

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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SUMMARY
PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING

January 17, 2008
San Diego, California

I. PUBLIC MEETING

A. CALL TO ORDER AND INTRODUCTIONS

Chair MacLeod called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:00 a.m., January 17, 2008, in Room 310 of the County Administration Center in San Diego, California.

ATTENDANCE

Board Members Present

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

Board Members Absent

Jose Moreno

Board Staff

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

Division of Occupational Safety and Health

Larry McCune, Principal Safety Engineer

Others present

Larry Pena, Southern California Edison
Anne Katten, California Rural Legal Assistance
Harvey Porter, Continental Maritime of San Diego
Gary Searer, WJE
Peter Kuchinsky, ACWA/SPIA
Kevin Thompson, Cal-OSHA Report
George Bone, SASCO Electrical Construction
Allen Sloan, IBEW Local #11
Elizabeth Treanor, Phylmar Regulatory Round Table

Wendy Holt, AMPTP
Mariano Kramer, DOSH
Laura Sheppard, Center for Public Interest Law
Tina Kulinovich, Federal OSHA
Dan Leacox, Greenberg Traurig
Guy Prescott, Operating Engineers Local #3
Kevin Bland, CFCA & RCA
Lynne Formigli, California Teachers Association
Craig Caulkins, C.S. Caulkins Company

B. OPENING COMMENTS

Chair MacLeod 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.

Chair MacLeod suggested deferring any public meeting comments regarding Title 8 reform until the Business Meeting in order to consolidate the staff briefing, the public comments, and the Board discussion, and the Board concurred.

Chair MacLeod then opened the floor for public comment.

Gary Robert Searer, Licensed Civil Engineer and Licensed Structural Engineer with WJE Associates, Inc., spoke in opposition to the proposed denial of OSHSB Petition File No. 498, regarding inspection and load testing of window cleaning load sustaining devices and equipment. Mr. Searer stated that testing to 50% of the required minimum load reveals absolutely nothing about whether the item being tested can withstand the full minimum required load. He compared it to test-driving a used car only at surface street speeds and surmising from that that the vehicle would perform adequately at highway speeds.

Mr. Rank asked whether, in his comments, Mr. Searer was referring to testing to yield or failure or testing within the modulus of elasticity where there is repeated loading without failure.

Mr. Searer responded that when WJE tests, they monitor deflection. They test at least twice to ensure that the results are repeatable and that the item being tested remains elastic. If yield or failure occurs at substantially below the minimum required load, that would indicate a potential deficiency. They only test to failure if the device fails prematurely. If the device is tested to 100% of the minimum and it is behaving elastically, they stop the test.

Larry McCune asked how there is any recovery of the device being tested if it is tested to yield strength.

Mr. Searer responded that, based on instrumenting of the device while it is being tested, WJE can determine whether or not the device has been damaged by any of the tests. There are portions, such as tie-back anchors, that are required to remain elastic under the 100% minimum load. The only way to certify that the device meets those requirements and will experience no damage under the full load is to load it to the full load.

Mr. McCune then stated that there are other test loads included in the Safety Orders that are used to verify integrity of equipment, such as chain slings that are tested to twice the working load, which is substantially less than the breaking strength of the chain. He further stated that it appeared that test loads were being confused with working loads and the ultimate strength of materials. If materials are designed to an ultimate strength, it does not make sense to test to the ultimate strength and structurally damage the material.

Chair MacLeod asked whether there are national consensus standards, either American National Standards Institute (ANSI) or American Society of Mechanical Engineers (ASME), that address load testing requirements and if so, whether California is compliant with those standards.

Mr. Searer responded that he did not know. He stated that he was familiar with the Association of the Wall and Ceiling Industry (AWCI) standard but not the ANSI standard.

Mr. Jackson asked whether the testing requirement under discussion was 50% of the rated capacity of the anchorages and the tie-backs. He further asked if there was a safety factor built into the rated capacity—whether there is a point at which the rated capacity is less than the design capacity.

Mr. Searer responded that the rated load for a davit may be 1,000 pounds, and the requirement is that the davit and all its connections must be able to take four times that rated load. There are also other limits to what loads can be put on that davit. For instance, the hoist is allowed to develop three times the rated load before it stalls. That is not a design standard, that is a performance standard.

Dr. Frisch stated that meetings of the window cleaning safety committee of ANSI and ASME are scheduled in March and/or April. He asked whether Mr. Searer saw a reason for California to “get out in front” of these organizations with a standard that may be different than what ANSI and ASME are calling for on a national or international basis; and if so, why he felt that way.

Mr. Searer responded that the International Window Cleaners Association (IWCA) standard was written without WJE’s input and has only one licensed civil engineer on its panel. Therefore, although that standard is written in such a way that the equipment is tested to 50%, that is the opinion of only one engineer. He further stated that just because there is a standard on the books does not mean that that standard is nationally accepted. WJE tests to 100% of the minimum load because that is the only way, statistically, structurally, and analytically, to determine if something can meet 100% of the minimum load.

Mr. Kastorff asked whether there is a federal standard that addresses this issue.

Mr. Searer responded that there is not a federal standard. Federal OSHA does not limit the load tests.

Mr. Kastorff asked what WJE does in other states; he asked whether WJE tests to 50% or 100% of the rated load, and whether or not the roofs were damaged.

Mr. Searer responded that WJE tests to 100% in other states. He stated that when WJE tests, they warn the client that the roof could be damaged, and if the roof is damaged it needs to be repaired. He stated that he would not put potential roof damage ahead of potential life safety issues.

Mr. Rank stated that shackles, wire rope, and wire rope clips are designed with a 5:1 safety factor. He asked whether WJE's 100% test of the minimum is within the modulus of elasticity where there can be repeated loading without damage.

Mr. Searer responded that WJE monitors the components being tested to ensure that they remain linear, elastic, and without damage. If they become damaged, WJE repairs them. He stated that WJE tests to four times the rated load, or in the case of tie-back anchors, 5,000 pounds per person. They do not test beyond that because there is no reason to do so.

Chair MacLeod asked whether the upcoming ANSI and ASME meetings would be discussing the load testing of this equipment.

Mr. Searer responded that WJE had submitted their comments regarding this provision approximately 18 months ago but had not yet heard whether or not there had been a decision. WJE is planning to attend the March meeting, but Mr. Searer was not certain as to whether load testing would be on the agenda.

Craig Caulkins, Principal Engineer for C.S. Caulkins Company, spoke in support of the proposed denial of OSHSB Petition File No. 498 and in response to Mr. Searer's comments. He stated that there are two national committees that promulgate the standards for window cleaning equipment for the United States. These are the IWCA I-14.1 standard, which he vice-chairs, and the ASME A120.1 standard for equipment, which he also vice-chairs. He stated that it appeared that Mr. Searer, as well as many other eminently qualified engineers nationwide, was confused, and Mr. Caulkins hoped to clear up that confusion. The Fall Protection Code promulgated by the American Society of Safety Engineers (ASSE) is considered the "Bible" concerning fall protection and life safety as it relates to fall protection. In that Code, there are long-established testing criteria for items such as full-body harnesses and lanyards, and it mentions anchorages on the roof as well. The IWCA I-14.1 and the ASME A120.1 are required to consider a minimum arresting force of 1,800 pounds per person on an anchorage or any part of the fall arrest system, which is twice the 900 pounds at which a person can be harmed or killed in a fall.

The confusion occurs when it comes to safety factors. Cal OSHA requires that anchorages are tested at 2,500 pounds, which exceeds the 1,800 pound maximum that the anchor would ever experience. When the manufacturers of the full-body harnesses and the lanyards perform their tests, the equivalent static load on these devices is approximately 900 pounds. Cal OSHA has mandated that the equipment be good for at least 5,000 pounds. That is not the minimum that a man will put on the anchor, that figure includes a built-in safety factor. Federal OSHA, IWCA, and ASME A120.1 all use 5,000 pounds. That is a recognized number for which the anchors are designed, but it includes a safety factor.

When testing an anchor on a roof, a line is strung between two anchors with a manual hoist between them. Attached to this is a clock-like or digital readout device known as a tensiometer, which indicates the load being put on the line, which in turn goes back to the anchor. However, the tensiometer is not a precise instrument. When the tester pulls the handle, the load goes up 10, 15, 20, or even 50 pounds at a time; with one pull it could go from 4,950 pounds to 5,025 pounds.

There is a clause in the ASSE Fall Protection Code that states that if one of these devices incurs a load through a fall arrest, it must be taken out of service. Therefore, if the fall arrest load maximum is 1,800 pounds, and a device is supposed to be taken out of service at 1,800 pounds, why would it be tested to 5,000 pounds? Every device tested under those conditions would have to be taken out of service. Every test prescribed by the ASSE Fall Protection Code is prototype testing—before production testing. There is no criteria for testing the equipment in the field, including the roof anchor itself.

Mr. Caulkins then stated that he would like to address the question of other of equipment on the roof. If the davit or the outrigger fails, the person anchored to them is going to fall. An outrigger is an L-shaped aluminum device, usually portable, that a window cleaner will move around on a rooftop to rig the building, and they come in pairs. A powered platform is suspended from the pair of davits. The davit engages the building in one spot. An outrigger is a similar device, except that it is a beam with a counterweight and a fulcrum. The beam extends out over the face of the building, and the same type of powered platform is suspended from it. There are code-prescribed safety factors of 4:1 for either the outrigger or the davit, meaning that the rated load of the hoisting unit that is being suspended from that outrigger or davit must be multiplied by a factor of four to determine how strong the davit needs to be.

Mr. Caulkins indicated that manufacturers of window cleaning equipment would be adamantly opposed to load testing their davits in the field to 4,000 pounds. Testing to such a load would potentially damage the equipment and void the manufacturer's warranty. It is in the interest of the building owner to keep the manufacturer's warranty in place; product liability does not expire.

Mr. Rank stated that, unless it had been changed, the ASSE Fall Protection Code did not address how to perform the math to determine a safety factor of 2:1 as opposed to 5,000 pounds per anchorage point. He asked whether one had to prove the 5,000 anchorage point or the safety factor of 2:1 and whether the ASSE Fall Protection Code provided the calculations to determine that safety factor.

Mr. Caulkins responded that the ASSE Fall Protection Code had been updated, but it does not provide the necessary calculations. The Code indicates that a qualified person must perform those calculations, and it defines "qualified person." That definition is somewhat different from that in Title 8, in that the person must possess a degree or certificate implying a professional knowledge and capacity, but it does not specify that the person must be a professional engineer.

Mr. Caulkins stated that he had neglected to mention wire ropes in his previous comments. In the window-cleaning industry, wire rope is required to have a 10:1 safety factor as opposed to a 5:1 safety factor. If the load on the rope is 1,000 pounds, the rope is required to have a 10,000 pound minimum breaking strength. No one suggests testing the wire rope over 10,000 pounds, because it might break. When testing the rope, it is tested to a point somewhat below its ultimate breaking strength, and that is the point of the regulation addressed by Petition No. 498. The point of the testing is not to exceed the ultimate capacity of the anchor, but to test it to some safety factor over and above its designed use.

Mr. Kastorff asked whether 900 pounds is the figure at which serious damage occurs to an individual who is falling and has been arrested by a belt system or harness.

Mr. Caulkins responded that 900 pounds is the theoretical load that would be imparted onto a human from a fall.

Mr. Kastorff asked where the 5,000 pound figure had come from, if twice 900 pounds is 1,800 pounds.

Mr. Caulkins responded that he did not know. He stated that it was a nice, round number that had been used for some time in promulgated standards.

Mr. Jackson stated that 5,000 is the big, bold, default number that is used in cases where the exact load is not known and an employee is going to be securing to an unknown anchorage, that anchorage must be capable of supporting 5,000 pounds per individual secured to it. However, the ASSE Fall Protection Code indicates that, with the correct engineering, two times the maximum anticipated load is all that is necessary.

Mr. Rank stated that the problem with the 5,000 pound requirement is that the diameter of the wire rope gets larger each time another person is added to the load, which is why the 2:1 safety factor is much easier to use.

Mr. Caulkins stated that the IWCA meeting is going to be held in Philadelphia in March. That is the committee to which WJE had submitted comments, and the reason that the IWCA has not responded is that they are waiting for the Board's petition decision. That could sway the IWCA, as they agree with the sentiments expressed in the proposed decision. This issue is not on the agenda for the ASME A120.1 committee, which is meeting in Las Vegas in April.

Chair MacLeod asked whether the IWCA would be discussing load testing at their meeting.

Mr. Caulkins responded that such a discussion was not on the agenda, but if the question came up, it would be addressed. He indicated that the IWCA felt that they owed WJE a response to their written letter, but that they were waiting to see how the Board decided on the petition.

Chair MacLeod asked whether the ASSE Fall Protection Code pertains to hoists and platforms, and Mr. Caulkins responded negatively.

Chair MacLeod asked whether load testing for window cleaning systems was mandated in any of the national codes.

Mr. Caulkins responded in the negative and stated that he could not think of any other part of a building that is required to be load tested after it is constructed. If a building is designed to support a certain load per square foot on a floor, no one comes back ten years later and load tests the floor to determine that it can support that load. It makes more sense to monitor the equipment in an ongoing manner, checking for cracks or other signs of wear each time it is used.

California was the first state to promulgate safety standards for window cleaners, going as far back as 1917.

Chair MacLeod asked whether it would make more sense for the Board to wait for the IWCA's response to WJE to make a decision regarding Petition No. 498, as the IWCA consists of professional engineers who are more familiar with the relevant issues than the Board members.

Mr. Caulkins responded that he worked closely with Larry McCune while the Division's evaluation of the petition was being written. He indicated that, in a sense, his opinions have already been expressed in the Division's evaluation. He then stated that if the Board felt more comfortable waiting for the IWCA to respond formally to WJE, he respected that, and the IWCA would be responding in the next month or two.

C. ADJOURNMENT

With no further comments, Chair MacLeod adjourned the Public Meeting at 11:00 a.m.

II. PUBLIC HEARING

A. PUBLIC HEARING ITEMS

Chair MacLeod called the Public Hearing of the Occupational Safety and Health Standards Board (Board) to order at 11:00 a.m., January 17, 2008, in Room 310 of the County Administration Center in San Diego, California.

Chair MacLeod opened the Public Hearing and introduced the first item on the agenda.

1. TITLE 8: **LOW-VOLTAGE ELECTRICAL SAFETY ORDERS**
 Chapter 4, Subchapter 5
 Electrical Safety Orders, Group 1
 Low-Voltage Electrical Safety Orders

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

Peter Kuchinsky, Senior Risk Management Consultant with Association of California Water Agencies Joint Powers Insurance Authority (ACWA/JPIA), asked for a definition of the term "qualified person," in order provide guidance to employers as to a minimum standard of training that determines a "qualified person."

Mr. McCune thanked Board staff for their work on the proposal, stating that it was an enormous task to sort out all of the existing regulations and to determine whether a California regulation is more or less effective than a federal regulation.

Chair MacLeod recognized Conrad Tolson for all of his work on the proposal.

Mr. McCune went on to state that one area of confusion in the proposal is in Section 2360.3, which requires ground fault circuit interrupters for construction light work. He indicated that there is a very similar standard in Section 2405.4, which is almost identical to 2360.3, but it is for temporary wiring. He suggested that the two be combined into one standard in order to avoid conflict as to whether the work being performed is construction light work or temporary wiring. He also stated that an existing state standard was inadvertently deleted and should be retained, indicating that he would discuss this with Board staff after the meeting.

Harvey Porter, Health and Safety Manager for Continental Maritime of San Diego, asked whether the requirement for a locking mechanism indicated in Section 2340.22(e) would “grandfather in” older equipment that did not have such a locking mechanism.

Dr. Frisch asked whether Board staff has received confirmation from federal OSHA that the proposal under review is at least as effective as the federal standard.

Mr. Manieri responded negatively.

Dr. Frisch asked whether the Board’s final vote on the proposal would be predicated on receiving such confirmation, and Mr. Manieri responded affirmatively. Dr. Frisch then asked that staff convey to federal OSHA the urgency in getting that confirmation so that the Board could adopt the proposal in a timely manner.

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Chapter 4, Subchapter 7, Article 59
Sections 4297 and 4300 and
New Section 4300.1
Table Saws

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

Kevin Bland, representing the California Framing Contractors Association and the Residential Contractors Association, stated that he was also representing Mr. Bruce Wick of the California Professional Association of Specialty Contractors (CalPASC), who could not be present at the meeting. Mr. Bland spoke in support of the proposal with some minor, technical modifications. He addressed the definition of a “push stick” as indicated in Section 4297. The idea is to have a push stick that will keep the hand away from the saw when making certain cuts. The notch in the end of the stick, as required in the proposal, is not necessarily practical, and it is more practical for a planer than a table saw. Removing that requirement from the proposal would facilitate compliance and increase safety. Mr. Bland further stated that exchanging the word “blade” for the phrase “cutting tool” would serve to clarify the proposal for both the regulated public and the Division’s enforcement unit. He then stated that the phrase in paragraph (f) of Section 4300 that indicated that “a push stick of suitable design shall be provided and shall be

used” is redundant. The phrase “of suitable design” is an attempt to redefine a push stick, and it is unnecessary, as push stick is already defined in 4297. He stated that the exception for crosscutting, grooving, dadoing, and rabbeting is not entirely clear. It is not clear whether, in addition to the spreader, the exception also applies to the hood of the table saw for the type of non-through cuts mentioned in the exceptions.

Mr. Kastorff asked for a definition or clarification of a “safe distance” between the hands and the cutting tool, and Mr. Jackson and Mr. Rank supported that request.

B. ADJOURNMENT

Chair MacLeod adjourned the Public Hearing at 11:20 a.m.

III. BUSINESS MEETING

Chair MacLeod called the Business Meeting of the Occupational Safety and Health Standards Board (Board) to order at 11:20 a.m., January 17, 2008, in Room 310 of the County Administration Center in San Diego, California.

A. PROPOSED SAFETY ORDERS FOR ADOPTION

1. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
Chapter 7, Subchapter 4, Article 11
Section 1597
Jobsite Vehicles—Scope and Application
(Heard at the November 15, 2007, Public Hearing)

Mr. Manieri summarized the history and purpose of the proposal, stating that no comments had been received in response to a 15-day Notification of Proposed Modification, and he indicated that it was now ready for the Board’s adoption.

MOTION

A motion was made by Mr. Kastorff and seconded by Mr. Rank that the Board adopt the proposed safety order.

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

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Chapter 4, Subchapter 7, Article 2
Section 3228
Number of Exits
(Heard at the October 18, 2007, Public Hearing)

Mr. Manieri summarized the history and purpose of the proposal, stating that no comments had been received in response to a 15-day Notification of Proposed Modification, and he asked that the Board adopt the proposal as written.

MOTION

A motion was made by Mr. Jackson and seconded by Dr. Frisch that the Board adopt the proposed safety order.

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

3. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Chapter 4, Subchapter 7, Article 4
Section 3270
Safe Access to Elevated Locations
(Heard at the November 15, 2007, Public Hearing)

Mr. Manieri summarized the history and purpose of the proposal, stating that no modifications had been made as a result of comments received, and he asked that the Board adopt the proposal as written.

MOTION

A motion was made by Dr. Frisch and seconded by Mr. Kastorff that the Board adopt the proposed safety order.

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

B. PROPOSED PETITION DECISION FOR ADOPTION

1. Petition File No. 498
Howard J. Hill, et. al.

Mr. Manieri summarized the history and purpose of the petition and asked that the Board adopt the proposed petition decision.

MOTION

A motion was made by Mr. Jackson and seconded by Dr. Frisch to adopt the petition decision as proposed, which called for denial of the petition.

Dr. Frisch asked whether someone from the State of California would be attending the two meetings in March and April regarding window cleaning equipment, and Mr. McCune indicated that he was a member of both committees and would be attending both meetings.

Dr. Frisch asked that if those meetings resulted in positions that differ from the Board’s

decision on the petition, Mr. McCune inform the Board staff.

Mr. Rank commented that the davits can be tested in the shop in which they are manufactured to meet any type of criteria. He indicated that the concern arises when determining whether or not the davit is adequately welded to the American Welding Society (AWS) 1.1 or 1.8 standards and whether it is being welded to the building by a certified welder. Once the davits are welded to the roof and covered with roofing material, there is no way to perform a visual inspection of the weld. He stated that he understood the Division's position against destructive testing of equipment that is already on the building due to the potential for damaging the equipment to the point where it could fail at a future date. However, that problem would be minimized or eliminated if the davits are installed and the welds inspected by certified welders.

Dr. Frisch compared the procedure discussed in the petition to the building of a house, where everything is tested to ensure that it functions as intended prior to the completion of construction on the presumption that it is going to function as intended once it is in place, indicating that any testing done after construction is completed would be less strenuous than that performed prior to that time. He asked Mr. Rank whether that was a fair analysis.

Mr. Rank responded affirmatively, stating that there should be requirements in the bid documents and contracts that all welding must be performed in concordance with the AWS standards. That ensures that the expectation of the welding throughout the entire building.

Dr. Frisch asked for clarification that the critical point was that the testing be performed prior to the completion of construction and not after the fact. Mr. Rank responded affirmatively.

Chair MacLeod stated that the Board and Board staff relies very heavily on the national consensus standards in order to formulate occupational safety and health rules and regulations in California. He indicated that both the Division and staff evaluations of the petition refer to the two upcoming committee meetings. He expressed his impression that load testing is not really going to be discussed at these meetings, and he asked whether the issue should be raised at these meetings, indicating his belief that those two meetings are the proper forum in which to address the issue.

Mr. McCune responded that the IWCA was in the process of responding to the WJE letter.

Dr. Frisch indicated his agreement with Chair MacLeod's comments and asked Mr. McCune to convey the information that the Board relies on these bodies to provide engineering advice on these issues, and IWCA should not be waiting for the Board to act before they make their decision on the WJE letter.

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

C. PROPOSED VARIANCE DECISIONS FOR ADOPTION

Mr. Beales summarized the ten proposed variance decisions for adoption and asked that the Board approve the consent calendar and thereby adopt the proposed decisions as written.

MOTION

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

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

D. TITLE 8 REFORM PROJECT

Mr. Boersma summarized the history and purpose of the project, indicating that the consensus of the advisory committee convened in September 2007 was to support the creation of a comprehensive index and updating the graphics throughout Title 8. Mr. Boersma asked that the Board provide guidance regarding the future course of the rulemakings already noticed as well as the remaining reform elements.

Chair MacLeod then reopened the Public Meeting to allow for public comment regarding the project.

The following commenters urged the Board to move forward only with the creation of a comprehensive index and updates of the graphics:

- Elizabeth Treanor, Director of the Phylmar Regulatory Round Table.
- Guy Prescott, Director of Safety for Operating Engineers Local 3. Mr. Prescott stated that Mr. Boersma's presentation outlined a somewhat different outcome from the September advisory committee meeting than he remembered. He stated that he had not received the minutes of that meeting until recently from another advisory committee member, not from Board staff, and he stated that the letter had not been sent to the advisory committee members.
- Anne Katten of California Rural Legal Assistance (CRLA). Ms. Katten also indicated that reorganization of the Agricultural Safety Orders is unnecessary, stating that the agricultural industry in California did not want to serve as a test case for unintended consequences. She indicated that the reorganization of the Agricultural Safety Orders included substantive changes in field sanitation, the illness and injury prevention program, and the application of machinery maintenance and lock-out tag-out regulations.
- Kevin Bland, representing the California Framing Contractors Association, the Residential Contractors Association, CalPASC, and the California Chamber of Commerce. Mr. Bland referred to the different reference books written by private companies for different industries, such as construction, which have more comprehensive indexes and better graphics and cross-referencing than Title 8, and he suggested that those could be used as a reference for the Title 8 index.
- Vicky Heza, Deputy Chief of Enforcement with the Division of Occupational Safety and Health. Ms. Heza also suggested the creation of a web-based search engine for Title 8.

Dr. Frisch asked Mr. Bland whether he saw value in proceeding with the comprehensive index, given that there are commercially available reference materials and in light of the state's ongoing budget crisis.

Mr. Bland responded that he still saw value in the project, as the commercially available references are expensive, and creating a comprehensive index with cross references and perhaps a web-based search Title 8 search engine would be available more widely.

Mr. Washington stated his impression from the comments received was that the Board should move ahead with the creation of the comprehensive index with cross references and updated graphics and table the other Title 8 reform elements. He asked whether allowing advisory committee members to bring knowledge gained from commercially available references would be a form of plagiarism.

Mr. Beales responded that he was uncertain as to whether or not these products are copyrighted, but the product is available to the public for reference. Duplicating the work may well be contrary to copyrights, however.

Mr. Jackson expressed his agreement with the commenters that a table of contents and an index is something that has been needed for at least 30 years. He asked who the custodian of the index is as it exists, online for example, in order to ensure that the end product is accessible by the regulated community. He stated that building an index is a good tool, but expressed concern that it may be outside the scope of the Board staff. He stated that the solution may be an electronic solution and wanted to ensure that the Board was using the right tool for the job.

Mr. Kastorff expressed certainty that there is an electronic tool that will create an index, stating that he had seen depositions in which every word in the deposition is indexed. He stated that it was probably an insignificant expense.

Mr. Jackson asked whether the index, as it exists today, is in the Board's purview. He asked whether the Board regulates the index and who owns the index and the table of contents.

A response was that West Group creates the index and in cooperation with law offices throughout the state.

Mr. Jackson stated that part of the problem may be that the index is not the Board's work product and exists outside the regulations that the Board has adopted. He was unable to remember ever taking testimony from anybody regarding what the index should say or what the table of contents should say.

Chair MacLeod responded that that was true, but that the Board had heard, when he was the Executive Officer, from the regulated public who desperately wanted these changes. He stated that that was no longer the case, but the Board was hearing from some of the same organizations that now do not want the project to move forward as originally designed. He stated that these were really administrative matters, rather than rulemaking proposals that are ordinarily sent to advisory committees for work. He indicated that the Board opted, in this case, to convene

advisory committees because the scope of the project was so far-reaching, and that those advisory committees had reached consensus to move forward with the reorganization of Title 8. He stated that this project was conceived under a Republican administration, the ideas were developed, and it was funded under a Democratic administration through the budget process. It had legislative support, but time has changed people's feelings regarding the project. He stated that the original idea was that if one looked at the printed version of Title 8, it did not make a lot of sense in terms of organization. Small employers, in particular, were virtually crippled because they did not have the time or the expertise to research their health and safety responsibilities to employees. He went on to state that although Title 8 is treated almost exclusively as an enforcement document, it is really designed for employers, and small employers do not come before the Board very often and lobby for what they want. The project was designed to better categorize regulations for future generations, whereby the regulations could be placed in Title 8 in a more realistic format. What the Board was hearing today was that due to the progress in technology and computers, the complete reformation was no longer necessary. He is not sure that that is completely true because, using that logic, the elevator safety orders could be placed over in pneumatics, and that would be okay because elevator manufacturers could find them. He stated that some manner of organization is necessary, and the idea for the project was to organize the regulations in such a way that regulations could be located by employers. He expressed his opinion that the reorganization is still an idea that has merit, but the Board cannot move forward with the project without the support of the regulated public.

Mr. Washington expressed his agreement with Chair MacLeod that the reorganization was a good idea at the time, but with the advance of computer database and search engine technology, it is now much easier to find what one is looking for. He stated that he was not hearing that the stakeholders want the project completely abandoned, but rather that they want it reprioritized.

Dr. Frisch stated that, setting aside the question of who is responsible for the index, the question is who is the best person or organization to know how to create it. When it comes to how to organize information and how to think about how to find information, the State Library and the librarians are the experts on how one goes about accessing information, and they are also some of the most knowledgeable people in terms of how the public are now accessing information. Technology has changed the way in which the public accesses information from the state. The Board should consult people in state government who are the most knowledgeable about how to access and index information. He asked Mr. Beales whether there was anything in statute or elsewhere that prevents the Board from using photographs as opposed to diagrams.

Mr. Beales responded that he knew of no legal reason that photographs could not be used.

Chair MacLeod stated that Mr. Boersma had researched this extensively, but he was unsure whether photographs could be used in Title 8.

Dr. Frisch stated that he had asked because he did not know whether it was because it had never been done or whether there was a reason not to do it. He stated that if it just that it has never been done before and it is technologically possible to do it, the use of photographs should be contemplated.

Mr. Rank expressed agreement with Dr. Frisch's comments regarding who has the experience to create the index. He stated that Mr. McCune had offered, at the advisory committee, to assist with the indexing to ensure that everything regarding a particular subject or search term was available. He expressed his opinion that the Division could be a good resource for Board staff to work with in the creation of an index. Mr. Rank went on to ask that Board staff mail the minutes and the cover letter to the members of the advisory committee members.

Chair MacLeod stated that the advisory committee roster may not be accurate. He indicated that there were more people at the meeting than are reflected on the attendance roster. He stated that there were at least ten people from the Division present, including the Chief, for various periods of time, and the roster reflects only 16 people. He expressed uncertainty that there was a representative advisory committee participating in the meeting if there were so many representatives from the Division.

Dr. Frisch stated that the inaccuracy in the roster was not completely the staff's responsibility. If one does not sign in for the meeting, then that name is not going to be reflected on the roster, and if the signature and contact information are illegible, there can be no guarantee that the mailing is going to be received. The responsibility lies with everyone to ensure that if they are attending the meeting, that they sign in.

Mr. Jackson stated that the Board had heard from stakeholders the importance of an index and updated graphics. He expressed his opinion that the other elements of the project have real potential value in the future. He indicated that some good things had come from going through Title 8 and getting the pieces together. He used the explosive safety orders as an example. In the past, they had been scattered throughout Title 8, there were some conflicting safety orders, and the idea of consolidating those safety orders took explosives from manufacture through use, transportation, storage, and disposal and put all of those safety orders in one section, making them very easy to find. He disagreed with Ms. Katten's comments about losing part of the Safety Orders. He expressed his belief that this project was not undertaken to lose anything but to make all of the applicable rules available to the stakeholders in that industry. He does not think an employer, an employee, or an employee's representative should have to go to four or five different parts of Title 8 to find the best way to protect their people, and there is some real value that can come from consolidating. There may be some duplication, but one should be able to find the safety orders for a particular industry in one place. He stated that he would "hate to see this Board abandon the idea of the cleaning up the mess that exists beyond just fixing the index." He stated that the creation of a comprehensive index is a stopgap measure until the orders can be consolidated. He stated that the Board should take the recommended steps of the creation of a comprehensive index and updating the graphics, but not abandon the reorganization entirely. He stated that once those two steps had been completed, Board staff should focus on what can be done to improve the organization of the rest of Title 8 so end users can find what they need to know.

Chairman MacLeod agreed with Mr. Jackson's comments. He stated that the question of who has the authority to create the index may have to be answered in a courtroom, but he was not sure. In terms of the Agricultural Safety Orders, he expressed his opinion that it is egregious that

the State of California does not have specific Agricultural Safety Orders for its workers. He stated that he did not understand unintended consequences as a rationale for not going forward with consolidating those safety orders. For the time being, however, he believes that the best way to proceed is to table them and work on the index. He also believes that, if an index is assembled, perhaps core rules could still be identified but not reordered through the indexing system.

Mr. Jackson stated that one of the things he had gleaned from this morning's testimony was that the broadly collected participants in the advisory committee were not all focused on one issue. There were many different stakeholders looking at their particular areas. He stated that gathering an industry specific advisory committee would be more beneficial when and if the time comes to reorganize the safety orders.

Chair MacLeod stated that, in the case of agriculture, an industry-specific advisory committee had been convened. He stated that agriculture, because of its unique nature, is a good example of why consolidation is necessary. He referred to the creation of the permanent heat illness prevention standard and how difficult it had been to develop language that would apply across the board to everybody. He stated that some of the industries regulated by the General Industry Safety Orders are so unique that it is almost impossible to develop language that applies to construction as well as agriculture, etc.

Mr. Jackson stated that that was part of the problem. If it is so difficult to write a regulation that applies to an industry's specific problem, then the industry is tasked with trying to figure out how to apply what the Board gives them, which is usually randomly applied. He stated that the regulations are so difficult to find before a catastrophe that causes enforcement. He does not think there are any regulations that do anybody any good after the fact. Discovering a particular regulation at the same time as one is issued a notice of penalty is too late. If an employer had had the regulation in hand in the first place, there was at least an opportunity to prevent the event.

Mr. Washington asked whether, if the Chairman was suggesting tabling most of the elements for the time being, he would provide instruction regarding how to move forward with the project.

Chair MacLeod responded with his understanding that the Board should move ahead with the indexing and the graphics at a minimum and table the other elements that had raised the concern of the stakeholders. He expressed his belief that the indexing and the graphics are within the Board's authority.

Mr. Jackson expressed certainty that the graphics are within the Board's authority because they are adopted as part of the rules.

Chair MacLeod stated that no one would change the index until the Board does.

Mr. Washington asked whether there is any other Title in the California Code of Regulations, such as an index, that is owned by someone other than the state.

Mr. Manieri responded that Barclays works for the state, not vice versa. He stated that he was not aware of anything that would preclude the Board from giving instruction to Barclays on how to reorganize or reinvent the index. He stated that he and Mr. Boersma had done some preliminary research and had not discovered anything that would be an obstacle to making substantive changes to the indexing system.

Dr. Frisch asked whether Chair MacLeod needed a motion on this item.

Mr. Beales responded that it was permissible to have a motion, but it is common practice for Board members, by voicing their opinions, to state a consensus for the guidance of staff. The agenda item states, "the staff requests the Board to provide guidance regarding the future course of this project." He stated that such guidance could be provided with or without a motion. He stated that the substantive guidance that seems to be requested is guidance as to which of the elements in the current Title 8 reform project should go forward at the present time. The indexing and the graphics are two of those elements, going ahead with the Agricultural Safety Orders that have already been noticed is another of those elements, and going ahead with the other reorganization matters are the balance of the elements. The request pursuant to the agenda item is that staff be given guidance as to how they should proceed with all of those matters. Whether the Board does that by polling the Board members and developing a consensus, which the Chairman could then restate, or by making a motion and taking a vote, either of those options are available to the Board.

Dr. Frisch expressed his impression is that the Board would like to see staff continue on the effort to complete the indexing and revamp the graphics, that that Board would like to defer other items that are not related to the Agricultural Safety Orders, but he had not heard a consensus regarding the Agricultural Safety Orders.

Chair MacLeod expressed his feeling that the Agricultural Safety Orders should be tabled until such time as there is support from the regulated community. He stated that the identification of core rules to see whether or not it is feasible to identify them and to somehow indicate within Title 8 that they are core rules without renumbering or reorganizing them would be useful. In that manner, the core rules at least would be identified in such a way to emphasize that they apply to all employers in the state.

Dr. Frisch stated that staff should be able to do that in conjunction with the creation of the index because the two should be tied together.

The Board's consensus, therefore, was for staff to proceed with the creation of a comprehensive index and update the graphics, tabling the other elements of the project until further notice.

Chair MacLeod stated that the next step should be a work plan outlining how staff plan to proceed.

Dr. Frisch suggested that staff come back to the Board with such a work plan at a future meeting, if that is feasible.

Chair MacLeod asked Ms. Hart how much time staff would need to develop a work plan and prepare it for presentation to the Board.

Ms. Hart responded that Mr. Boersma had made a lot of progress in identifying things that need to be done, but that it would take some more research to discover how much more needs to be done. In terms of developing the work plan, the Division has offered their assistance, so the staff would need to coordinate with the Division to get their commitment to moving forward with the index. She suggested that staff could present its work plan in March.

After some general discussion among the Board and staff, it was determined that the staff would present its work plan to the Board at the April meeting in Sacramento.

E. OTHER

1. Legislative Update

Mr. Beales stated that SB 772 regarding Lyme disease, in one of its earliest incarnations, would have stripped the Board of certain authority regarding employees and Lyme disease. That bill is still alive and was most recently amended on January 7, 2008. As of the most current version of that bill, the portions that impacted the Board's authority have been deleted. Another bill that was enacted last year, SB 76, was not a bill aimed at occupational safety health, but rather state financial matters, and one of its provisions affected the Division's handling of fees for inspections of elevators, aerial passenger tramways, and permanent amusement rides, and would determine what fund those fees would be applied to. Another bill which was not tracked last year, SB 107, regarding wave pools previously did not have any direct mention of occupational safety and health; it now contains a provision stating that "an emergency stop for the wave equipment shall be easily accessible to lifeguards and other pool officials, as required by the California Division of Occupational Safety and Health." Mr. Beales stated that he was not certain whether there is such a requirement or whether this bill, if enacted, would create a necessity to enact such a requirement. He concluded by stating that a pending bill, AB 1610, contains a provision that the California Law Revision Commission review all relevant state laws and regulations pertaining to refineries, including regulations of the Division of Occupational Safety and Health, meaning that if the study goes forward and a report is prepared and presented to the legislature, there could be some impact on future rulemakings.

2. Executive Officer's Report

Ms. Hart began by reviewing the budget situation. She stated that Victoria Bradshaw, Secretary of the Labor and Workforce Development Agency, had held a brief meeting the previous week regarding the budget. The Governor's proposed 2008-2009 budget requires a 10% General Fund cut for those agencies that are General Funded. This reduction applies to the Board, and the proposed budget eliminates the Staff Services Manager (SSM) position. She stated that the staff relies on that position, and they were fighting to keep it, but they were unsuccessful. She stated that staff is working with the Department on all budget-related matters and will continue to do so. For this year, the Department of Industrial Relations has temporarily placed a suspension on all hiring and expenditures for the time being. Therefore, the Board will not be hiring for any vacant positions or making any major expenditures without express permission to do so. Interim procedures have been established for critical purchases and hires, but until the Department is confident that all fiscal obligations will be met, they have asked for the Board's assistance with this, and the Board would provide such assistance.

Dr. Frisch asked what constitutes a significant expenditure.

Ms. Hart responded that the Department is allowing anything under \$3,000. Anything unusual or that is not absolutely necessary to continuing business will be evaluated.

Chair MacLeod asked whether there was an automatic cut on all unfilled positions that resulted in the loss of the SSM position.

Ms. Hart responded that that position was the only real vacancy at the Board at the time. The Board did receive with the current budget a Senior Safety Engineer position, which was vacant and established for a purpose. Tom Mitchell has since been placed in that position, so there is a Senior Industrial Hygienist position vacant. She expressed her opinion that the decision for the SSM position to be eliminated was made early on, prior to her return to staff. She expressed confidence that there would be an SSM position available again, but she did not know when.

She then reviewed the summary of the work performed by Board staff in the previous calendar year, which was provided to the Board in their packets for the meeting. She stated that the numbers for 2007 were very similar to those in 2006, except for the substantial increase in variance applications, which is due to the large number of elevator variance applications received. Of the 284 variances docketed in 2007, 250 of them were elevator-related.

Dr. Frisch asked how many variance hearings were held in 2007.

Ms. Hart responded that Board staff hold at least one variance hearing per month and sometimes more.

Mr. Beales stated that, although he did not know the exact number, he thought there had been approximately 16 variance hearings in 2007, with several variance applications being heard at each.

Ms. Hart then went on to the 2008 Rulemaking Calendar, stating that Board staff has an obligation to submit to the Office of Administrative Law (OAL) each year a rulemaking calendar for that year. The 2008 calendar is due to OAL by the end of February, and she proposed to send it to the Department of Industrial Relations for approval by the end of January. She summarized that although it was an ambitious schedule, the staff is working very hard to complete as many of the listed projects as possible.

Dr. Frisch asked that the advisory committee and other rulemaking activity resulting from Petition File No. 494, regarding roll-over protection for riding lawnmowers, be moved from the reserve list to the active list.

Ms. Hart thanked Dr. Frisch for his input, stating that the staff was looking for guidance from the Board if there were projects that were important to the Board members and what they expect to see from Board staff. She stated, however, that the Board and staff have to be aware of the petitions that are running long. She stated that the staff is trying to do a “clean up” to ensure that they are current and have not overlooked any petition decisions that require action.

Mr. Rank asked that the rulemaking proposal regarding Section 1710(k)(2), Permanent Flooring—Skeleton Steel Construction in Tiered Buildings be expedited.

Ms. Hart responded that although it is listed toward the end of the rulemaking calendar, that rulemaking proposal was on her desk right now, and it would be noticed for public hearing in the near future. She went on to state that Board staff is not held to the calendar, the schedule is very fluid; the calendar is just the staff’s proposal for the year.

She then went on to summarize the Calendar of Activities, stating that staff is trying to have all the documents related to the upcoming advisory committee meetings online by the end of the week or early the next week.

3. Future Agenda Items

Ms. Hart reiterated that staff would present a work plan regarding the creation of an index and updated graphics for Title 8 in April.

Chair MacLeod asked Mr. Beales if there had been any further developments on the Fleetwood Mobile Homes variance matter, and Mr. Jackson asked whether the hearing panel had been selected.

Mr. Beales responded that the hearing panel would be selected according to the Board’s procedures and that evaluations were being prepared by both the Division and Board staff. He stated that there is a 60-day time limit for preparing those evaluations.

F. ADJOURNMENT

Chair MacLeod adjourned the Business Meeting at 1:02 p.m.