

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**FINAL STATEMENT OF REASONS**

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Chapter 4, Subchapter 7, Article 3, New Section 3241.1
of the General Industry Safety Orders (GISO)

*Working Warehouses***MODIFICATIONS AND RESPONSE TO COMMENTS RESULTING FROM THE 45-DAY
PUBLIC COMMENT PERIOD**

The public comment period for this rulemaking action was extended beyond the 45-day comment period by the Occupational Safety and Health Standards Board (board) and ended on June 17, 2004. There are no modifications to the information contained in the initial statement of reasons except for the following sufficiently related modifications, which are the result of public comments and further board staff evaluation of the proposal.

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 proposed section adopts and clarifies similar language into Title 8 that is contained in the California Labor Code, 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. Public comments received from representatives of the California Retailers Association (CRA) express that including the term "storage racks" in subsection (b) and the term "rack" in the "Note" to the section could create some ambiguity as to the meaning of the proposed standard. Therefore, proposed modifications include a definition of the word "shelf" and deletion of the term "storage racks or" in subsection (b), and "or rack" in the "Note." The term "shelf" is proposed as meaning the following:

"Shelf" means a support structure of rigid material such as wood, glass, metal or metal grating to hold or store merchandise. For the purposes of this section, shelves are fixed horizontally to a wall or other vertical surface including upright wood or metal frames and columns that contain structural

support, such as shelves, racks, or cantilevered arms for storing merchandise including palletized items.

Board staff contacted CRA's representatives who concurred that the proposed modifications would address their concerns. The proposed modification is necessary to provide clarity to the standard by defining what is meant by the term "shelf."

Section 3241.1(b) and its "Note"

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. Due to public comments discussed above under subsection (a), modifications are proposed to delete the terms "storage racks or" and "or rack" in subsection (b) and the "Note" after subsection (b) respectively. The deletion of these terms along with the inclusion of the definition for the term "shelf" in subsection (a) is necessary to add clarity to the standard.

Summary and Response to Oral and Written Comments:

I. Written Comments

Mr. Bill Dombrowski, president, California Retailers Association (CRA), by letter dated December 4, 2003.

Comment:

Mr. Dombrowski provided background information relating to California Labor Code (LC) sections 9100 – 9104 as they relate to the securing of merchandise on shelves in working warehouses. Mr. Dombrowski explained that CRA petitioned the board to add a new standard in Title 8 to clarify that the intent of the LC sections for working warehouses is to address the securing of merchandise stored on shelves as measured from the sales floor to the top plane of the shelf on which merchandise is stored. Mr. Dombrowski stated that CRA supports the proposed standard with several recommended revisions.

Mr. Dombrowski identified a typographical error in the "Note" after subsection (b). Mr. Dombrowski commented that including the term "storage racks or" in subsection (b) and the term "or rack" in the "Note" could create some ambiguity as to the meaning of the proposed standard, particularly since those terms are not included in subsections (a) and (c) of the proposal.

Response:

As result of comments and further evaluation of the proposal by board staff, modifications are proposed to correct the typographical error and include a definition of the word "shelf" and delete the terms "storage rack or" in subsection (b) and "or rack" in the "Note."

The board thanks Mr. Dombrowski and CRA for their support of the proposal, comments, and participation in the board's rulemaking process.

Mr. Glen C. Hansen of Knox, Lemmon, Anapolsky, Attorneys-at-Law, representing CRA by letter dated April 5, 2004.

Comment:

Mr. Hansen provided background information relating to new LC sections 9100 – 9104 as they relate to the securing of merchandise on shelves in working warehouses. Mr. Hansen summarized the reasons why CRA petitioned the board to add a new standard in Title 8 to clarify the intent of the LC sections for working warehouses. Mr. Hansen's comments are similar to the written comments outlined above by Mr. Dombrowski.

Mr. Hansen further commented that on January 26, 2004, board staff e-mailed the proposed modifications for the standard to their office reflecting changes to the proposal. Mr. Hansen stated that CRA agrees to those changes (modifications) and supports proposed section 3241.1, as amended with the proposed modifications.

Response:

See the comments and response to Mr. Dombrowski's written comments.

The board thanks Mr. Hansen and CRA for their support of the proposal, comments, and participation in the board's rulemaking process.

II. Oral Comments

Oral comments received at the December 18, 2004 public hearing in Sacramento, California.

Mr. Glen C. Hansen of Knox, Lemmon, Anapolsky, Attorneys-at-Law, representing CRA.

Comment:

Mr. Glen Hansen, Knox, Lemmon Anapolsky, LLP, submitted the petition on behalf of CRA that lead to the rulemaking. Mr. Hansen expressed his gratitude for the punctuality and responsiveness of board staff. He underscored his client's comments submitted to the board in a letter dated December 4, 2003, which addressed three specific items contained in the final proposal.

- (1) The term "subsection" in the "Note" included in subsection (b) should be replaced with the word "subsections."
- (2) The terms "storage racks or" in subsection (b) of the proposed standard should be deleted.
- (3) The terms "or rack" in the "Note" included in subsection (b) of the proposed section 3241.1 should also be deleted.

Response:

See the comment and response to Mr. Dombrowski's letter above. The board thanks Mr. Hansen and CRA for their support of the proposal, comments, and participation in the board's rulemaking process.

MODIFICATIONS AND RESPONSE TO COMMENTS RESULTING FROM THE 15-DAY
NOTICE OF PROPOSED MODIFICATIONS

No further modifications to the information contained in the Initial Statement of Reasons are proposed as a result of the 15-day Notice of Proposed Modifications mailed on July 7, 2004.

Summary and Response to Written Comments:

No written comments were received.

ADDITIONAL DOCUMENTS RELIED UPON

None.

ADDITIONAL DOCUMENTS INCORPORATED BY REFERENCE

None.

DETERMINATION OF MANDATE

These standards do not impose a mandate on local agencies or school districts as indicated in the initial statement of reasons.

ALTERNATIVES CONSIDERED

The board invited interested persons to present statements or arguments with respect to alternatives to the proposed standard. No alternative considered by 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 adopted action.