

DEPARTMENT OF INDUSTRIAL RELATIONS
Occupational Safety and Health Standards Board
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FINAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS

TITLE 8: 1630(a)
of the Construction Safety Orders

Elevators for Hoisting Workers

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

There are no modifications to the information contained in the Initial Statement of Reasons.

Summary of and Responses to Written and Oral Comments:

I. Written Comments

Bruce Wick, Director of Risk Management, California Professional Association of Specialty Contractors, by email dated March 5, 2020.

Comment:

Mr. Wick wrote in support of the proposed amendment to Section 1630(a). He stated that the proposal provides important and potentially life-saving support of construction workers, especially those in emergency situations.

Response:

The Board thanks Mr. Wick for his comment and participation in the Board's rulemaking process.

Donald A. Zampa, President, District Council of Iron Workers of the State of California and Vicinity and Greg McClelland, Executive Director, Western Steel Council, by letter dated March 12, 2020.

Comment:

Mr. Zampa and Mr. McClelland urged the Board to adopt the amendment due to an Appeals Board Decision After Reconsideration (DAR) from inspection numbers 1180499, 1192145 and 1205214, which negated decades of custom and practice and Cal/OSHA safety enforcement regarding the proper time to install construction personnel hoists. They commented that there will be no overall increased fiscal cost associated with the amendment and adopting the change will return the status quo that existed prior to the DAR. They also stated that having a CPH available for access to and exit from the site of an injury could make the difference between life and death, when minutes count in getting an injured worker off the site and into a hospital that can provide life-saving treatment.

Response:

The Board thanks Mr. Zampa and Mr. McClelland for their comments and participation in the Board's rulemaking process.

Nicole Marquez-Baker, Director of Policy and Legal Services, Worksafe, by letter dated March 16, 2020.

Comment:

Ms. Marquez-Baker shares the same comments as Mr. Zampa and Mr. McClelland.

Response:

The Board thanks Ms. Marquez-Baker for her comment and participation in the Board's rulemaking process.

Natalia Bautista, Reich, Adell & Cvitan, representing the International Union of Elevator Constructors, Local 18, by letter dated March 17, 2020.

Comment:

Ms. Bautista wrote in support of the amendment stating that, left unchecked, the current confusion brought about by the DAR has the effect of unnecessarily reducing the number of elevators required on construction projects which undermines worker safety and response times for medical emergencies on building sites.

She also pointed out that the proposed amendment is not a change in existing law, but rather a clarification of a longstanding rule and would greatly benefit worker safety and efficiency in building project completion.

Ms. Bautista further stated that a clearly defined rule allows for consistent compliance and enforcement, which results, in this case, in greater worker safety in the immediate and long-term with no projected significant economic impacts on businesses and governments.

Response:

The Board thanks Ms. Bautista for her comment and participation in the Board's rulemaking process.

Robbie Hunter, President, State Building and Construction Trades Council of California, by letter dated March 17, 2020.

Comment:

Mr. Hunter wrote in support of the amendment on behalf of the 450,000 construction workers and 68,300 apprentices represented by the member unions of the State Building and Construction Trades Council, AFL-CIO. He stated that it will remedy a situation that will create an unacceptable and life-threatening hazard to construction workers if not addressed and it will reestablish the status quo that existed before the DAR.

He stated that in his 35 years as an Ironworker he has seen workers on upper floors of a structure who have been impaled by rebar, been electrocuted, knocked unconscious with blood coming

from their ears, who have suffered heart attacks, and who have fallen from one floor to another. These are just a few examples of the truly life-threatening situations that construction workers and emergency personnel have been faced with on a building.

He further stated that having a CPH installed for access and exit from a construction site when there is an injury has saved and will save the lives of construction workers when minutes count in getting a worker to medical professionals or first responders up to the location of an injured worker.

Response:

The Board thanks Mr. Hunter for his comment and participation in the Board's rulemaking process.

Michael Walton, Secretary, Construction Employers' Association (CEA), by letter dated March 17, 2020.

Comment:

Mr. Walton stated that CEA does not want to eliminate the installation of the construction personnel elevator (CPE) nor is CEA advocating that the CPE be installed when the building reaches 60 feet. CEA is proposing two alternatives for regulatory language that is clear about when the elevator is to be installed, when it can come down, and to provide clarity to the construction industry employers about their duty to comply. CEA believes these alternatives take into account today's building environment and promotes a level playing field.

Response:

The purpose of this expedited rulemaking was limited in scope to clarify the definition of height as used in Section 1630(a) such that it is more clearly understood to require an elevator be installed in a building or structure that will ultimately be 60 feet at the time it reaches 36 feet. Board staff will be addressing a petition from the Division of Occupational Safety and Health (Division) regarding additional amendments to Section 1630 in the future. Mr. Walton is encouraged to participate in that rulemaking and may also petition the Board with proposed language.

The Board thanks Mr. Walton for his comment and participation in the Board's rulemaking process.

Amber Rose, Area Director, Occupational Safety and Health Administration, by letter dated April 6, 2020.

Comment:

Ms. Rose commented that the proposed standard does appear to be commensurate with the federal standard.

Response:

The Board thanks Ms. Rose for her comment and participation in the Board's rulemaking process.

II. Oral Comments

Oral comments received at the March 19, 2020, Public Hearing held by web-based teleconference.

Len Welsh, Representing Iron Workers and the Western Steel Council.

Comment:

Mr. Welsh stated the ironworkers and Western Steel Council fully support the adoption of this standard and thanked the Board for moving the amendment forward quickly. He stated that this long-standing requirement is at least three-decades old and was being uniformly complied with and enforced throughout California due to employers having to obtain a permit from Cal/OSHA. The Appeals Board decision came out of the blue and has caused a lot of confusion in the construction industry and needs to be solved as quickly as possible. He stated that there is no associated cost increase because it will just be maintaining the status quo. He said there are serious health concerns when there is no CPH available to move an injured party.

Response:

The Board thanks Mr. Welsh for his comment and participation in the Board's rulemaking process.

Frank Belio, International Union of Elevator Constructors, Local 18.

Comment:

Mr. Belio expressed his full support for the proposed revision. He and his 2,300 members, mechanics and apprentices believe it will increase safety for all construction workers.

Response:

The Board thanks Mr. Belio for his comment and participation in the Board's rulemaking process.

Greg McClelland, Western Steel Council.

Comment:

Mr. McClelland thanked the Board for putting together the web-based meeting in this unchartered territory. He said the amendment remains a high priority for his employers and members of the Iron Workers Union, and that in contrast to some comments heard at the July 2019 meeting that there was not a need to address this, and that there was not confusion, that he can provide lists of job sites where there was significant disruption and confusion regarding this long-standing standard that has worked effectively. He looks forward to hearing that this standard is approved.

Response:

The Board thanks Mr. McClelland for his comment and participation in the Board's rulemaking process.

Reese Fortin, Safety Manager, Sundt Construction.

Comment:

Ms. Fortin stated that her company is concerned that there might be a structure where a hoist cannot be installed at 36 feet and would like to see something in the standard allowing an engineer to do a review that the hoist can be installed when the engineer says it is feasible or practical to do so.

Response:

Please see the response to Mr. Walton's letter in the written comment section. The Board thanks Ms. Fortin for her comment and participation in the Board's rulemaking process.

Russell McCrary, California Ironworkers Employers Council District Council of Ironworkers.

Comment:

Mr. McCrary commented 36 feet works much better than 60 feet and he has noticed confusion on installation. He stated that that there have been buildings where a floor is at 58 feet so the elevator is not installed and on some projects, the building has reached 80 feet before they put in the CPH. He asked the Board to please adopt this standard. He also said everyone appreciates the speed with which this rulemaking has been done.

Response:

The Board thanks Mr. McCrary for his comment and participation in the Board's rulemaking process.

Barbara Burgel, Occupational Safety and Health Standards Board Member.

Comment:

Ms. Burgel commented that she supports the change but she was confused about how you would measure 36 feet below ground (regarding requiring a CPH when an excavation is 48 feet below ground).

Response:

The proposed language for this rulemaking is discrete and was designed to mimic what already exists in 1630(d). The language from 1630(d) was duplicated in 1630(a) to make clear that an elevator is required at the time a building reaches 36 feet in height. Board staff will be addressing a petition from the Division of Occupational Safety and Health (Division) regarding additional amendments to Section 1630 in the future. However, for this particular issue, it was limited to clarifying the height of a building to install an elevator.

The Board thanks Ms. Burgel for her comment and participation in the Board's rulemaking process.

ADDITIONAL DOCUMENTS RELIED UPON

None.

ADDITIONAL DOCUMENTS INCORPORATED BY REFERENCE

None.

DETERMINATION OF MANDATE

This standard does not impose a mandate on local agencies or school districts.

ALTERNATIVES CONSIDERED

The Board invited interested persons to present statements or arguments with respect to alternatives to the proposed standard. No alternative considered by the Board would be (1) more effective in carrying out the purpose for which the action is proposed; or (2) would be as effective as and less burdensome to affected private persons than the adopted action, or (3) would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Board staff were unable to come up with any alternatives or no alternatives were proposed by the public that would have the same desired regulatory effect.