industry. A notice of rulemaking is to be issued in 7/02.

Handling Loads:

This was to go to OAL 7/02.

Crane Load Safety Devices

A notice of rulemaking is to be issued in 9/02.

Crane - application/purpose statement:

This proposed regulation would define what is a crane and what is not, in order to clean up some of the ambiguous language in existing rules. This regulation could spill over to such equipment such as forklifts working as cranes (Top Pickers) Reach Stackers and Straddle carriers etc. A notice of rulemaking is to be issued in 12/02.

Inspection of Cranes and Hoisting Equipment:

A hearing is to be issued in 11/02.

Eyewash and emergency Showers

This was to go to OAL 8/02.

Respiratory Protection:

A hearing is to be issued in 10/02.

Heat Illness:

This proposal, originally developed in response to an injury in agriculture, would add rules to our industry that are not needed. Our Industry has had one heat related illness within the last 5 years. Rulemaking for this proposal is the responsibility of DOSH. A notice of rulemaking is to be issued in 10/02.

Airborne Contaminants:

A notice of rulemaking is to be issued 11/02.

California Air Resources Board

CARB published and approved a Risk Reduction Plan to Reduce Particulate Matter Emissions from Diesel Fueled Engines and Vehicles. CARB will be developing regulations to implement the plan in 2002. The plan calls for low sulfur diesel fuel and emission reductions on new and existing on and off road diesel engines. The stated CARB timeframe is roughly equivalent to the EPA timeframe for on road vehicles.

These rules will apply to stationary engines such as emergency power generators, compressors, and generator sets for refrigerated units on trailers, clip on units, or fixed units on vans or trucks.

The CARB Marine Terminal Committee has also focused on emissions from vessels. They are attempting to develop guidelines and establish a demonstration projects for emissions reductions for ocean going vessels.

Issue: PMA needs to monitor the development of these regulations. PMA needs to work with employers to develop a diesel retrofit strategy and comment on the regulations as appropriate.

South Coast Air Quality Management District

SCAQMD has passed several regulations requiring alternate fueled vehicles to replace Local, State, and Federal government diesel fleet vehicles (not the private sector.) This agency has attempted to implement the low sulfur and engine emission reduction r