

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**NOTICE OF PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
AND NOTICE OF PROPOSED CHANGES TO TITLE 8
OF THE CALIFORNIA CODE OF REGULATIONS**

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

PUBLIC MEETING: On **December 18, 2003**, at 10:00 a.m.
in the Auditorium of the State Resources Building,
1416 Ninth Street, Sacramento, California.

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

PUBLIC HEARING: On **December 18, 2003**, following the Public Meeting,
in the Auditorium of the State Resources Building,
1416 Ninth Street, Sacramento, California.

At the Public Hearing, the Board will consider the public testimony on the proposed changes to occupational safety and health standards in Title 8 of the California Code of Regulations.

BUSINESS MEETING: On **December 18, 2003**, following the Public Hearing,
in the Auditorium of the State Resources Building,
1416 Ninth Street, Sacramento, California.

At the Business Meeting, the Board will conduct its monthly business.

DISABILITY ACCOMMODATION NOTICE: Disability accommodation is available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the public hearings/meetings of the Occupational Safety and Health Standards Board should contact the Disability Accommodation Coordinator at (916) 274-5721 or the state-wide Disability Accommodation Coordinator at 1-866-326-1616 (toll free). The state-wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1-800-735-2929 (TTY) or 1-800-855-3000 (TTY-Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

**OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD**

STEVEN L. RANK, Chairman

NOTICE OF PROPOSED CHANGES TO TITLE 8
OF THE CALIFORNIA CODE OF REGULATIONS
BY THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, General Industry Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on December 18, 2003.

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Chapter 4, Subchapter 7, Article 3
New Section 3241.1
Working Warehouses

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Chapter 4, Subchapter 7, Article 107
Section 5155
Airborne Contaminants

Descriptions of the proposed changes are as follows:

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
 Chapter 4, Subchapter 7, Article 3
 New Section 3241.1
 Working Warehouses

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

The Occupational Safety and Health Standards Board (Board) has granted Board Petition File No. 454, which was submitted by Glen C. Hansen, Attorney-at-Law, Knox Lemmon Anapolsky, LLP representing California Retailers Association (Petitioner). The Petitioner notes that in 2001, the Legislature passed and the Governor signed Senate Bill 486. The passage of this bill resulted in new Sections 9100-9104 relating to requirements for working warehouses being codified in the California 2003 Labor Code (LC). LC Sections 9100 and 9101 contain definitions. LC Section 9102 provides that the owner, manager, or operator of a working warehouse secure merchandise stored on shelves higher than 12 feet above the sales floor. The Petitioner states that the Legislature intended the 12-foot requirement to refer to the top plane of the shelf on which merchandise is stored. However, the Petitioner points out that LC Sections 9101 and 9102 could be incorrectly interpreted to mean that the 12-foot requirement for securing merchandise relates to the distance from the sales floor to the top of the merchandise that is stored on the shelf. Therefore, the Petitioner requests that a new regulation be added to Title 8 to clarify the meaning of the phrases “merchandise is stored on shelves higher than 12 feet above the sales floor” and “merchandise stored on shelves higher than 12 feet above the sales floor,” as those phrases are respectively used in Sections 9101 and 9102 of the Labor Code. This proposal would add a new “Section 3241.1. Working Warehouses” to address the Petitioner’s concerns.

Section 3241.1. Working Warehouses.

This new section contains definitions and various requirements pertaining to the height at which stored materials must be secured in a working warehouse. The effect of this section is to clarify LC Sections 9100 through 9103 relating to safety in working warehouses.

Section 3241.1(a) Definitions.

Proposed subsection (a) would define “sales floor” and “working warehouse.” These definitions are taken directly from LC Sections 9100 and 9101. The effect of including these definitions is to make the meaning of the listed terms clear to the regulated public.

Section 3241.1(b)

Proposed subsection (b) would require measures to be taken, in addition to the requirements of Section 3241(c) and (e), to secure merchandise on storage racks or shelves higher than 12 feet above the sales floor. Methods of securing merchandise include rails, fencing, netting, security doors, gates, cables, or the binding of items on a pallet into one unit by shrink-wrapping, metal or plastic banding, or by tying items together with a cord. The effect of the proposed subsection is to clarify to the employer that measures shall be taken to secure merchandise stored on storage racks or shelves higher than 12 feet and provide methods of securing merchandise. The proposed subsection would also codify the requirements of LC Section 9102 into Title 8, GISO.

Section 3241.1(b) Note

The effect of the Note in proposed subsection (b) is to clarify to the employer that the height of 12 feet, which is specified in subsections (a)(2) and (b), is the distance measured from the floor to the top plane of the shelf or rack on which merchandise is stored.

The Petitioner explained that the intent of the Legislature was to have merchandise secured when stored on shelves above 12 feet. Additionally, the proposal was submitted to Senator Jackie Speier, the author of Senate Bill 486, and she responded that she supported the proposed language as written.

Section 3241.1(c)

Proposed subsection (c) would require a safety zone to be established to temporarily block persons other than the operator from entering areas where merchandise could fall when heavy machinery is used to place or retrieve merchandise on a shelf or rack in a working warehouse.

The effect of subsection (c) is to prevent the exposure of any person to the hazard of falling objects when heavy machinery is used for placing or retrieving merchandise from shelves or racks. The proposed subsection would also codify the requirements of LC Section 9103 into Title 8, GISO.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. Further, California employers in working warehouse operations have been required to be in compliance with LC Sections 9100 through 9103 since July 1, 2002. Therefore, affected employers are already in substantial compliance with the provisions of proposed new Section 3241.1.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulation does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, the regulation does not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed regulation does not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulation requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulation does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed regulation does not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendment may affect small businesses.

ASSESSMENT

The adoption of the proposed amendments to this regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Chapter 4, Subchapter 7, Article 107
Section 5155
Airborne Contaminants

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

Section 5155, Airborne Contaminants, establishes minimum requirements for controlling employee exposure to specific airborne contaminants. This Section specifies several types of airborne exposure limits, requirements for control of skin and eye contact, workplace environmental monitoring through measurement or calculation, and medical surveillance requirements. California periodically amends the airborne contaminants table (Table AC-1) in this regulation to keep the standard consistent with current information regarding the harmful effects of exposure from these substances and other new substances not listed. The standard was last revised in 2001. In this revision, the substances chosen for review were taken from the 1997, 1998, 1999, 2000, and the 2001 editions of the Threshold Limit Values (TLVs) published by the American Conference of Governmental Industrial Hygienists (ACGIH).

This proposed rulemaking action contains nonsubstantive, editorial, reformatting of subsections, and grammatical revisions. These nonsubstantive revisions are not all discussed in this Informative Digest. However, these proposed revisions are clearly indicated in the regulatory text in underline and strikeout format.

The exposure limits of the following substances are proposed to be lowered:

Acetone	Epichlorohydrin
Allyl alcohol	Glutaraldehyde
n-Amyl acetate	Isoamyl acetate
sec-Amyl acetate (all Isomers and mixtures)	Maleic anhydride
Beryllium and beryllium compounds	Methyl methacrylate
2-Butoxyethanol	Molybdenum, soluble compounds, as Mo
Butyl acrylate	Propylene oxide

Exposure limits for the following substances are proposed to be added to Table AC-1 (new substances):

3-Amyl acetate	2-Methylbutyl acetate
tert-Amyl acetate	Pentyl acetate
Ethyl cyanoacrylate	1,3,5 Triglycidyl-s-triazinetrione
Ethyl tert-butyl ether	Vinylidene fluoride
Flour dust	

Short term exposure limits (STEL) are proposed for the following substances in Table AC-1:

n-Amyl acetate	Ethyl butyl ketone
sec-Amyl acetate (all Isomers and mixtures)	Isoamyl acetate
3-Amyl acetate	2-Methylbutyl acetate
tert-Amyl acetate	Pentyl acetate
Diethyl ketone	

Short term exposure limits (STEL) are proposed to be deleted for the following substances in Table AC-1:

Acrolein

Beryllium and beryllium compounds

Di-sec-octyl phthalate

Pentane

A skin notation is proposed for Acrolein.

The eight-hour time weighted average limit for Acrolein is proposed to be deleted and replaced with a ceiling limit.

A respirable fraction limit is proposed for insoluble Molybdenum compounds.

The new exposure limit for Flour dust is expressed as the airborne mass of dust passing a size selector as defined by a new footnote to Table AC-1. This fraction is intended to represent the inhalable fraction of the airborne dust.

The effect of this amendment is to reduce the risk of material impairment of health or functional capacity for employees exposed to the above substances.

All proposed changes to Section 5155 are considered at least as effective as or more stringent than the federal OSHA requirements in Title 29, Code of Federal Regulations (29 CFR) section 1910.1000, Airborne contaminants.

COST ESTIMATES OF PROPOSED ACTION

The subject regulation is a revision of an existing regulation which specifies requirements for airborne contaminants. The primary users of these substances are the private industrial and chemical sectors. Those rare public sector workplaces where these substances are used should already be in compliance with the existing regulation, and the revised regulation should not necessitate any additional cost to remain in compliance. Based on this information, the additional expenditures for local and state governments to comply with the revised regulation are estimated to be none. Similarly, the large industrial companies have professional internal health and safety staff who are aware of the recommendations for exposure limits published by non-governmental organizations, such as the ACGIH. These companies normally control exposure to these limits as a matter of policy and to benefit employee relations. Based on this, the additional expenditures for these entities to comply with the revised regulation is estimated to be insignificant to none.

Costs or Savings to State Agencies

No significant costs or savings to state agencies is anticipated to result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposed changes will reduce the possibility of employee

illness and improve productivity, increasing the ability of California businesses to compete with businesses in other states

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose significant nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulation does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this regulation does not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed regulation does not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulation requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulation does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed regulation does not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed amendments may affect small businesses.

ASSESSMENT

The adoption of the proposed amendments to the regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The above proposals do not contain building standards as defined by Health and Safety Code Section 18909.

A copy of the proposed changes in STRIKEOUT/UNDERLINE format is available upon request made to the Occupational Safety and Health Standard Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives has been prepared and is available upon request from the Standards Board's Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than December 12, 2003. The official record of the rulemaking proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on December 18, 2003 will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274-5743 or e-mailed at oshsb@hq.dir.ca.gov. The Occupational Safety and Health Standards Board may thereafter adopt the above proposals substantially as set forth without further notice.

The Occupational Safety and Health Standards Board's rulemaking file on the proposed actions including all the information upon which the proposals are based are open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning either the proposed administrative action or the substance of the proposed changes may be directed to Keith Umemoto, Executive Officer, or Michael Manieri, Principal Safety Engineer, at (916) 274-5721.

You can access the Board's notice and other materials associated with this proposal on the Standards Board's homepage/website address which is <http://www.dir.ca.gov/oshsb>. Once the Final Statement

of Reasons is prepared, it may be obtained by accessing the Board's website or by calling the telephone number listed above.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

STEVEN L. RANK, Chairman