

DEPARTMENT OF LABOR**Occupational Safety and Health Administration****29 CFR Parts 1910, 1915, 1917, 1918**

[Docket No. S-008]

Powered Industrial Truck Operator Training**AGENCY:** Occupational Safety and Health Administration, Labor.**ACTION:** Proposed rule; reopening of comment period, public hearing.

SUMMARY: The Occupational Safety and Health Administration (OSHA) proposed to revise the standards that provide for the training of powered industrial truck operators in general industry and the maritime industries to reduce injuries and deaths that result from inadequate training. That document was published on March 14, 1995 (60 FR 13782). In a companion document in today's Federal Register, OSHA is proposing to improve such training in the construction industry and is scheduling a public hearing.

In order to permit consideration of these overlapping matters in the most efficient manner, OSHA is combining these rulemakings, reopening the comment period for general industry and maritime, and scheduling a hearing for all sectors.

DATES: Written comments on the proposed standard and notices of intention to appear at the informal public hearing on the proposed standard must be postmarked by April 1, 1996. Parties who request more than 10 minutes for their presentations at the informal public hearing and parties who will submit documentary evidence at the hearing must submit the full text of their testimony and all documentary evidence postmarked no later than April 15, 1996. The hearing will take place in Washington, DC and is scheduled to begin on April 30, 1996.

ADDRESSES: Comments should be sent in quadruplicate to: Docket Office, Docket No. S-008; Room N2624; U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Washington, DC 20210 (202-523-7894).

Notices of intention to appear at the informal rulemaking hearing, testimony, and documentary evidence are to be submitted in quadruplicate to: Mr. Thomas Hall, OSHA Division of Consumer Affairs, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Room N3647, Washington, DC 20210; (202-219-8615). Written comments received, notices of

intention to appear, testimony, and all other material related to the development of this proposed standard will be available for inspection and copying in the public record in the Docket Office, Room N2624, at the above address.

The hearing will be held in the auditorium of the U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Cyr, Office of Information and Consumer Affairs, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3647; 200 Constitution Avenue NW., Washington, DC 20210 (202-219-8148, FAX 202-219-5986).

SUPPLEMENTARY INFORMATION: On March 14, 1995 (60 FR 13782), OSHA proposed standards to improve training of powered industrial truck operators in general industry (29 CFR part 1910) and the maritime industries (29 CFR parts 1915, 1917 and 1918). After consulting with the Advisory Committee on Construction Safety and Health (ACCSH), OSHA is proposing improved training for those operators in the construction industry in today's Federal Register. OSHA believes the most efficient way to consider these matters is to combine the rulemaking into one proceeding that shares the same record. If the evidence indicates different requirements are needed for different sectors, this can be accommodated in the final standard. Also, some commenters to the March proposal requested a public hearing. (See Ex. 2-47.)

Accordingly, OSHA is reopening the comment period for the general and maritime industries to April 1, 1996 to coincide with the comment period for construction. In addition, OSHA is scheduling a public hearing for all sectors commencing April 30, 1996. In light of budget stringency, OSHA is only scheduling a hearing in Washington, DC. Regional hearings create substantial expense.

The Advisory Committee on Construction Safety and Health made several recommendations for powered industrial truck training in the construction industry that may have merit for other sectors as well. Accordingly, OSHA is requesting comment on these issues for all sectors, in addition to the other issues arising from the proposal. The four specific issues raised by the ACCSH are as follows:

1. Should an employer be allowed to accept the certification of training by a third party such as a union, training institute,

manufacturer, consultant, or other private or public organization? Since OSHA does not accredit certifiers, what criteria should be used to establish their credibility?

Employees sometimes work only briefly for an employer and it might be inefficient for an employer with high turnover to have to specifically review the performance of each new employee. There would need to be some mechanism to ensure that the operator would be trained in the conditions comparable to those found at the work site and that the employer would know that the operator had been adequately trained.

2. What type of testing should be conducted during initial training to judge the competency of the trainee (performance testing and oral and/or written tests)?

A. If tests are administered, what subjects should be tested, and what methods, if any, should be used to judge that the tests are reliable and address the subject matter adequately?

B. What, if any, should be the acceptable pass/fail requirement for the tests?

ACCSH recommended that the employer or other organization training operators should give both performance tests and oral/written tests to ensure the skill and knowledge of the operator. The committee also recommended that there should be pass/fail criteria for those tests and that records be kept of the results of the tests. They asserted that the requirement would assist in lowering accident rates. They also suggested that if this turned out not to be effective, that OSHA consider accreditation of training programs. OSHA did not propose a written or oral test requirement for general industry or maritime and in its experience, this issue has proven to be very controversial.

3. Are some of the training areas listed not needed? ACCSH believes that most of the areas for training were necessary but they felt a few might not be. Specifically, they felt that the recommended topic on the differences between driving an auto and a powered industrial truck might be unnecessary. OSHA is concerned that the stability differences and the effects of rear wheel steering are significant matters.

4. Should an employee receive refresher or remedial training only if operating a vehicle unsafely or if involved in an accident? Is a one year interval too frequent for retraining or recertification?

The ACCSH asserted that a periodic retraining provision for construction was inappropriate because most construction employees are only on a particular job a short period. However, they recommended reevaluation and possible retraining after an incident, accident or expiration of a certificate. (See question 1.)

OSHA has also made a few minor stylistic changes to improve the clarity of the regulatory text for construction. Interested parties may wish to comment on these.

Collection of Information Under the Paperwork Reduction Act

In addition to the issues raised above, OSHA seeks specific comment on the collection of information requirement proposed in §§ 1910.178(l)(5), 1915.120(a)(5), 1917.43(i)(5), and

1918.77(a)(5) [60 FR 13782; March 14, 1995]. Those sections contain a collection of information requirement as defined by the new OMB regulations at 60 FR 44978, August 29, 1995. OSHA is asking for comment on a similar collection of information in § 1926.602(d)(5) as part of the NPRM covering the construction industry. These paragraphs require employers to prepare and maintain a record to certify that employees have been trained and evaluated as required by the powered industrial truck operator training proposed standard. The proposed rule requires employers to certify compliance with the standard by preparing a certification record that contains the name of the employee trained, the date of training, and the signature of the person performing the training and evaluation.

This certification record is needed to verify that powered industrial truck operators are trained to perform their duties competently and safely. To comply with the training requirement, employers must keep a record certifying that their employees have successfully completed powered industrial truck operator training. Safe operation can decrease the number of fatalities and injuries associated with powered industrial trucks.

It has been estimated that there are approximately 1.2 million powered industrial truck operators, and which each firm averaging four powered industrial trucks in operation, the total number of responses to this standard should be 360,000. Initial training should occur one time per operator and refresher training when necessary. The refresher training is to be done when working conditions change for any reason, for example, when an operator leaves a job working in general industry (a warehouse) to a job working on a construction site. The working conditions are different, therefore, the operator should be retrained about the new hazards that may exist in the new work environment.

OSHA estimates that it will take employers about 1 hour to prepare and 8 hours to deliver the training and another 15 minutes to prepare a certification record, make it available during compliance inspections, retain current training materials and course outlines, and document the types of trucks that an operator is authorized to operate. It will cost employers on average about \$53 to initially train and certify each employee. The total first year burden for all workplaces is 641,125 burden hours at an annual cost of \$4,570,881. It should be noted that the \$4,570,881 cost is included in the

regulatory analysis cost and, by OMB definition, includes training costs, not just the cost of preparing written documents.

OSHA requests comment from the public on all aspects of this collection of information. Specifically OSHA requests comment or whether this proposed collection of information does:

- Ensure that the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Comments on the collection of information (certification record) should be sent to the OMB Desk Officer for OSHA at Room 10235, 726 Jackson Place, NW, Washington, DC 20503. Commenters are encouraged to send a copy of their comment on the collection of information to OSHA along with their other comments. The supporting statement for this collection of information requirement is available in both OMB and the OSHA Docket Offices.

OMB is currently reviewing OSHA proposed collection of information to determine its consistency with the Paperwork Reduction Act of 1995. At this time OMB has not approved this collection of information.

Public Participation

Interested persons are requested to submit written data, views and arguments concerning the proposal of March 14, 1995 and the additional issues raised in this document. These comments must be postmarked by April 1, 1996, and submitted in quadruplicate to the Docket Office, Docket No. S-008, Room N2624, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Washington, DC 20210.

All written comments received within the specified comment period will be made a part of the record and will be available for public inspection and copying at the above Docket Office

address. The comments submitted as part of the proposal for general industry and maritime will be considered part of the record for construction and those submitted for construction will be considered part of the record for general industry and maritime.

Notice of Intention to Appear at the Informal Hearing

Pursuant to section 6(b)(3) of the Occupational Safety and Health Act, an opportunity to submit oral testimony concerning the issues raised by the proposed standard including economic and environmental impacts, will be provided at an informal public hearing to be held in Washington, DC on April 30, 1996. If OSHA receives sufficient requests to participate in the hearing, the hearing period may be extended. Conversely, the hearing may be shortened if there are few requests.

The hearing will commence at 9:30 a.m. on April 30, 1996, in the Auditorium, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210.

All persons desiring to participate in the hearing must file in quadruplicate a notice of intention to appear, postmarked on or before April 1, 1996. The notice of intention to appear, which will be available for inspection and copying at the OSHA Technical Data Center Docket Office (Room N2624), telephone (202) 219-7894, must contain the following information:

1. The name, address, and telephone number of each person to appear;
2. The capacity in which the person will appear;
3. The approximate amount of time required for the presentation;
4. The issues that will be addressed;
5. A brief statement of the position that will be taken with respect to each issue; and
6. Whether the party intends to submit documentary evidence and, if so, a brief summary of it.

The notice of intention to appear shall be mailed to Mr. Thomas Hall, OSHA Division of Consumer Affairs, Docket S-008, Room N3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 219-8615.

A notice of intention to appear also may be transmitted by facsimile to (202) 219-5986 (Attention: Thomas Hall), by the same date, provided the original and 3 copies are sent to the same address and postmarked no more than 3 days later.

Filing of Testimony and Evidence Before the Hearing

Any party requesting more than 10 minutes for a presentation at the hearing, or who will submit documentary evidence, must provide in quadruplicate, the complete text of the testimony, including any documentary evidence to be presented at the hearing. One copy shall not be stapled or bound and be suitable for copying. These materials must be provided to Mr. Thomas Hall, OSHA Division of Consumer Affairs at the address above and be postmarked no later than April 15, 1996.

Each such submission will be reviewed in light of the amount of time requested in the notice of intention to appear. In those instances when the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact prior to the informal public hearing.

Any party who has not substantially complied with this requirement may be limited to a 10-minute presentation, and may be requested to return for questioning at a later time.

Any party who has not filed a notice of intention to appear may be allowed to testify for no more than 10 minutes as time permits, at the discretion of the Administrative Law Judge, but will not be allowed to question witnesses.

Notice of intention to appear, testimony and evidence will be available for copying at the Docket Office at the address above.

Conduct and Nature of the Hearing

The hearing will commence at 9:30 a.m. on April 30, 1996. At that time, any procedural matters relating to the proceeding will be resolved.

The nature of an informal rulemaking hearing is established in the legislative history of section 6 of the Occupational Safety and Health Act and is reflected by OSHA's rules of procedure for hearings (29 CFR 1911.15(a)). Although the presiding officer is an Administrative Law Judge and limited questioning by persons who have filed notices of intention to appear is allowed on crucial issues, the proceeding is informal and legislative in type. The Agency's intent, in essence, is to provide interested persons with an opportunity to make effective oral presentations that can proceed expeditiously in the absence of procedural restraints that impede or protract the rulemaking process.

Additionally, since the hearing is primarily for information gathering and

clarification, it is an informal administrative proceeding rather than an adjudicative one.

The technical rules of evidence, for example, do not apply. The regulations that govern hearings and the pre-hearing guidelines to be issued for this hearing will ensure fairness and due process and also facilitate the development of a clear, accurate and complete record. Those rules and guidelines will be interpreted in a manner that furthers that development. Thus, questions of relevance, procedure and participation generally will be decided so as to favor development of the record.

The hearing will be conducted in accordance with 29 CFR part 1911. It should be noted that § 1911.4 specifies that the Assistant Secretary may, upon reasonable notice, issue alternative procedures to expedite proceedings or for other good cause.

The hearing will be presided over by an Administrative Law Judge who makes no decision or recommendation on the merits of OSHA's proposal. The responsibility of the Administrative Law Judge is to ensure that the hearing proceeds at a reasonable pace and in an orderly manner. The Administrative Law Judge, therefore, will have all the powers necessary and appropriate to conduct a full and fair informal hearing as provided in 29 CFR 1911, including the powers:

1. To regulate the course of the proceedings;
2. To dispose of procedural requests, objections and comparable matters;
3. To confine the presentations to the matters pertinent to the issues raised;
4. To regulate the conduct of those present at the hearing by appropriate means;
5. At the Judge's discretion, to question and permit the questioning of any witness and to limit the time for questioning; and
6. At the Judge's discretion, to keep the record open for a reasonable, stated time (known as the post-hearing comment period) to receive written information and additional data, views and arguments from any person who has participated in the oral proceedings.

OSHA recognizes that there may be interested persons who, through their knowledge of safety or their experience in the operations involved, would wish to endorse or support certain provisions in the standard. OSHA welcomes such supportive comments, including any pertinent accident data or cost information that may be available, in order that the record of this rulemaking will present a balanced picture of the public response on the issues involved.

Signed at Washington, DC, this 22nd day of January, 1996.

Joseph A. Dear,

Assistant Secretary of Labor.

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S-008]

Powered Industrial Truck Operator Training

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is proposing to revise the Agency's construction safety standard that mandates the training of powered industrial truck operators. These revisions are being proposed to reduce the number of injuries and deaths that have continued to occur as a result of inadequate truck operator training. The proposal is a follow-up to a parallel proposal to improve truck operator training in the general and maritime industries that was published in the Federal Register on March 14, 1995.

The proposed operator training requirements would mandate the development of a training program that bases the amount and type of training on the prior knowledge of the trainee and the ability of that trainee to acquire, retain, and use the knowledge and skills that are necessary to safely operate a powered industrial truck. A periodic evaluation of each operator's performance would also be required. Refresher or remedial training would be required, if unsafe vehicle operation, an accident or near miss, or other deficiencies were identified in this periodic evaluation.

Today, OSHA also is publishing a Federal Register notice reopening the comment period for the general industry and maritime industry truck operator training proposal. OSHA is scheduling a joint informal hearing to revise comments and testimony on both proposals, i.e., the proposal published in March and the one being published today.

DATES: Written comments on the proposed standards and notices of intention to appear at the informal public hearings on the proposed standards must be postmarked by April