

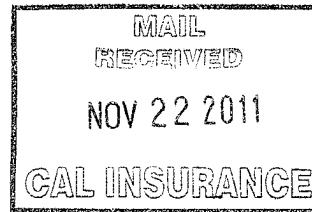
## DEPARTMENT OF INDUSTRIAL RELATIONS

**DIVISION OF OCCUPATIONAL SAFETY AND HEALTH**

1515 CLAY STREET, SUITE 1901

OAKLAND, CA 94612

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ADDRESS REPLY TO:  
PO BOX 420603  
SAN FRANCISCO 94142-0603

November 17, 2011

Scott Hauge  
President  
Small Business California  
2311 Taraval Street  
San Francisco, CA 94116

Dear Mr. Hauge,

Thank you for contacting me with the concerns of California's small business community regarding the requirements of Cal/OSHA's Emergency Action Plan and Fire Prevention Plan regulations. I am grateful for this opportunity to clarify some misleading information that was recently circulated regarding these standards, and for the opportunity to communicate directly with the small businesses that drive California's economy.

Both of these regulations were adopted in 1981 and were required to be at least as effective as the corresponding federal OSHA regulations. The purpose of the Emergency Action Plan (8 CCR 3220) is to ensure that employees know their expected roles in order to minimize injuries and deaths in an emergency. These provisions are also intended to prevent unnecessary injury or death to emergency responders who, without appropriate accounting for personnel, may enter a workplace to rescue employees who have already safely evacuated.

For many employers, the emergency action plan requirements consist of:

- providing escape procedures and routes
- procedures to account for employees after the evacuation
- informing employees how to report fires and other emergencies,
- providing a contact for further information, and
- training employees on the plan.

Employers who have employees who will be expected to perform critical functions prior to evacuation and employers whose employees will perform rescue or medical duties must also have procedures for these duties. Employers with 10 or fewer employees, may communicate this information orally, and need not maintain a written plan. These provisions are also consistent with the California Fire Code, Section 404, which requires employers to have fire safety and evacuation plans in most types of occupancies.

There are a number of other Cal/OSHA standards that either requires an employer to have an emergency action plan, or permit employers to use the emergency action plan as an alternate means of compliance. For example, the Hazardous Waste and Emergency Response Operations ("Hazwoper Standard", 8 CCR 5192) requires that employers who may have a spill of hazardous substances that constitutes an "emergency" must either maintain a full emergency response team OR, if employees will not engage in emergency response, may evacuate employees under an emergency action plan, meeting the requirements of Section 3220. This is consistent with California environmental regulations that require a wide variety of businesses to have emergency procedures in their Hazardous Materials Business Plan, and to train employees on what to do in case of a chemical release.

For your convenience and your members', I have attached a list of Cal/OSHA regulations that specifically require emergency action plans meeting the requirements of Section 3220.

Fire prevention plans (8 CCR 3221) are required for grain handling operations and for establishments that come under the butadiene and ethylene oxide standards. Fire prevention plans in combination with emergency action plans are an alternate means of compliance with the portable fire extinguisher standard (8 CCR 6151). Section 3221 requires that the plan:

- identify potential fire hazards, proper handling and storage procedures, potential ignition sources and control, and fire protection equipment or systems
- list the names or job titles for people responsible for maintaining fire protection equipment and systems,
- list the names or job titles for people responsible for controlling the accumulation of flammable or combustible waste

This section also requires that employers control accumulation of flammable or combustible waste, and that employees be trained regarding the fire hazards and their control. There are other standards that address fire prevention in a number of other settings such as welding operations and shipyards, but they do not reference Section 3221.

As you pointed out in your letter, a 1985 appeals board decision held that even if an emergency action plan or fire prevention plan is not required by Cal/OSHA standards, an employer who develops such a plan can be cited if the plan does not meet Cal/OSHA requirements. You stated that this can result in employers choosing not to develop such plans, in order not to risk citations. While I agree that we do not want to deter employers from developing emergency action plans, or fire prevention plans where necessary, I do believe that these standards describe the minimum contents necessary for an effective plan. The Appeals Board has also held that Cal/OSHA has the burden to demonstrate that an employer of 10 or fewer employees has not conveyed these instructions orally (*R Wright and Associates*, 1999 Decision After Reconsideration).

Mr. Scott Hauge  
November 17, 2011  
Page 3

Because of recent public statements in the Cal OSHA Reporter that Cal/OSHA had started aggressively enforcing these standards, I requested a search of citations in the inspection database for all inspections from January 1, 2000 through November 8, 2011. During this period, Cal/OSHA performed approximately 100,000 inspections. During that time, there were a total of 350 citations for violations of Section 3220, and a total of 152 citations for violations of Section 3221. In 2011 to date, there have been 26 citations for Section 3220, and 12 citations for Section 3220.

I appreciate your suggestion that Cal/OSHA develop prototype plans to aid small businesses in complying with these standards. While it may be difficult to design a prototype plan that fits the variety of activities and responses in California's diverse workplaces, I would certainly like to meet with you to explore how Cal/OSHA can assist small businesses in preparing for emergencies, and in addressing other health and safety concerns. Perhaps Deborah Gold, our Deputy Chief for Health, and Vicky Heza, Manager of our Consultation Program, could join us. Federal OSHA has also prepared a guide for employers in planning for emergencies and evacuations, which is available at:  
<http://www.osha.gov/Publications/osha3088.pdf>

Thank you again for contacting me about this issue. I hope this information is helpful. If you would like to schedule a meeting, please call my assistant, Gretta Windmon, at (510)286-7000. I look forward to working with you on this issue and any others your members may have about worker health and safety protection. We are eager to provide more information and outreach that can help small employers understand and comply with standards to protect their workers as efficiently as possible.

Sincerely,



Ellen Widess  
Chief

Att

Cc: Christine Baker, Acting Director, DIR  
Deborah Gold, Deputy Chief for Health and Engineering Services, DOSH  
Chris Lee, Deputy Chief for Enforcement, DOSH  
Lori Kammerer

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The following is a two-part list of Cal/OSHA standards that specifically reference either Emergency Action Plans (8 CCR 3220) or Fire Prevention Plans (8 CCR 3221). These standards contain general requirements. Please note that other standards contain requirements for emergency planning or fire prevention in specific environments, for example 8 CCR 3395 requires employers who have employees exposed to outdoor heat to have emergency procedures, and 8 CCR 4848 addresses fire prevention for welding operations. All Cal/OSHA regulations can be found on-line at:  
<http://www.dir.ca.gov/samples/search/query.htm>.

Emergency Action Plan (Title 8, California Code of Regulations, Section 3220)

Section 1535. Methylenedianiline (Construction)

Sections 3294, 3298, and Appendix A to Article 6 regarding Powered Platforms and Equipment for Building Maintenance).

Section 5178 Grain Handling Facilities.

Section 5189 Process Safety Management of Acutely Hazardous Materials.

Section 5192 Hazardous Waste Operations and Emergency Response.

Section 5200 Methylenedianiline (General Industry)

Section 5201 1,3-Butadiene

Section 5220 Ethylene Oxide

Section 6151 Portable Fire Extinguishers

Section 6175 Fixed Extinguishing Systems.

Section 6183 Fire Detection Systems.

Section 6184 Employee Alarm Systems

Section 6519 Fire Protection and Fire Fighting Equipment (Petroleum Safety Orders)

Fire Prevention Plan (Title 8, California Code of Regulations, Section 3221)

Section 5178 Grain Handling Facilities

Section 5220 Ethylene Oxide

Section 5201 1,3-Butadiene

Section 6151 Portable Fire Extinguishers