

**North Carolina Department of Labor
Occupational Safety and Health Division**

Raleigh, NC

Field Information System

CPL 2-1.28

Subject: *Powered Industrial Truck Operator Training*

Discussion: This instruction clarifies the Powered Industrial Truck Operator Training citation policies.

Action: References to the Field Information Reference Manual (FIRM) and Regional Administrator or other federal personnel will mean the North Carolina Operations Manual and the appropriate OSH Division management person (District Supervisor, Bureau Chief, or Assistant Director), respectively.

This instruction is effective on the date of signature. It will remain in effect until canceled by the Director or revised.

Signed on Original

Robert Adams

Safety Standards Officer

Signed on Original

Robert K. Andrews, Jr.

Director

12/4/00

Date



OSHA INSTRUCTION

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

DIRECTIVE NUMBER: CPL 2-1.28

EFFECTIVE DATE: August 11, 2000

SUBJECT: Compliance Assistance for the Powered Industrial Truck Operator Training Standards

ABSTRACT

Purpose: This instruction provides compliance assistance for the revised powered industrial truck operator training standard.

Scope: OSHA-wide.

References: 29 CFR 1910.16(a)(2)(x), .16(b)(2)(xiv) and .178(l), 1915.120, 1917.1(a)(2)(xiv), 1918.1(b)(10) and 1926.602(d); OSHA Instruction CPL 2.103, Field Inspection Reference Manual (FIRM), 9/26/94; ANSI B56.1-1969, Safety Standard for Powered Industrial Trucks; Seat Belt Enforcement Memorandum, 10/9/96; OSHA Instruction CPL 2.111, Citation Policy for Paperwork and Written Program Requirement Violations, 11/27/95; 63 FR 66237, 12/1/98.

State Impact: See paragraph V.

Action Offices: National, Regional, and Area Offices.

Originating Office: Directorate of Compliance Programs (DCP).

Contact: Patrick Kapust
Directorate of Compliance Programs (202) 693-1850
200 Constitution Ave, NW, Room N3603
Washington, DC 20210
Directorate of Construction (202) 693-2345
200 Constitution Ave, NW, Room N3467
Washington, DC 20210

By and Under the Authority of
Charles N. Jeffress
Assistant Secretary

TABLE OF CONTENTS

I.	<u>Purpose</u>	1
II.	<u>Scope</u>	1
III.	<u>References</u>	1
IV.	<u>Action Information.</u>	1
V.	<u>Federal Program Change.</u>	1
VI.	<u>Application</u>	1
VII.	<u>Background</u>	1
VIII.	<u>Standard Overview</u>	2
IX.	<u>General Inspection Guidelines</u>	3
X.	<u>Enforcement Guidance for the Longshoring and Marine Terminal Industries.</u>	4
APPENDIX A	1910.178(l) - Questions and Answers	A-1
APPENDIX B	Enforcement of the Use of Seat Belts on Powered Industrial Trucks in General Industry October 9, 1996	B-1
APPENDIX C	National Maritime Safety Association Settlement Agreement July 14, 2000	C-1
INDEX		Index-1

- I. Purpose. This instruction provides compliance assistance to ensure uniform enforcement of the revised powered industrial truck operator training standards.
- II. Scope. This instruction applies OSHA-wide.
- III. References.
- * 29 CFR 1910.16(a)(2)(x), .16(b)(2)(xiv) and .178(l), 1915.120, 1917.1(a)(2)(xiv), 1918.1(b)(10) and 1926.602(d).
 - * OSHA Instruction CPL 2.103, Field Inspection Reference Manual (FIRM), 9/26/94.
 - * ANSI B56.1-1969, Safety Standard for Powered Industrial Trucks.
 - * OSHA Instruction CPL 2.111, Citation Policy for Paperwork and Written Program Requirement Violations, 11/27/95.
 - * Seat Belt Enforcement Memorandum, 10/9/96.
 - * 63 FR 66237, Powered Industrial Truck Operator Training; Final Rule; 12/1/98.
 - * National Maritime Safety Association Settlement Agreement, 7/14/00.
- IV. Action Information.
- A. Responsible Office. Directorate of Compliance Programs (DCP).
- B. Action Offices. National, Regional and Area Offices.
- C. Information Offices. State Plan States, Consultation Project Managers.
- V. Federal Program Change. This instruction describes a Federal Program Change for which State adoption is not required.
- NOTE: In order to effectively enforce safety and health standards, guidance to compliance staff is necessary. Therefore, although adoption of this instruction is not required, States are expected to have enforcement policies and procedures which are at least as effective as those of Federal OSHA. In the interest of national maritime policy, those States which cover longshoring and marine terminals, as well as those with public sector employees engaged in these activities, are encouraged to follow the provisions in paragraph X, Enforcement Guidance for the Longshoring and Marine Terminal Industries, of this Instruction.
- VI. Application. These standards apply to all industries except agricultural operations.
- VII. Background. The previous powered industrial truck operator training standard in part 1910 was adopted from the national consensus standard, American National Standards

Institute (ANSI) B56.1-1969, Safety Standard for Powered Industrial Trucks. The previous standard required that only trained operators who were authorized to do so could operate powered industrial trucks and that methods of training in the safe operation of powered industrial trucks be devised.

Since promulgation of the OSHA standard, the powered industrial truck consensus standard (B56.1) has undergone five complete revisions. The B56.1 consensus standard has substantially upgraded its recommended training requirements. In view of this fact, interested persons requested that OSHA improve its training requirements for powered industrial truck operators.

The revised training requirements (63 FR 66237, 12/1/98) incorporate performance requirements that provide flexibility to employers in developing methods of training for powered industrial truck operators. These standards require the development of a training program that bases the amount, type, degree, and sufficiency of training on the knowledge of the trainee and the ability of the vehicle operator to acquire, retain, and use the knowledge and skills necessary to safely operate the truck. These standards also require a periodic evaluation of each operator's performance; and refresher training based primarily on unsafe operation, an accident or near miss, deficiencies found in a periodic evaluation of the operator, the introduction of different equipment, or a change in a workplace condition that affects safe operation.

The revised training requirements are intended to enhance the safe operation of powered industrial trucks in the workplace. Compliance with these revised training requirements will significantly decrease the number of injuries and fatalities resulting from unsafe powered industrial truck operations.

- VIII. Standard Overview. The training requirement found in 29 CFR 1910.178(l) for operators of powered industrial trucks and the same requirement for operators of powered industrial trucks in the construction [1926.602(d)] and maritime [1915.120, 1910.16(a)(2)(x), 1910.16(b)(2)(xiv), 1917.1(a)(2)(xiv), 1918.l(b)(10)] industries specify that the employer must develop a complete training program. OSHA requires that operators of powered industrial trucks be trained in the operation of such vehicles before they are allowed to operate them independently. The training must consist of instruction (both classroom-type and practical training) in proper vehicle operation, the hazards of operating the vehicle in the workplace, and the requirements of the OSHA standard for powered industrial trucks. Operators who have completed training must then be evaluated while they operate the vehicle in the workplace. Operators must also be periodically evaluated (at least once every three years) to ensure that their skills remain at a high level and must receive refresher training whenever there is a demonstrated need. To maximize the

effectiveness of the training, OSHA will not require training that is duplicative of other training the employee has previously received if the operator has been evaluated and found competent to operate the truck safely. Finally, the training provisions require that the employer certify that the training and evaluations have been conducted.

- IX. General Inspection Guidelines. The following guidelines will assist the CSHO in determining compliance with the revised powered industrial truck operator training standard during compliance inspections.
- A. Inquire about the employer's method of powered industrial truck operator training program implementation (formal instruction, practical training), and evaluation of the operator's performance in the workplace. Ensure that all training is conducted by a person who has the knowledge, training and experience to train operators and evaluate their competence.
 - B. Determine whether the employer has trained employees in the applicable topics listed in 1910.178(l)(3).
 - C. Determine whether powered industrial truck operators have received training in the operating instructions, warnings, or precautions listed in the operator's manual for the types of vehicle that the employee is being trained to operate, including operator's instructions, warnings, or precautions regarding seat belt use (operator restraint systems). Employers not providing training in the operating instructions, warnings, or precautions listed in the manufacturer's operator's manual related to seat belt use may be cited under 1910.178(l)(3)(i)(M).

Seat belts in forklift trucks are a component part of an operator restraint system that is designed to reduce the incidence and severity of injuries to the operator in the event of a tipover accident. Forklift trucks are particularly susceptible to tipovers. Failure to wear the seat belt that is provided in the forklift increases the risk of injury to the operator in the event of such an accident. Section 1910.178 does not currently contain requirements for the use of operator restraint systems. However, Section 5(a)(1) of the OSH Act requires employers to protect employees from serious and recognized hazards. Recognition of the hazard of forklift tipover and the need for operators to use an operator restraint system is evidenced by certain requirements in the more current version of ANSI B56.1 consensus standard for powered industrial trucks, and ASME B56.1-2000 - Safety Standard for Low Lift and High Lift Trucks. In addition, seat belts have been supplied by many manufacturers of counterbalanced, center control, high lift trucks that have a sit-down nonelevating operator position. OSHA's enforcement policy on the use of seat belts on powered industrial trucks is that employers are

obligated to require operators of powered industrial trucks that are equipped with operator restraint devices, including seat belts, to use the devices. CSHOs will enforce the use of such devices under Section 5(a)(1) of the OSH Act in accordance with the October 9, 1996 Seat Belt Enforcement Memorandum.

- D. When possible, observe powered industrial truck operations to determine if trucks are being operated safely, and conduct employer/employee interviews to verify training program implementation.
- E. Determine whether the employer has certified that all required training and evaluations have been conducted. In accordance with OSHA Instruction CPL 2.111, Citation Policy for Paperwork and Written Program Requirement Violations, the following will apply when citing 1910.178(l)(6): When the employer has properly trained and evaluated powered industrial truck operators, but has failed to certify that the action was taken, no citation will be issued. The requirement for certification and the reasons for the requirement will be explained to the employer and the action noted in the case file. The employer will also be informed of possible penalties for subsequent violations.
- F. When employers are cited for violations of the powered industrial truck operator training standard, the Area Director will be responsible for determining the classification of violations cited under the powered industrial truck operator training standard in accordance with the FIRM (OSHA Instruction CPL 2.103).
- G. APPENDIX A provides a list of questions and answers to assist in compliance with the powered industrial truck operator training standards. APPENDIX B provides a copy of the October 9, 1996 Seat belt enforcement memorandum and APPENDIX C provides a copy of the July 14, 2000 National Maritime Safety Association Settlement Agreement.
- X. Enforcement Guidance for the Longshoring and Marine Terminal Industries. The following guidance will be applied in enforcing the powered industrial truck operator training standard in the Longshoring and Marine Terminal Industries (SIC 4491). This guidance has been developed to implement the Settlement Agreement attached as Appendix C, and OSHA is required to follow the terms of this Settlement Agreement in enforcing the standard with respect to Longshoring and Marine Terminal operations.
 - A. Compliance Deadlines. There are two compliance deadlines for employers that have employees that regularly operated powered industrial trucks prior to December 1, 1998 and employees that did not regularly operate a powered industrial truck prior to December 1, 1998.

1. Employers must comply with all provisions of the standard, as set forth herein, by October 1, 2001 with respect to workers who regularly operated a powered industrial truck in the longshoring or marine terminal workplace before December 1, 1998.
 2. Employers must comply with all provisions of the standard, as set forth herein, by June 30, 2001 with respect to workers who did not regularly operate a powered industrial truck in the longshoring or marine terminal workplace before December 1, 1998.
 3. Prior to June 30, 2001 or October 1, 2001, whichever is applicable, if those employers are not in full compliance with 1910.178(l), they must ensure that their powered industrial truck operators are adequately trained as required by 1917.27 for marine terminals and 1918.98 for longshoring.
- B. Training, Evaluation and Certification by a Third Party. The person or persons who conduct training, refresher training, evaluations, and certification of operators under 1910.178(l) need not be employed by the employer of those operators. Such third-party training, including appropriate on-the-job training, may be provided by an employers' association, a labor union, joint labor-management training organization, or any other organization meeting the requirements of the standard. However, citations for failure to train will always be issued to the **employer**.
1. The employer may rely on a third-party trainer's certification that an employee has been trained and evaluated to operate a particular type of powered industrial truck in accordance with the standard if the training entity presents to the employer verification that the training program conforms to the standard and includes a list of topics covered by the training. The employer must make the verification available to OSHA upon request.
 2. If a powered industrial truck operator is certified under the preceding paragraph, the employer must provide additional training in any of those topics only when its powered industrial truck operators will be potentially exposed to hazardous workplace-related conditions that could not reasonably have been foreseen when the training took place. Before employees operate powered industrial trucks under these conditions, the employer must brief them about the conditions and how to operate the powered industrial truck safely under those conditions.

- C. Three-Year Evaluations and Certification Records. An employer may comply with the requirement of 1910.178(l)(4)(iii) that an operator has been evaluated at three-year intervals if it knows that a third party has conducted the required evaluation and the third party certifies the evaluation pursuant to 1910.178(l)(6). If such evaluations, which can be based on the review of records by an existing entity, such as a joint labor-management committee, are made in the normal course of business, they need not be repeated for purposes of this paragraph.
1. The certification required by 1910.178(l)(6) may be performed, and the records of such certification maintained, by a third-party trainer. The certification records must identify the types of equipment on which the operator has been trained and evaluated.
 2. If an employer does not regularly employ the same operators, such as where powered industrial truck operators are assigned by a hiring hall, the employer does not need to maintain the records at its own worksite. The employer must know where the records are located, and they must be accessible to an OSHA compliance officer during an inspection. Failure of an employer to provide the certification records under these conditions would be cited under 1910.178(l)(6).
- D. Avoidance of Duplicative Training of Experienced Operators. An employee who, prior to December 1, 1998, has regularly operated a particular type of powered industrial truck in a marine terminal or longshoring operation, which operation can be determined by an existing entity such as a joint labor-management committee, may be certified under 1910.178(l)(6) to operate that type of powered industrial truck if one of the following provisions has been met:
1. Written documentation establishes that the employee has previously been trained and evaluated on all of the training topics listed in 1910.178(l)(3) that are applicable to that type of powered industrial truck; or
 2. The employee's operation of the type of powered industrial truck is evaluated under circumstances that typically prevail in the marine terminal and/or longshoring workplaces in which the operator normally works by a person or entity with the requisite knowledge, skills, and experience to perform evaluations, and the employee is found competent to perform the operator's duties safely. If the evaluations, which can be based on the review of records by an existing entity, such as a joint labor-management committee, are conducted during the normal course of business, they need not be repeated for purposes of this paragraph.

E. Refresher Training and Evaluation.

1. A powered industrial truck operator must receive refresher training under 1910.178(l)(4)(ii)(A) or (C) if a workplace observation by a supervisor or other qualified person indicates that the operator is deficient in some of the requisite knowledge and skills needed to operate the vehicle safely. If the observer determines that the deficiencies in the operator's knowledge and skills can be corrected by on-the-job instruction, the observer or another qualified person may immediately provide such instruction. After such instruction, the observer or other qualified person may reevaluate the operator's performance in the workplace and, if the operator demonstrates that he or she possesses the knowledge and skills to operate the equipment safely, the operator may continue to operate the powered industrial truck without any further training and without affecting his or her certification. If on-the-job instruction is not sufficient to obviate the deficiencies in the operator's knowledge and skills, the operator must receive such additional refresher training and evaluation as is necessary to ensure that the operator has the knowledge and skills needed to operate the powered industrial truck safely.
2. An operator must receive refresher training and evaluation under 1910.178(l)(4)(ii)(B) when the operator has been involved in an incident in which the operator's operation of the powered industrial truck caused or contributed to personal injury or property damage or provided other clear evidence that the operator operated the equipment unsafely. In the event that an OSHA inspection of the incident is conducted, the CSHO will include in the case file and account for any facts and conclusions developed by an independent inquiry of the factors underlying the incident which are made available to the CSHO during the inspection or within 14 days of the incident, whichever is later.

- F. Generic Training. An operator who has been trained on a particular type of powered industrial truck may, without additional training, operate other makes and models of the same type of truck that have fundamentally similar operating characteristics and placement of operating controls. Similarly, an employee who has been trained to use a particular type of powered industrial truck attachment need not receive additional training to use a fundamentally similar make or model of the same type of attachment for the same type of truck.

- G. Seat belt Training. Powered industrial truck operator training programs must cover equipment manufacturers' recommendations as to the use of seat belts under 1910.178(l)(3)(i); such programs may also address the hazards, if any, in the opinion of the training provider, that seat belt use could cause in a particular work situation in the marine cargo handling industry.

APPENDIX A

1910.178(l) - Questions and Answers

Paragraph (l)(1)(i) requires that each powered industrial truck operator have the competency to operate a powered industrial truck safely.

- 1. Can an employee be allowed to operate a powered industrial truck if the employee can't read?**

Yes, during training and evaluation, a determination must be made whether the employee has the knowledge and skills to perform the job. For example, if the employee cannot read and comprehend the operator's manuals for the types of trucks the employee will operate, then this information would have to be taught by means other than having the employee try to read the truck manuals. Information obtained during the initial employee evaluation can be used to, among other things, determine how best to train the employees.

- 2. Can an employee with poor vision in one eye or a hearing impairment be allowed to operate a powered industrial truck?**

The employer has the responsibility under this training standard to ensure that each operator is capable of performing the duties that are required of the job.

The Americans with Disabilities Act (ADA) addresses the issue of whether employers may impose physical qualifications upon employees or applicants for employment. The ADA permits employers to adopt medical qualification requirements necessary to ensure that an individual does not pose a "*direct threat to the health or safety of other individuals in the workplace*," provided all reasonable efforts are made to accommodate otherwise qualified individuals. The employer should consult with appropriate medical personnel to assist in determining operator physical qualifications.

Paragraph (l)(2)(i) allows trainees to operate a powered industrial truck.

- 3. When can a powered industrial truck operator trainee operate a powered industrial truck in the workplace?**

An operator trainee can operate a truck only under the direct supervision of a person who has the knowledge, training, and experience to train operators and evaluate their competence, and where such operation does not endanger the trainee or other employees.

4. What industries are covered by these training requirements?

The powered industrial truck operator training requirements apply to all industries in which the trucks are being used, except agricultural operations.

Paragraph (l)(2)(ii) requires that the training consist of a combination of formal instruction, practical training, and evaluation of the operator's performance in the workplace.

5. Can my powered industrial truck operator training consist only of formal instruction such as watching a videotape?

No, OSHA requires a combination of formal instruction and practical training. Although formal training is invaluable for teaching the principles of vehicle operation, it is the hands-on training and evaluation of vehicle operation that finally proves the adequacy of the training and the ability of the employee to use that training successfully.

6. Can tool box meetings or informal discussions be considered formal instruction?

Yes, tool box meetings or informal discussions can be considered formal instruction when the principles of safe powered industrial truck operation are covered by the designated trainer.

Paragraph (l)(2)(iii) requires that all operator training and evaluation be conducted by a person who has the knowledge, training, and experience to train powered industrial truck operators and evaluate their competence.

7. How could an employer determine the qualifications of trainers?

An example of a qualified trainer would be a person who, by possession of a recognized degree, certificate, or professional standing, or who by knowledge, training and experience, has demonstrated the ability to train and evaluate powered industrial truck operators.

8. Can the person providing the training come from outside the company?

Yes, the employer may authorize a trainer from outside the company to conduct the training, such as a training consultant or a manufacturer's representative. Nonetheless, the employer must have evidence that the operators have been trained in the required program topics.

Some employers believe they must use an outside training consultant. However, an employer may utilize an employee who has the knowledge, training, and experience to provide training and evaluation.

- 9. When a Powered Industrial Truck operator is assigned to an employer by a union hiring hall and works for more than one employer over a period of time, which employer is responsible for ensuring that the operator has been trained and evaluated under the standard?**

Each employer for whom an employee works is responsible for ensuring that the employee has been trained in accordance with the standard. In hiring hall situations, the training under 1910.178(l)(3)(i), *Truck-related topics*, may be conducted by a labor union, joint labor/management training organization, an association of employers, or another third-party trainer as long as the person(s) conducting the training have the knowledge, training, and experience to properly conduct the training. An individual employer that relies on such training would not be relieved of the provisions of 1910.178(l)(3)(ii), *Workplace-related topics*, which provides for training on site-specific matters. But, the employer need not duplicate training if the outside training covered all of the employer's site-specific conditions. However, see the specific guidance for Longshoring and Marine Terminal industries at paragraph X.

- 10. Can the evaluation required by (l)(2)(ii) be based entirely on observation of the operator in a training facility outside the workplace?**

No. The evaluation must take place in the workplace so that the evaluator can observe the operator under actual workplace conditions. However, see the specific guidance for Longshoring and Marine Terminal industries at paragraph X.

In paragraph (l)(3) OSHA has provided a list of subjects to ensure that the training contains the appropriate information for the operator.

- 11. Are employers required to train powered industrial truck operator trainees in all of the topics listed in paragraph (l)(3)?**

It is the responsibility of the employer to select the particular items that are pertinent to the type of trucks that the employee will be allowed to operate, and the work environment in which the vehicle will be operated. The employer may leave out elements if the employer can demonstrate that they are not relevant to safe operation in the employer's workplace.

12. Do these training requirements apply only to high lift and low lift trucks?

No, these requirements apply to all types of powered industrial trucks, including specialized powered industrial trucks covered by §1910.178(a). The training standard applies to vehicles covered by volumes of the consensus standard such as: Low Lift and High Lift Trucks, ASME B56.1; Guided Industrial Vehicles, ASME B56.5; Rough Terrain Forklift Trucks, ASME B56.6; Industrial Crane Trucks, ASME B56.7; Personnel and Burden Carriers, ASME B56.8; and Operator Controlled Industrial Tow Tractors, ASME B56.9. The standard does not apply to earth moving equipment or vehicles used for over-the-road hauling. Therefore, equipment that was designed to move earth but has been modified to accept forks is not covered by the powered industrial truck operator training standard.

13. Must an employee receive separate training in each make and model of powered industrial truck that the employee operates?

No. An operator who has been trained on a particular type of powered industrial truck (e.g., a sit-down counterbalanced rider truck) may, without additional training, operate other makes and models of that same type of truck, unless there is a significant difference in the applicable truck-related and workplace-related topics listed in paragraph (l)(3) for the different make and model of truck. In addition, an employee who has been trained to use a particular type of powered industrial truck attachment need not receive additional training to use a fundamentally similar make or model of the same type of attachment for the same type of truck.

14. Would these training requirements include training operators in the use of operator restraint systems?

Yes. For several years, sit-down counterbalanced powered industrial trucks have been equipped by the manufacturer with operator restraint systems. Manufacturers' operators' manuals instruct and warn operators to use operator restraint systems. Employers are required by paragraph (l)(3) to train employees in all operating instructions, warnings and precautions listed in the operator's manual for the type of vehicle which the employee is being trained to operate. Therefore, operators must be trained in the use of operator restraint systems addressed in the operating instructions.

15. Does OSHA require employers to train operators in vehicle stability?

Employers are required by paragraph (l)(3) to train operators in vehicle stability. Non-mandatory Appendix A to the training standard provides guidance to employers in understanding the basic principles of vehicle stability.

Paragraph (l)(4) specifies that an evaluation be conducted of each powered industrial truck operator's performance.

16. How often are evaluations required to be conducted after training has been successfully completed?

The employer must conduct evaluations at least once every three years and as part of the initial training provided to the operator. In addition, for operators provided refresher training under the standard, an evaluation of the effectiveness of that refresher training must be performed. This evaluation does not have to be formalized but must consist of a person who has the knowledge, training, and experience observing each operator perform all typical operations to ensure that the powered industrial truck is being operated safely. OSHA requires that a more extensive evaluation be conducted at least once every three years.

17. When would refresher training be required?

Refresher training is required when information available to the employer shows that the employee lacks the skills or knowledge to operate the truck safely. If the employee has been observed operating the vehicle in an unsafe manner, has been involved in an accident or near miss, or has received an evaluation that reveals the employee is not operating the truck safely, refresher training is required. In addition, refresher training is required when the employee is assigned to drive a different type of truck or a condition in the workplace changes that could affect the safe operation of the truck. An evaluation of the effectiveness of the refresher training is required.

Paragraph (l)(6) requires that the employer certify that the required training and evaluations have been conducted.

18. What does OSHA require the employer to include in the certification that the required training and evaluations have been conducted?

The certification consists of the name of the operator, the dates of the training, the date of the evaluation, and the identity of the person(s) conducting the training and evaluation.

Paragraph (l)(5) allows the employer to forgo that portion of the training that an employee has previously received.

19. Is it necessary to retrain powered industrial truck operators if they have already received training in some of the topics listed in paragraph (l)(3)?

The employer must evaluate the applicability and adequacy of an operator's prior training. Employers need not retrain an employee in a training topic if the prior training

is appropriate to the truck and working conditions encountered. Additional training in that topic is not required if the operator is evaluated and found to operate the truck safely.

Longshoring and Marine Terminal Operations.

20. What is meant by the term “regularly operated” as discussed for powered industrial truck operators in the longshoring and marine terminal industries?

Many longshoring and marine terminal employees had substantial experience operating PITs prior to December 1, 1998, when the standard was issued. The term “regularly operated” is used to distinguish between those employees who had substantial experience operating a PIT prior to December 1, 1998 and those who did not. Employees who were listed as powered industrial truck operators by a hiring hall or the employer prior to December 1, 1998 would in most instances be considered as regular operators. Employees who were not listed as qualified to operate a powered industrial truck prior to December 1, 1998 by the employer or a hiring hall shall not be considered in most instances to have regularly operated a powered industrial truck prior to that date. However, a determination of whether an employee regularly operated a PIT cannot be made using a rigid formula but must take into account factors such as:

1. how long the employee worked on the docks prior to December 1, 1998; and
2. whether the employee worked on the docks full time or part time; and
3. whether the employee normally operated a PIT as part of his/her job responsibilities; and
4. the total number of workdays in which the employee had operated a PIT at a longshoring or marine terminal workplace.

APPENDIX B

Enforcement of the Use of Seat Belts on Powered Industrial Trucks in General Industry October 9, 1996

MEMORANDUM FOR: REGIONAL ADMINISTRATORS

**FROM: JOHN B. MILES, JR.,
DIRECTORATE OF COMPLIANCE PROGRAMS**

**SUBJECT: Enforcement of the Use of Seat Belts on Powered Industrial
Trucks in General Industry**

It has come to my attention that clarification is needed to ensure that a uniform approach is taken by all OSHA offices with respect to the enforcement of the use of seat belts on powered industrial trucks in general industry.

American National Standards Institute (ANSI) B56.1-1969 Safety Standard for Powered Industrial Trucks, was adopted by OSHA under the procedures described in Section 6(a) of the Occupational Safety and Health Act (OSH Act). ANSI B56.1-1969 does not have provisions for the use of seat belts. Therefore, 29 CFR 1910.178 does not contain requirements for the use of seat belts. However, Section 5(a)(1) of the OSH Act require employers to protect employees from serious and recognized hazards. Recognition of the hazard of powered industrial truck tipover and the need for the use of an operator restraint system is evidenced by certain requirements in the more current versions of ANSI B56.1 consensus standard for powered industrial trucks; ASME/ANSI B56.1a-1989 Addenda to ASME/ANSI B56.1-1988, and ASME B56.1-1993 Safety Standard for Low Lift and High Lift Trucks. In addition, seat belts have been supplied by many manufacturers of counterbalanced, center control, high lift trucks which have a sit-down nonelevating operator position. Also, some manufacturers have instituted retrofit programs for the installation of operator restraint systems to older powered industrial trucks.

OSHA's enforcement policy relative to the use of seat belts on powered industrial trucks is that employers are obligated to require operators of powered industrial trucks which are equipped with operator restraint devices or seat belts to use the devices. OSHA should enforce the use of such devices under Section 5(a)(1) of the OSH Act.

After consultation with the Regional Solicitor, OSHA may also cite Section 5(a)(1) of the OSH Act if an employer has not taken advantage of a manufacturer operator restraint system or seat belt retrofit program.

If you have any questions or concerns, please contact the Office of General Industry Compliance Assistance at (202) 693-1850.

APPENDIX C

National Maritime Safety Association Settlement Agreement
July 14, 2000

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NATIONAL MARITIME SAFETY	)	
ASSOCIATION, INC.,	)	
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
OCCUPATIONAL SAFETY AND HEALTH	)	No. 99-1031
ADMINISTRATION, UNITED STATES	)	
DEPARTMENT OF LABOR, AND	)	
ALEXIS M. HERMAN, SECRETARY,	)	
UNITED STATES DEPARTMENT OF LABOR,	)	
	)	
Respondents,	)	
	)	
	)	
CARRIERS CONTAINER COUNCIL, INC.	)	
INTERNATIONAL LONGSHORE & WAREHOUSE UNION,	)	
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,	)	
	)	
Intervenors for	)	
Petitioner.	)	
	)	

SETTLEMENT AGREEMENT

1. **Coverage.** This Settlement Agreement addresses the application of 29 CFR 1910.178(1) -- Powered Industrial Truck Operator Training ("the standard") -- to the longshoring and marine terminal industries (SIC 4491). The standard was issued on December 1, 1998 (63 Fed. Reg. 66238) and is made applicable

to marine terminals by 29 CFR 1917.1(a)(2)(xiv) and to longshoring by 29 CFR 1918.1(b)(10).

2. **Implementation.** Within 30 days of the signing of this Settlement Agreement, OSHA shall instruct its regional and area offices to follow the terms of this Settlement Agreement in enforcing the standard with respect to longshoring and marine terminal operations. OSHA shall provide this Settlement Agreement to state plan occupational safety and health agencies and encourage that the states follow its terms.

* * *

3. **Compliance Deadline.** Employers engaged in longshoring or marine terminal operations shall, as to workers who did not regularly operate a powered industrial truck (PIT) in a marine terminal or longshoring workplace before December 1, 1998, comply with all provisions of the standard, as set forth herein, by June 30, 2001. With respect to workers who regularly operated a PIT in a marine terminal or longshoring workplace before December 1, 1998, employers must comply with all provisions of the standard, as set forth herein, by October 1, 2001. Prior to June 30, 2001 or October 1, 2001, whichever is applicable, if those employers are not in full compliance with 1910.178(l), they must ensure that their powered industrial truck operators are adequately trained as required by 1917.27 for marine terminals and 1918.98 for longshoring.

4. Training, Evaluation and Certification by a Third Party.

The person or persons who conduct training, refresher training, evaluations, and certification of operators under 29 CFR 1910.178(1) need not be employed by the employer of those operators. Such third-party training, including appropriate on-the-job training, may be provided by an employers' association, a labor union, a joint labor-management training organization, or any other organization meeting the requirements of the standard.

An employer may rely on a third-party trainer's certification that an employee has been trained and evaluated to operate a particular type of powered industrial truck in accordance with the standard if the training entity presents to the employer -- who shall make it available to OSHA upon request -- verification that the training program conforms to the standard and includes a list of topics covered by the training. When an operator has been certified under the preceding sentence, the employer must provide additional training in any of those topics only when its powered industrial truck operator[s] will be potentially exposed to hazardous workplace-related conditions that could not reasonably have been foreseen when the training took place. Before its employees operate powered industrial trucks under such conditions, the employer shall brief them about the conditions and in how to operate the powered industrial truck safely under those conditions.

* * *

5. **Three-Year Evaluations and Certification Records.** An employer may comply with the requirement of § 1910.178(l)(4)(iii) that an operator has been evaluated at three-year intervals if it knows that a third party has conducted the required evaluation and the third party certifies the evaluation pursuant to § 1910.178(l)(6). If such evaluations, which can be based on the review of records by an existing entity, such as a joint labor-management committee, are made in the normal course of business, they need not be repeated for purposes of this paragraph.

The certification required by § 1910.178(l)(6) may be performed, and the records of such certification maintained, by a third-party trainer. The certification records must identify the types of equipment on which the operator has been trained and evaluated. Where an employer does not regularly employ the same operators, such as where operators are assigned by a hiring hall, the employer does not need to maintain the records at its own worksite. The employer must, however, know where the records are located, and they must be accessible to an OSHA compliance officer during a workplace inspection.

* * *

6. **Avoidance of Duplicative Training of Experienced Operators.** An employee who, prior to December 1, 1998, has regularly operated a particular type of PIT in a marine terminal

or longshoring operation, which can be determined by an existing entity such as a joint labor-management committee, may be certified under § 1910.178(l)(6) to operate that type of PIT if (a) written documentation establishes that the employee has previously been trained and evaluated in all of the training topics listed in § 1910.178(l)(3) that are applicable to that type of PIT; or (b) the employee's operation of the type of PIT is evaluated under circumstances that typically prevail in the marine terminal and/or longshoring workplaces in which the operator normally works by a person or entity with the requisite knowledge, skills, and experience to perform evaluations, and the employee is found competent to perform the operator's duties safely. If such evaluations, which can be based on the review of records by an existing entity, such as a joint labor-management committee, are made in the normal course of business, they need not be repeated for purposes of this paragraph.

* * *

7. **Refresher Training and Evaluation.** A PIT operator shall receive refresher training under § 1910.178(l)(4)(ii)(A) or (C) if a workplace observation by a supervisor or other qualified person indicates that the operator is deficient in some of the requisite knowledge and skills needed to operate the vehicle safely. If the observer determines that the deficiencies in the operator's knowledge and skills can be corrected by on-the-job

instruction, the observer or another qualified person may immediately provide such instruction. After any such instruction, the observer or other qualified person may reevaluate the operator's performance in the workplace and, if the operator is then able to demonstrate that he or she possesses the knowledge and skills to operate the equipment safely, the operator may continue to operate the PIT without any further training and without affecting his or her certification. If on-the-job instruction is not sufficient to cure the deficiencies in the operator's knowledge and skills, the operator shall receive such additional refresher training and evaluation as is necessary to ensure that the operator has the knowledge and skills needed to operate the powered industrial truck safely.

An operator shall receive refresher training and evaluation under § 1910.178(l)(4)(ii)(B) when the operator has been involved in an incident in which the operator's operation of the PIT caused or contributed to personal injury or property damage or provided other clear evidence that the operator operated the equipment unsafely. In the event that an OSHA inspection of the incident is conducted, the OSHA inspector will include in the case file and will account for any facts and conclusions developed by an independent inquiry of the factors underlying the incident which are made available to the inspector during the inspection or within 14 days of the incident, whichever is later.

The affected parties may contact the inspector to discuss the results of the independent inquiry.

* * *

8. **Generic Training.** An operator who has been trained on a particular type of powered industrial truck may, without additional training, operate other makes and models of the same type of truck that have fundamentally similar operating characteristics and placement of operating controls. Similarly, an employee who has been trained to use a particular type of powered industrial truck attachment need not receive additional training to use a fundamentally similar make or model of the same type of attachment for the same type of truck.

* * *

9. **Seatbelt Training.** Powered industrial truck operator training programs must cover equipment manufacturers' recommendations as to the use of seatbelts under § 1910.178(l)(3)(I); such programs may also address the hazards, if any, in the opinion of the training provider, that seat belt use could cause in a particular work situation in the marine cargo handling industry.

* * *

10. **Withdrawal of Law Suit.** NMSA agrees to withdraw its petition for review in the above-captioned case within five working days of the signing of this Settlement Agreement. The

Parties and Intervenors signing below shall bear their own costs and expenses incurred in connection with this matter.

11. **Support of Settlement Agreement.** In the event that all or any portion of this Settlement Agreement is challenged in any forum, the signatories below agree to move to intervene in support of this Settlement Agreement.

HENRY L. SOLANO
Solicitor of Labor

JOSEPH M. WOODWARD
Associate Solicitor for
Occupational Safety and Health

BRUCE JUSTH
Counsel for Appellate Litigation

CHARLES T. CARROLL, Jr., Esq.
Wilcox, Carroll & Froelich,
Suite 301, 2011 Pa. Ave., N.W.
Washington, D.C. 20006
General Counsel, National
Maritime Safety Association

JOHN SHORTALL
Attorney,
Office of Solicitor
U.S. Department of Labor
Frances Perkins Bld., Rm. S-4004
200 Constitution Avenue, N.W.
Washington, D.C. 20210-0001

BARUCH A. FELLNER, Esq.
Gibson, Dunn & Crutcher, LLP
1050 Conn. Ave., N.W.
Washington, D.C. 20036-5306
Counsel for the National
Maritime Safety Association

C. PETER LAMBOS, Esq.
CAROL N. LAMBOS, Esq.
Lambos & Junge,
29 Broadway
New York, New York 10006-3101
Counsel for Carriers
Container Council, Inc.

(more signatories on page 9)

(signatories continued from page 8)

HERZL EISENSTADT, Esq.
ELIZABETH ALEXANDER, Esq.
Gleason & Mathews, P.C.
26 Broadway -- 17th Floor
New York, New York 10004-1864
Counsel for International
Longshoremen's Association

CRAIG E. EPPERSON, Esq.
Pacific Maritime Association
550 California Street
San Francisco, CA 94104-1060
General Counsel & Secretary,
Pacific Maritime Association

C. PETER LAMBOS, Esq.
CAROL N. LAMBOS, Esq.
Lambos & Junge,
29 Broadway
New York, New York 10006-3101
Counsel for United States
Maritime Alliance, Ltd.

RICHARD ZUCKERMAN, Esq.
Leonard, Carder et al.
Suite 201
1188 Franklin Street
San Francisco, Calif. 94109
Counsel for the International
Longshore & Warehouse Union

July 14, 2000

INDEX

accident	2, 3, A-5
certification	4-7, A-5, C-3, C-4, C-6
compliance	1-6, C-2, C-4
construction	2
CSHO	3, 7
employee	3-7, A-1-6, C-3-5, C-7
employer	2-6, A-1-3, A-5-, C-3, C-4
enforcement	1, 3, 4, B-1
evaluation	2, 3, 5-7, A-1-3, A-5, C-3-6
Federal Program Change	1
FIRM	1, 4
General Industry	B-1
industrial trucks	1-5, A-4, B-1, C-3
inspection	1, 3, 6, 7, C-4, C-6
lift	3, A-4, B-1
longshoring	1, 4-6, A-3, A-6, C-1, C-2, C-5
Maritime	1, 2, 4, C-1, C-8, C-9
operation	2, 6, 7, A-1-3, C-5, C-6
seat belt	1, 3, 4, 8
standard	1-5, A-1, A-3-, C-1-3
training	1-8, A-1-6, C-1, C-3-7
truck	1-8, A-1-, C-1-3, C-6, C-7