

OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD
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NOTICE OF PROPOSED MODIFICATIONS TO
CALIFORNIA CODE OF REGULATIONS
TITLE 8; Division 1, Chapter 4, Subchapter 7, Section 4530
of the General Industry Safety Orders

Bakery Ovens – Inspections

Pursuant to Government Code Section 11346.8(c), the Occupational Safety and Health Standards Board (Standards Board) gives notice of the opportunity to submit written comments on the above-named regulation in which further modifications are being considered as a result of public comments and/or Board staff evaluation.

On June 19, 2008, the Occupational Safety and Health Standards Board held a Public Hearing to consider revisions to Title 8, Division 1, General Industry Safety Orders, Section 4530. The Standards Board received oral and written comments on the proposed modifications. The regulation has been modified as a result of these comments.

A copy of the full text of the regulation as originally proposed, and a copy of the text with the modifications clearly indicated, are attached for your information. In addition, a summary of all oral and written comments regarding the original proposal and responses is included.

Pursuant to Government Code Section 11346.8(d), notice is also given of the opportunity to submit comments concerning the addition to the rulemaking file of the following documents relied upon:

ADDITIONAL DOCUMENTS RELIED UPON

1. American National Standard for Bakery Equipment – Safety Requirements (ANSI) Z50.1-2006, Bakery Equipment – Safety Requirements, Chapter 9, Ovens and Product Dryers, Section 9.7, Maintenance Program.
2. Standard Interpretations, the United States Department of Labor, Occupational Safety and Health Administration, 04/02/1998 – Brake design requirements for bakery equipment.
3. Standard Interpretations, the United States Department of Labor, Occupational Safety and Health Administration, 04/24/1998 – Annual inspection of bakery ovens by qualified person.

These documents are available for review during normal business hours at the Standards Board Office located at the address listed below.

Pursuant to Government Code Section 11346.8(d), notice is also given of the opportunity to submit comments concerning the addition to the rulemaking file of the following documents incorporated by reference:

ADDITIONAL DOCUMENTS INCORPORATED BY REFERENCE

1. National Fire Protection Association (NFPA) 86-2007; Ovens and Furnaces; Chapter 1; Section 1.1; Scope and Chapter 7; Section 7.5; Inspection, Testing, and Maintenance.
2. NFPA 54-2006/American National Standards Institute (ANSI) Z223.1-2006, National Fuel Gas Code, Annex B.3, Maintenance of Appliances and Equipment.

These documents are too cumbersome or impractical to publish in Title 8. Therefore, it is proposed to incorporate the documents by reference. Copies of these documents are available during normal business hours at the Standards Board Office located at the address listed below.

Any written comments on these modifications must be received by 5:00 p.m. on November 10, 2008 at the Occupational Safety and Health Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, California 95833. The regulation will be scheduled for adoption at a future Business Meeting of the Occupational Safety and Health Standards Board.

The Occupational Safety and Health Standards Board's rulemaking file on the proposed action is open to public inspection Monday through Friday, from 8:00 a.m. to 4:30 p.m. at the Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, California.

Inquires concerning the proposed modifications may be directed to the Executive Officer, Marley Hart at (916) 274-5721.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Marley Hart, Executive Officer

Date: October 21, 2008

Regulation as Originally Proposed

TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

PROPOSED STATE STANDARD,
TITLE 8, DIVISION 1, CHAPTER 4

Amend Section 4530(a)(1) to read:

§4530. Bakery Ovens.

(a) General Oven Requirements.

(1) Ovens shall be located so that possible fire or explosion will not expose groups of persons to possible injury. For this reason, ovens shall not adjoin lockers, lunch or sales rooms, main passageways, or exits.

(2) All safety devices on ovens shall be inspected at intervals of not less than twice a month by a qualified person, and not less than once a year by a representative of the oven manufacturer.

~~(2)~~(3) Main shutoff valves, operable separately from any automatic valve, shall be provided to permit turning off the fuel or steam in case of an emergency.

~~(3)~~(4) Main shutoff valves shall be located so that explosions, fires, etc. will not prevent access to these valves.

~~(4)~~(5) Main shutoff valves shall be locked in the closed position when ~~men~~ a person must enter the oven or when the oven is not in service.

NOTE: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code.

Modifications to the Original Proposal

(Regulatory language to be deleted is shown in bold and strike-out and new language is shown in bold and underscore.)

**STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD**

PROPOSED STATE STANDARD,
TITLE 8, CHAPTER 4

Amend Section 4530(a)(1) to read:

§4530. Bakery Ovens.

(a) General Oven Requirements.

(1) Ovens shall be located so that possible fire or explosion will not expose groups of persons to possible injury. For this reason, ovens shall not adjoin lockers, lunch or sales rooms, main passageways, or exits.

(2) The employer shall develop and implement a written inspection and testing program for all safety devices on bakery ovens that specifies inspection and testing frequencies that will ensure the proper operation of the oven safety devices. The inspection and testing program shall be in accordance with the scope, inspection and testing provisions of the National Fire Protection Association (NFPA) 86-2007, Standard for Ovens and Furnaces, Chapter 7, Section 7.5 and NFPA 54-2006/American National Standards Institute (ANSI) Z223.1-2006, National Fuel Gas Code, Annex B.3, which are herein incorporated by reference. ~~All safety devices on ovens shall be inspected at intervals of not less than twice a month by a qualified person, and not less than once a year by a representative of the oven manufacturer.~~

~~(2)~~(3) Main shutoff valves, operable separately from any automatic valve, shall be provided to permit turning off the fuel or steam in case of an emergency.

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NOTE: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code.

Summary and Responses to Oral and Written Comments

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Website address www.dir.ca.gov/oshsb**SUMMARY AND RESPONSES TO ORAL AND WRITTEN COMMENTS****I. Written Comments**

Patrick Singh, Director of Safety and Loss Control, Corporate Risk Management for Safeway Stores, Inc., Pleasanton, CA, by letter received on June 19, 2008.

Commenter No. 1:

Mr. Singh states that this proposal should not be adopted for the following reasons:

- 1) It would not increase the effectiveness on the regulations. Federal OSHA does not enforce the counterpart federal standard upon which this proposal is based because it is based on an outdated standard and is not applicable to current bakery operations. This same outdated requirement will not make Cal/OSHA regulations more effective.
- 2) It is vague in nature. The proposal would be difficult to enforce because of the vague language used. Such vagueness could create confusion and unnecessarily expose employees to electrical hazards.
- 3) It could actually endanger employees by exposing them to electrical hazards. There would be an increased likelihood for employees to be exposed to electrical hazards when inspecting the highly complex industrial ovens and where de-energizing ovens may not be an option.
- 4) It would be difficult to comply and enforce. The proposal would be difficult to enforce because of the vague language used. Such vagueness could create confusion and unnecessarily expose employees to electrical hazards.
- 5) It is not consistent with NFPA 86 which require safety devices on bakery ovens to be inspected by a qualified person at least once a year.
- 6) It would be burdensome to employers without a corresponding increase in workplace safety.
- 7) Ovens of today have many fail safe devices that provide for employee safety. Technological advances in electronics and mechanical engineering has lead to the inclusion of multiple fail safe devices in modern bakery ovens.
- 8) The Federal regulation is based on an outdated national consensus standard.
- 9) The Federal regulation lacks effectiveness as is shown by the fact that it is not enforced.

Mr. Singh stated that the proposal should be changed to be more in keeping with National Fire Protection Agency (NFPA) 86, requiring at least one annual inspection by a manufacturer's representative. He suggested the following language: "All safety devices on ovens shall be inspected not less than once a year by representative of the oven manufacturer or other qualified technicians". Mr. Singh opined that this would ensure that the devices are inspected properly by qualified individuals.

Response to Commenter No. 1:

The Board agrees with Mr. Singh to the extent that the proposed language is not clear as to its application and out dated as it is based on the 1947 ANSI Z50.1, a consensus standards that does not take into account current inspection and preventive maintenance requirements of modern ovens and safety devices.

The Board recognizes that the need for preventive maintenance and inspection of numerous types of bakery ovens currently available to the bakery industry can not be addressed by the limited inspection intervals mandated by the original proposal and the federal counterpart standard in 29 CFR, §1910.263(l)(9)(ii). The Board recognizes the necessity and frequency of inspections and testing for bakery oven safety devices may vary from oven to oven and should be based on numerous factors including the bakery oven type, frequency and type of use, the age of the oven components, and the specific oven's history of component failures. Based on its review of the ANSI/NFPA 86-2007 and ANSI Z223.1-2006 standards, the Board notes these standards provide performance based standards that identify what ovens are regulated and the inspection and testing frequency of the oven safety devices.

Therefore, in response to this comment, the Board modifies the proposed language by proposing a performance standard that meets the intent of the federal standard in 29 CFR, §1910.263(l)(9)(ii) by referencing the latest ANSI/NFPA 86-2007 and ANSI Z223.1-2006 standards to ensure bakery oven's safety devices are regularly inspected and tested.

It is appropriate to note that the ANSI Z50.1-2006, Safety Requirements for Bakery Equipment, is a consensus standard widely accepted by the bakery industry and endorsed by the Bakery Industry Suppliers Association, the American Bakers Association, the [Biscuit and Cracker Manufacturers Association](#), the American Society of Baking, and the American Institute of Baking. As stated by the title of Section 4530, the focus of this standard is "bakery ovens" regardless of the type of business the oven is used in. The bakery ovens may be used by commercial, retail and industrial bakeries as well as at institutions like schools, prisons, churches, etc. This modification would limit the regulated bakery ovens consistent with the scope of ANSI/NFPA 86-2007, in Sections 1.1.4 and 1.1.7.

Commenter No. 2:

Pamela B. Williams, Senior Vice President, of the California Retailers Association, Sacramento, CA, and Kristin Power, Vice President, for the California Grocers Association, Sacramento, CA, provided joint written comments, dated June 18, 2008.

Ms. Williams and Ms. Power state the following:

- 1) Neither the federal bakery oven standard nor the associated legislative history clarifies its applicability to retail settings. This casts doubt on whether the proposed standard should apply to retail grocers.

- 2) The proposed regulations should not apply to retail bakery ovens in grocery stores because the primary identifying SIC Code does not identify it as a bakery.
- 3) Based on the lack of related accidents at grocery retailers, there appears to be no need to apply the standard to grocery retailers.
- 4) Because employees would be exposed to electrical hazards and the highly technical nature of modern bakery ovens during inspections, the manufacturers recommend store employees not perform the mandated inspections.
- 5) The bi-weekly inspections would add significant financial burden because the employers would be forced to contract with the manufacturer or an outside company to conduct the inspections.
- 6) The proposal is unclear on several issues including the following:
 - “Qualified person” is not defined.
 - Proof of inspection or recording requirements are not included in the standard.
 - No alternative procedure is provided in the event the manufacturer is no longer in business.

Response to Commenter No. 2:

See the Response to Commenter No. 1. As stated in this response, the proposal is being modified to reference appropriate national consensus standards, and this modification addresses most of these commenters’ concerns. However, since the federal standard does not limit that standard’s applicability to a particular type of business, neither does this proposal. Also, the federal regulation’s application is not limited in light of the financial burden it imposes. The removal of the term “qualified person” eliminates concern about that term, and the modification of the proposal, as indicated in the Response to Commenter No. 1, addresses the concerns about recording requirements and alternative procedures.

Commenter No. 3:

Ken Nishiyama Atha, Regional Administrator, U.S. Department of Labor, Occupational Safety and Health Administration, Region 9, by letter dated May 21, 2008.

The Occupational Safety and Health Administration concurs that original proposal is at least as effective as the federal counterpart standard 29 CFR §1910.263(l)(9)(ii).

Response to Commenter No. 3:

The Board thanks Mr. Nishiyama Atha of the Occupational Safety and Health Administration for his interest and participation in this proposal.

II. Oral Comments

Patrick Singh, Director of Safety and Loss Control, Corporate Risk Management, for Safeway Stores, Inc., Pleasanton, CA.

Commenter No. 4:

Patrick Singh, Director of Safety and Loss Control, Corporate Risk Management, for Safeway Stores, Inc., supplemented his written comments by stating the following:

- The proposal is vague and confusing, in regards to the definitions of the terms “bakery”, “inspection”, and “safety device”.
- The proposal would expose employees to unnecessary risk of electrical hazards.
- The bi-weekly inspections would be unnecessarily burdensome to employers.
- The proposed standard would not increase workplace safety.
- The counterpart federal standard is based on an outdated consensus standard and was not intended to regulate bakery ovens in retail settings, but to regulate ovens in commercial bakeries.

Mr. Singh recommended changing the proposal to be more consistent with National Fire Protection Agency (NFPA) 86 which requires safety devices on bakery ovens to be inspected by a qualified person at least once a year.

Response to Commenter No. 4:

See the Board’s Response to Commenter No. 1.

Commenter No. 5:

Mr. Willie Washington, Occupational Safety and Health Standards Board Member.

Mr. Washington expressed concern that small retail facilities, such as fast food restaurants and grocery stores, would be defined as bakeries under the proposal and asked whether there had been stakeholder input in the development of the proposal. Mr. Washington also asked whether the American Retail Bakers’ Association represented both commercial bakeries and bakery ovens in small retail facilities, such as fast food restaurants and grocery stores.

Response to Commenter No. 5:

The Board recognizes that a representative from the American Retail Bakers’ Association (ARBA) was contacted by staff during the formation of the language, and no objections or concerns were expressed about the proposal at that time. While the federal standard does not define “bakery,” that term is defined in the Standard Industrial Classification Codes. The Board also notes that the federal and state standard is specific to bakery ovens regardless of the industry they are used in. It is the Board’s understanding that the ARBA represents employers who operate bakery ovens in small retail facilities. Because the modified proposal adopts the scope of the NFPA 86 including a minimum input of 150,000 Btu/hr (44 kW) by reference, smaller

ovens operated in retail facilities would be exempt from these requirements. Smaller ovens and related equipment/machinery are covered by the requirements of GISO, Section 3203, Injury and Illness Prevention Program and Section 3328 which addresses the use and maintenance of equipment/machinery.

Commenter No. 6:

Mr. Bill Jackson, Occupational Safety and Health Standards Board Member.

Mr. Jackson expressed concern about properly defining the terms in the standard and the oven manufacturers' required inspections. He also expressed concern that the standard addresses ovens that may have been manufactured by a company no longer in business and ovens made by foreign manufacturers.

Response to Commenter No. 6:

The Board agrees with Mr. Jackson and has modified the proposal to provide the necessary guidance for those employers that have such ovens by referencing the performance standards in the NFPA 86-2007 and NFPA 54-2006 standards which clearly identify what ovens are regulated and what safety devices and oven components require an inspection and testing and at what frequency.

Comment No. 7:

Mr. John MacLeod, Chairman, Occupational Safety and Health Standards Board Member.

Chairman MacLeod asked whether the Division request that prompted the development of the proposal was based on a citable incident or whether it was simply a matter of making the regulation at least as effective as the counterpart federal regulation.

Response to Commenter No. 7:

The Board notes testimony by Mr. Larry McCune, representing the Division of Occupational Safety and Health, who responded that the proposal originated from field inspections in which the Division was performing "sweeps" of bakeries and similar establishments. The Division inspectors determined that there was not an inspection requirement in California, as there is in the federal standard.