

DOSH DIRECTIVE

Department of Labor and Industries
Division of Occupational Safety and Health
Keeping Washington Safe and Working

7.05

Powered Industrial Truck Training in Longshoring & Marine Terminals

Updated: July 1, 2015

I. Purpose

This DOSH Directive provides guidance to compliance and consultation staff regarding activities involving Powered Industrial Truck (PIT) operator training in the Longshoring and Marine Terminal Industries. It also provides clarification to compliance and consultation staff in understanding the agreement between the Occupational Safety and Health Administration (OSHA), Carriers Container Council, Inc., International Longshore & Warehouse Union, and the International Longshoreman's Association.

II. Scope and Application

This directive applies to all DOSH operations statewide. This is an update to DOSH Directive 7.05, *Powered Industrial Truck Training in Longshoring & Marine Terminals*, issued August 7, 2006, and replaces any previous instructions on this issue, whether formal or informal.

III. References

- Chapter 296-863 WAC, Forklifts and Other Powered Industrial Trucks
- Chapter 296-56 WAC, Longshore, Stevedore and Waterfront Related Operations
- OSHA CPL 02-01-028, Compliance Assistance for the Powered Industrial Truck Operator Training Standards
- Settlement Agreement between OSHA, NMSA and Carriers Container Council, Inc. - United States Court of Appeals, District of Columbia Circuit No. 99-1031, (*Appendix A below*)
- OSHA Interpretation Letter to Robert Hearne (August 1, 2005) (*Appendix B below*)

IV. Background

This guidance has been developed to implement the settlement agreement between OSHA, the Carriers Container Council, Inc., the International Longshore & Warehouse Union, and the International Longshoremen's Association. The Department of Labor and Industries (L&I) intends to follow the terms of this settlement agreement in enforcing the Powered Industrial Truck (PIT) standard (chapter 296-863 WAC) with respect to Longshore and Marine Terminal operations.

V. Enforcement Policy

The following interpretive guidance is based on chapter 296-863 WAC, in the context of the agreement between OSHA, labor and management within the maritime industry. It does not apply to employers other than those covered by the Standard Industrial Classification (SIC) Code 4491.

A. Employer Responsibility for Training.

Employers shall ensure that their PIT operators are adequately trained as required by WAC 296-56-60077 for Longshore, Stevedore and related Waterfront Activities. In addition to the training found in WAC 296-56-60077, employers must also ensure that the necessary and applicable training topics required by WAC 296-863-600 have been covered.

NOTE: See "Third Party Training" below for consideration.

B. Third Party Training.

1. The person(s) who conduct training, refresher training and evaluation of operators under chapter 296-863 WAC and WAC 296-56-60077, do not need to be employed by the employer of those being trained. 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 (including private training companies) that meet the requirements of the standard.

NOTE: Although training may be provided by a third-party organization, as described above, a citation would be issued to the employer of the operators if failure to comply with the regulations occurs.

2. The employer may rely on a third-party trainer's records showing that an employee has been trained and evaluated to operate a particular type of PIT 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 L&I upon request.
3. If a PIT operator is trained and evaluated under the preceding paragraph, the employer must provide additional training in any of those topics only when its PIT 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 PITs under these conditions, the employer must brief them about the conditions and how to operate the PIT safely.

C. Three Year Evaluation Requirements.

1. An employer is compliant with the conditions specified in WAC 296-863-60005 through WAC 296-863-60015, requiring evaluation of operators at three-year intervals, when the employer knows that a third party has conducted and documented the required evaluation, including a written and practical exam, pursuant to WAC 296-863-60005.

2. The recordkeeping required by WAC 296-863-60005 may be performed and maintained by a third-party trainer. The records must identify the types of equipment on which the operator has been trained and evaluated. Written records need to be kept per WAC 296-863-60005.
3. If an employer does not regularly employ the same operators, such as when PIT 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 a compliance officer during an inspection. Failure of an employer to provide the records under these conditions would be a violation of WAC 296-863-60005.

D. Experienced Operator Evaluation/Demonstration.

An employee who has regularly operated a particular type of PIT in a marine terminal or longshoring operation (as determined by an existing entity such as a joint labor-management committee), may be determined to be competent under WAC 296-863-60005 to operate that type of PIT, **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 chapter 296-863 WAC (Table 4), that are applicable to that type of PIT; **or**
2. 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 required knowledge, skills, and experience to perform evaluations, **and**
 - The employee is found competent to perform the operator's duties safely.
3. If the evaluations are conducted during the normal course of business, and can be verified by a review of records, they need not be repeated for purposes of this requirement.

E. PIT Operator Refresher Training Requirements.

1. A PIT operator must receive refresher training if any incidents identified in WAC 296-863-60010 occurs.
2. If the observer determines that there are deficiencies in the operator's knowledge and skills that 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 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 correct the deficiencies in the operator's knowledge and skills, the operator must receive additional refresher training and evaluation as required by WAC 296-863-60010, to ensure that the operator has the knowledge and skills needed to operate the PIT safely. This evaluation must be documented pursuant to WAC 296-863-60005.

3. In the event that DOSH conducts an inspection of the incident and is provided information developed from an independent inquiry of the factors underlying the incident, the inspector will ensure this information is included in the case file during the inspection or within 14 days of the incident, whichever is later.

F. Generic Training Clarification.

1. An operator who has been trained on a particular type of PIT may, without additional training, operate other makes and models of the same type of truck that have similar operating characteristics and controls.
2. An employee who has been trained to use a particular type of PIT attachment, need not receive additional training to use a similar make or model of the same type of attachment for the same type of truck. Ensure that topics under WAC 296-863-60005 are covered during initial training.

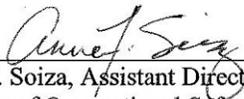
VI. Who to Contact

If DOSH staff have questions or need additional guidance or interpretive assistance, they are encouraged to contact the Maritime Supervisor.

VII. Expiration Date

This Directive will expire 2 years from the effective date, or earlier, if replaced by some other method of sufficient guidance.

Approved: _____


Anne F. Soiza, Assistant Director
Division of Occupational Safety and Health
Department of Labor and Industries

[Appendices A and B are attached below]

APPENDIX A
(Settlement Agreement)

Settlement Agreement between OSHA, NMSA and Carriers Container Council, Inc. - United States
Court of Appeals, District of Columbia Circuit No. 99-1031

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(l) -- 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(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, 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)(l); 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.

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July 14, 2000

APPENDIX B (Interpretation Letter)

August 1, 2005

Mr. Robert Hearne
1448 SR 333
Russellville, AR 72802

Dear Mr. Hearne:

Thank you for your April 12 letter to the Occupational Safety and Health Administration's (OSHA) Directorate of Enforcement Programs (DEP). Your letter has been referred to DEP's Office of General Industry Enforcement for an answer to your question regarding OSHA's powered industrial truck standard, 29 CFR 1910.178. Your question has been restated below for clarity.

Background: 29 CFR 1910.178(l)(4)(iii) requires that an evaluation of each powered industrial truck operator's performance shall be conducted at least once every three years.

Question: Would a written exam alone (i.e., without practical operation of the truck) suffice for the evaluation requirement stated above?

Reply: The "evaluation" of "performance" required by the standard cannot be met by a written exam alone. A written exam by itself does not indicate whether the operator is operating the powered industrial truck safely. In most cases, the person conducting the evaluation would do two things: first, observe the powered industrial truck operator during normal operations to determine if the operator is performing safely, and second, ask pertinent questions to ensure that the operator has the knowledge or experience needed to operate a truck safely. In some cases, because of the danger or complexity of the operation, the extent of the change in conditions, or the operator's need for additional skills, the evaluation will need to be lengthier and more detailed. The triennial evaluation ensures that the operator has retained the necessary knowledge and *skills* for safe operation of the vehicle. Therefore, a written exam alone would not be adequate to ensure that the operator has retained the necessary *skills* for safe vehicle operation.

Thank you for your interest in occupational safety and health. We hope you find this information helpful. OSHA requirements are set by statute, standards, and regulations. Our interpretations letters explain the requirements, and how they apply to particular circumstances, but they cannot create additional employer obligations. This letter constitutes OSHA's interpretation of the requirements discussed. Note that our enforcement guidance may be affected by changes to OSHA rules. In addition, from time to time we update our guidance in response to new information. To keep apprised of such developments, you can consult OSHA's website at www.osha.gov. If you have any further questions, please feel free to contact the Office of General Industry Enforcement at (202) 693-1850.

Sincerely,

Richard E. Fairfax, Director
Directorate of Enforcement Programs

Appendix B – OSHA Interpretation Letter to Robert Hearne