

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

2520 Venture Oaks Way, Suite 350  
Sacramento, CA 95833  
(916) 274-5721  
FAX (916) 274-5743  
Website address [www.dir.ca.gov/oshsb](http://www.dir.ca.gov/oshsb)

**SUMMARY**  
**PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING**

December 18, 2008  
Sacramento, California

**I. PUBLIC MEETING****A. CALL TO ORDER AND INTRODUCTIONS**

Acting Chair Frisch called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:00 a.m., December 18, 2008, in the Auditorium of the State Resources Building, 1416 9th Street, Sacramento, California.

**ATTENDANCE****Board Members Present**

Acting Chairman Jonathan Frisch, Ph.D.  
Bill Jackson  
Jack Kastorff  
Steve Rank  
Willie Washington

**Board Members Absent**

Chairman John MacLeod  
Josè Moreno

**Board Staff**

Marley Hart, Executive Officer  
David Beales, Legal Counsel  
Mike Manieri, Principal Safety Engineer  
Tom Mitchell, Senior Safety Engineer  
Bernie Osburn, Staff Services Analyst  
Chris Witte, Executive Secretary

**Division of Occupational Safety and Health**

Len Welsh, Chief  
Steve Smith, Principal Safety Engineer  
Larry McCune, Principal Safety Engineer

**Others present**

Kevin Bland  
Richard Parenti, OSHSB  
Rebecca Estrella, OSHSB  
Wendy Holt, AMPTP  
Dave Tognetti, Raley's Supermarkets  
Bob Hornauer, NCCCO  
Judi Freyman, ORC Worldwide  
Jere Ingram, EORM

Dan Leacox, Greenberg Traurig  
Kevin Thompson, Cal-OSHA Reporter  
Steve Johnson, ARC-BAC  
Larry Pena, So. Cal. Edison  
John L. Bobis, Aerojet  
Jamie Wright, Safeway  
Marti Fisher, California Chamber of Commerce

B. OPENING COMMENTS

Acting Chair Frisch stated that a remarkable amount of work is performed behind the scenes by the dedicated Board staff, who is rarely recognized for their hard work and dedication to serving the people of the state of California. Through a very difficult year, Board staff persevered and sustained productivity despite budget issues and other pressures. The seven Board members are all part-time, and they would be unable to perform their functions effectively without the work of the Board staff. He then asked Ms. Hart and Mr. Manieri to introduce the staff members, and he asked the staff members to come to the front of the room as their names were called.

Ms. Hart began by recognizing the former Chairman, Jere Ingram, who served on the Board from 1986 until 2003. She then asked Mr. Manieri to introduce the engineering staff, stating that she would then introduce the remaining staff members.

Mr. Manieri stated that the role of the staff engineers is to conduct evaluations and review petitions and variance applications submitted by the public and to develop the rulemaking packages brought before the Board. He introduced the engineers and indicated the length of each engineer's service to the Board and specific packages each had developed. The engineers are George Hauptman, Conrad Tolson, Hans Boersma, Tom Mitchell, and Richard Parenti.

Ms. Hart then introduced the remaining staff members, some of whom attend the Board meetings each month, beginning with David Beales, legal counsel; Cathy Dietrich, Associate Governmental Program Analyst; Rebecca Estrella, Variance Secretary and Receptionist; Bernie Osburn, Staff Services Analyst; Mike Manieri, Principal Safety Engineer; Leslie Matsuoka, Associate Governmental Program Analyst; Michele Quinonez, Office Technician; Chris Witte, Executive Secretary; and Yoyo Yiu, Student Assistant.

Mr. Kastorff, acting on behalf of the entire Board, presented Ms. Hart a plaque reading, "Presented to the California Occupational Safety and Health Standards Board Staff for Outstanding Performance and Dedication, 2008."

Acting Chair Frisch thanked Ms. Hart and Mr. Manieri for introducing the staff and Mr. Kastorff for coordinating the creation and presentation of the plaque.

Acting Chair Frisch indicated that this portion of the Board's meeting is open to any person who is interested in addressing the Board on any matter concerning occupational safety and health or to propose new or revised standards or the repeal of standards as permitted by Labor Code Section 142.2.

Judi Freyman, leader of the Western Occupational Safety and Health Group of ORC Worldwide, spoke in opposition to the adoption of Section 4530, Bakery Ovens—Inspections. She asked the Board not to adopt the rulemaking proposal today in order to give the interested parties further opportunity to work with Board staff to modify the proposal language to address the concerns of the grocery industry. She stated that there was no advisory committee for the proposal, which would have provided an opportunity for the interested parties to work with Board staff to reach a consensus on language for the proposal that would be mutually acceptable. She stated that there

were concerns about provisions in the proposal that had not been revised or addressed substantively.

Ms. Freyman stated that the federal rule upon which the proposal is based was adopted 35 years ago with expedited rulemaking and without extensive public comment. She stated that the Board should provide ample opportunity for public input, as operations in grocery store bakeries have changed significantly in the 35 years since the federal rule was adopted. The safety hazards and concerns represented by those operational changes need further discussion.

Jamie Wright, Safety Manager of Corporate Loss Control for Safeway, Inc., thanked the Board and staff for taking into account Safeway's comments during the initial public comment period. Many of the initial concerns were addressed in the revised proposal, and she expressed the opinion that the proposal is moving in the right direction. However, she asked for additional time to continue discussions regarding the proposal and allow for additional stakeholder input, in order to craft a standard that is mutually acceptable to both stakeholders and Board staff.

During review of the proposal during the initial 45-day public comment period, significant concerns were raised, some of which were addressed in the modified proposal. However, the revised proposal highlighted other areas of concern that could benefit from additional review.

Subsection (2) requires a written inspection and testing program. It would be helpful to clarify whether this requirement is to be site specific, equipment specific, or global in nature.

Subsection (5) requires that the main shutoff valve to be locked in the closed position when a person must enter the oven or when the oven is not in use. Entering an oven is not an uncommon occurrence in a retail bakery. An employee may enter the oven upon completion of the process or if a loaf has fallen off the rack. As was noted during the initial comment period regarding the inspection frequency, technology has advanced significantly since the adoption of the original federal rule. Today, if an employee opens the oven door, the system automatically shuts down. Therefore, turning off the valve is an unnecessary step. In addition, these systems are so safe that this type of interference with normal processes might create the need to request a service call to get the oven back online. Further, ovens are routinely not in use, so clarifying language in that portion of the proposal would benefit both the employer's understanding and the Division's enforcement efforts.

Ms. Wright stated that while Safeway understands that today is not the time to fully discuss all of its concerns regarding the proposal, additional time for discussion and review prior to adoption would be beneficial. Thus, Ms. Wright asked that the Board grant additional time for the stakeholders and the Board staff to work together to further review and refine the proposal.

Mr. Washington asked Ms. Wright whether there was anything to prevent override of the automatic shutoff feature when the oven door is open. Ms. Wright responded that there is a lockout/tagout procedure when maintenance is being performed, and the oven is equipped with an interlock switch that turns the oven off when the door is opened.

Dave Tognetti, Service Safety Manager for Raley's, asked the Board not to adopt Section 4530 regarding bakery ovens in favor of continuing to work with stakeholders to craft a regulation to

address more efficient testing and inspection requirements for bakery ovens. Raley's and Bel Air are very diligent about the safety of their bakery ovens, including the testing and inspection in accordance with the manufacturers' recommendations by trained and qualified technicians.

Proposed changes to the regulation require written inspection and a testing program that follows the American National Standards Institute (ANSI) and National Fire Prevention Association (NFPA) standards as referenced in the proposal. Raley's current practice is to follow the manufacturer's recommendations for inspection and testing. Those inspections and tests are documented, and the records are maintained for a minimum of two years.

Raley's invited Mr. Boersma of the Board staff to observe an annual inspection at one of the stores in the Sacramento area. An annual inspection takes approximately two hours and is a very comprehensive inspection, including each gas chamber and interlock switch. Manufacturers develop inspection procedures based on NFPA and ANSI standards, and Raley's follows those procedures.

The manufacturer recommends procedures to provide significant instruction relating specifically to the equipment used by Raley's. An inspection and testing requirement based on the ANSI and NFPA standards would be challenging not only because the manufacturer has already provided guidance for such procedures, but also because the ANSI and NFPA standards are not included in the proposal. In addition, they are from two different standards-setting organizations, and employers would have to obtain the complex ANSI and NFPA standards and interpret them.

Instead, it would make sense for the proposal to include language regarding the inspection documentation already kept by the stakeholders in accordance with manufacturer recommendations. However, a new complex program in which the employer has to interpret that ANSI and NFPA standards would not make sense. It would be safer for employers to rely upon the manufacturer to provide the employer with the most appropriate and safe methods and frequencies for its specific equipment.

Mr. Rank asked Mr. Tognetti about the geographical range of his duties as a corporate safety officer for Raley's. Mr. Tognetti responded that he oversees all OSHA environmental regulations for all of Raley's operations, including distribution centers, commercial bakeries, and all retail and non-retail facilities in California and Nevada.

Mr. Rank asked whether Mr. Tognetti was aware of any accident trends or serious accidents resulting from following the manufacturer's inspection requirements. Mr. Tognetti responded that he was not aware of any accidents related to inspections and tests, but employees have received minor burns from the inside of the oven door.

Acting Chair Frisch asked whether Raley's was compliant with current Cal-OSHA regulations. Mr. Tognetti responded affirmatively.

Marti Fisher, with the California Chamber of Commerce and on behalf of the California Retailers Association, concurred with the previous commenters and asked the Board not to adopt Section 4530 as proposed but to continue the discussions with stakeholders to find an alternative approach to incorporating the ANSI and NFPA standards by reference. She stated that,

whenever possible, it is preferable not to adopt outside standards by reference, as it makes compliance more difficult for employers. The manufacturers' recommendations state how to best maintain, service, and inspect equipment, and those recommendations, rather than outside standards, should be considered.

Mr. Washington expressed concern regarding reconciling manufacturers' recommendations with the broader and more complex ANSI and NFPA standards and the proposal. Ms. Fisher responded that such concerns could be addressed through further discussions between Board staff and stakeholders to craft a common sense and safe approach to address all bakery ovens in all applications. She stated that it makes compliance difficult for employers when outside standards are incorporated by reference in California regulations.

Acting Chair Frisch asked whether manufacturers keep federal OSHA regulations in mind when writing operating manuals and recommendations for testing and inspection. Ms. Fisher responded that that was her understanding. Mr. Washington commented that it is easier for manufacturers to comply with federal OSHA standards than to craft equipment that is compliant with state-specific regulations.

Mr. Rank commented that employers rely heavily on manufacturers' recommendations, as the manufacturer is the most familiar with its own equipment, and at times the manufacturers' recommendations are more stringent than the federal or state regulations.

#### C. ADJOURNMENT

Acting Chair Frisch adjourned the meeting at 10:43 a.m.

## II. PUBLIC HEARING

### A. PUBLIC HEARING ITEM

Acting Chair Frisch called the Public Hearing of the Board to order at 10:43 a.m., December 18, 2008, in the Auditorium of the State Resources Building, 1416 9th Street, Sacramento, California.

Acting Chair Frisch opened the Public Hearing and introduced the item noticed for public hearing.

1. TITLE 8:        **HIGH VOLTAGE ELECTRICAL SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 5, Group 2  
**High-Voltage Electrical Safety Orders**

Mr. Manieri summarized the history and purpose of the proposal and indicated that the package is now ready for public comment and the Board's consideration.

John Bobis, Director of Safety, Health, and Risk Management for Aerojet, stated that the definition of "building" on page 3 of the proposal is in conflict with Section 3206 of the General

Industry Safety Orders, and the definition should be consistent throughout the regulations. In addition, there is a statutory definition for “building” that should be consistent or at least cross-referenced in the proposal. He stated that there may be case law indicating that administrative agencies are not empowered to change statutory definitions.

Mr. Bobis also stated that the definition of “hoistway” on page 11 of the proposal is inconsistent with the definition contained in Section 3009 of the Elevator Safety Orders.

B. ADJOURNMENT

Acting Chair Frisch adjourned the Public Hearing at 10:50 a.m.

**III. BUSINESS MEETING**

Acting Chair Frisch called the Business Meeting of the Board to order at 10:50 a.m., December 18, 2008, in the Auditorium of the State Resources Building, 1416 9th Street, Sacramento, California.

A. PROPOSED SAFETY ORDERS FOR ADOPTION

1. TITLE 8:        **GENERAL INDUSTRY SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 7, Article 69  
Section 4530  
**Bakery Ovens—Inspections**  
(Heard at the June 19, 2008, Public Hearing)

Mr. Manieri summarized the history and purpose of the proposal and indicated that the package is now ready for public comment and the Board’s consideration.

MOTION

A motion was made by Mr. Jackson and seconded by Mr. Rank that the Board adopt the proposal.

Mr. Kastorff stated that the California regulations are difficult enough to understand on their own without requiring employers to go elsewhere to clarify them. He noted that the NFPA standards exempt small ovens, but no mention of that exemption is made in the California regulations. He suggested that the proposal be modified to eliminate references to third party documents.

Mr. Washington expressed appreciation for the Board staff’s addressing the concerns he voiced at the June Public Hearing. He stated that he would like for the business community and the regulated public to have further opportunity to discuss the proposal and attempt to address the stakeholders’ concerns as expressed.

Mr. Rank also recommended that the stakeholders be given an opportunity to work with Board staff to discuss the concerns expressed today. He expressed hope that a small group of stakeholders in conjunction with Board staff would be able to reach an agreement on a mutually acceptable regulation.

Mr. Jackson stated that much of the language addressed in the comments today at the public meeting was not noticed for hearing and was not proposed for amendment. He referenced his comments regarding the inspection of ovens where manufacturers no longer exist or manufacturers were located out of the country. The revision proposes that those ovens now have to be inspected in accordance with an NFPA standard that is as little as one or two years old. He expressed concern that the proposal does not provide sufficient relief for employers who may be using old ovens.

Acting Chair Frisch asked Mr. Beales about proper procedure should the Board decide not to adopt the regulation as proposed and direct Board staff to work with stakeholders to further modify the proposal, and he expressed concern that by doing so, equivalent safety might be compromised. Mr. Beales responded that the standard must be at least as effective as the federal standard, and that is the ultimate goal of the Board staff. He stated that the federal standard requires annual inspections by the manufacturer and biweekly inspections by the employer. When that was proposed, that was found to be untenable, so the Board staff worked very hard for several months to find a means of giving manufacturers flexibility, what amounts in effect to a performance standard where they can make their inspection protocols consistent with the national consensus standards. In addition, the Board in sincerity could go to federal OSHA and state that even though this standard does not use the same verbiage as the federal standard, it is at least as effective as the federal standard. The Board staff believes that those goals have been achieved, which is why the proposal in its current form is before the Board for adoption today.

As to the procedural matter, Mr. Beales suggested that if the Board wants the Board staff to work on the proposal further, a Board member could make a motion (in substitution for the current motion) to table the proposal.

Acting Chair Frisch asked Mr. Manieri when Board staff had received the Form 9 request that initiated this proposal. Mr. Manieri responded that the Form 9 was received in 2007 and work on a rulemaking proposal was started soon after.

Acting Chair Frisch expressed concern that, based on that timeline, this was not a new issue, and to imply that, after the Public Hearing and two days before the final decision, there was not sufficient opportunity for discussion and debate is somewhat disingenuous, as stakeholders had had ample opportunity to express their concerns.

Mr. Rank stated that he shared Dr. Frisch’s concern for expediting the adoption of a proposal that had been fairly noticed. However, he expressed the desire to have Board staff to consider the concerns that have been expressed today, and he suggested a small stakeholder committee, as opposed to a full advisory committee, to craft a proposal that stakeholders could support. In view of the fact that there have not been any serious accidents, he suggested that the process be expedited so a proposal could be adopted in the near future.

Thus, Mr. Rank made a substitute motion to table the present proposal and direct the Board staff to engage with further stakeholder contact for possible refinement of the proposal. The motion was seconded by Mr. Kastorff.

Mr. Jackson asked whether staff knew what prompted the Form 9 request that initiated the proposal. Mr. Welsh responded that it was a routine discovery on the part of his staff that there was a difference between the California requirements for bakery ovens and the federal requirement. He stated that the time to have checked with the stakeholders was before or at the time that Form 9 was generated. He further stated that the Division sometimes finds discrepancies in the regulations that affect stakeholders that are not entirely familiar with the Board’s procedures, and he expressed the belief that this is what happened with the current proposal and the reason for the delayed reaction. He expressed the belief that Division staff, Board staff, and stakeholders could work together to craft a proposal that meets the needs of the regulated public and is at least as effective as the federal standard.

Mr. Jackson stated that “at least as effective as” does not mean “the same.” He further stated that he has seen no indication in the record of the proposal that not having the federal inspection requirement in the body of the proposal has any effect on preventing employees from being injured in California workplaces.

A roll call was taken, and all members present voted “aye.” The substitute motion passed. Acting Chair Frisch asked staff to advise the Board at the January meeting of the plan for and progress on this proposal.

2. TITLE 8:        **GENERAL INDUSTRY SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 7, Article 98  
Section 4994  
**Crane Hoisting—Use of Outriggers, Stabilizers, and Other Supports**  
(Heard at the November 20, 2008, Public Hearing)

Mr. Manieri summarized the history and purpose of the proposal and indicated that the package is now ready for public comment and the Board’s consideration.

**MOTION**

A motion was made by Mr. Jackson and seconded by Mr. Kastorff that the Board adopt the proposed petition decision.

A roll call was taken, and all members present voted “aye.” The motion passed.

3. TITLE 8:        **GENERAL INDUSTRY SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 7, Article 98  
Section 4999  
**Properly Rigged (Handling Loads)**  
(Heard at the July 17, 2008, Public Hearing)

Mr. Manieri summarized the history and purpose of the proposal and indicated that the package is now ready for public comment and the Board’s consideration.

MOTION

A motion was made by Mr. Rank and seconded by Mr. Jackson that the Board adopt the proposed petition decision.

Mr. Washington repeated his previous concern that the definition of “qualified person” would exclude employees who routinely act as riggers but are not called “riggers.” Mr. Manieri responded that the definition does not discriminate between riggers and connectors. Anyone that has received the proper training and instruction in rigging would be a qualified rigger.

Mr. Washington asked Mr. McCune how the definition in the proposal would be interpreted. Mr. McCune responded that a connector is trained as a rigger. The connector not only connects but often does rigging within the performance of routine job duties and is trained accordingly.

Mr. Rank stated that prior to the proposal being drafted, the only industry that had a requirement that all loads shall be rigged by a qualified rigger, also a qualified person, was the construction industry, in Section 1710, Erection of Structures. That section excluded carpenters, framers, or any other kind of construction worker that put wire rope slings or performed any kind of rigging of materials on trucks, off of buildings, off of bridges, etc. Mr. Rank expressed the hope that the definition in the current proposal would reduce the occurrence of accidents and injuries resulting from loads being rigged by employees who are not qualified to do so.

A roll call was taken, and all members present voted “aye.” The motion passed.

B.        PROPOSED VARIANCE DECISIONS FOR ADOPTION

Mr. Beales asked that variance file numbers 08-V-176, Howard Properties, and 08-V-189, Stanford University, be removed from the consent calendar as the proposed decisions in those matters have not yet been completed, and they will be on the January consent calendar. In addition, Mr. Beales asked that the remaining variances be granted.

## MOTION

A motion was made by Mr. Jackson and seconded by Mr. Kastorff to adopt the consent calendar as modified.

Acting Chair Frisch asked whether there was a reason variance file nos. 08-V-140 and 08-V-141 were not subject to experimental variances before applying for permanent variances, and he addressed variance Condition No. 10. Mr. Beales responded that the applicants did not request a temporary or experimental variance from the Division, as the verbiage in the statutes governing temporary or experimental variances is unclear whether they would qualify as temporary or experimental variances. The reason for Condition 10 in the two decisions is to ensure that Board staff and Division staff do not lose track of these matters but to ensure that there is ultimate compliance with the safety order requiring overall approval of the entire electrical system. Mr. Beales further stated that staff anticipates that that will be done, and the hearing panel viewed this condition as a creative use of the Board's authority to allow a project to proceed while at the same time ensuring that there is ultimate compliance with the safety orders.

Acting Chair Frisch then asked whether Mr. Beales and the Board staff are comfortable that there are adequate controls in place that they will know if the conditions of these variances are being met. Mr. Beales responded affirmatively.

A roll call was taken, and all members present voted "aye." The motion passed.

## C. OTHER

### 1. Legislative Update

Mr. Beales stated that there is no legislative update for December.

### 2. Executive Officer's Report

Ms. Hart summarized the Calendar of Activities. In addition, she stated that interviews for the vacant Associate Safety Engineer position had been completed, and the executive staff is currently in the process of checking references. She hopes to present a job offer to one of the candidates by January. She also stated that although there will be no Public Hearing items in January, the Public Meeting and the Business Meeting would still proceed as scheduled on January 15, 2009, in San Diego.

Ms. Hart further stated that in 2009, Board members will again be asked to take the ethics training, which is required every two years. She stated that the Department has updated the Incompatible Activities Statement, which the Board members would all receive.

Ms. Hart concluded by thanking the public for their attendance at the monthly Board meetings and the various advisory committee meetings. She thanked them for their interest in occupational safety and health and their commitment to ensure safe working environments for employees. She also thanked the Board members for their active

involvement and assistance during the year. Although the meetings were only once a month, preparation for each meeting takes a lot of time, and there is a lot of reading material to digest. In addition to the monthly meetings, staff calls on the Board members to serve as panel members for variance hearings on a somewhat regular basis. The entire process is made all the better because of the Board members' dedication and commitment to serving on the Board.

4. Future Agenda Items

Ms. Hart stated that, for anyone who may be interested, there would be a diacetyl presentation at the January Public Meeting.

D. ADJOURNMENT

Acting Chair Frisch adjourned the Business Meeting at 11:27 a.m.