

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Attachment No. 2

INITIAL 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***SUMMARY**

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 pertains to securing merchandise and Section 9103 provides requirements for moving merchandise using heavy machinery. There is no continuing requirement for reporting customer injuries and deaths beyond calendar year 2003; therefore the requirements of LC Section 9104 are not included in this proposed rulemaking.

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.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

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 section is necessary 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 and are necessary 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 purpose and necessity 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 amendments also serve to codify the requirements of LC Section 9102 into Title 8, GISO.

Section 3241.1(b) Note

The purpose and necessity 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.

Subsection (c) is necessary 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 amendments also serve to codify the requirements of LC Section 9103 into Title 8, GISO.

DOCUMENTS RELIED UPON

1. Letter from Mr. Glen C. Hansen, Attorney-At-Law, Knox Lemmon Anapolsky, LLP, Petitioner, dated February 27, 2003.
2. Division Evaluation Report of Petition File No. 454, dated May 2, 2003.
3. Letter from Senator Jackie Speier dated May 5, 2003.
4. Letter from Mr. Glen C. Hansen, Attorney-At-Law, Knox Lemmon Anapolsky, LLP, Petitioner, dated June 16, 2003.
5. Standards Board Petition File No. 454, Proposed Petition Decision, dated June 19, 2003.

These documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC
IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

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.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that 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.