

Occupational Safety and Health Standards Board

Public Meeting and Business Meeting

December 15, 2022

Rancho Cordova City Hall
Council Chambers
2729 Prospect Park Drive
Rancho Cordova, California

AND

Via teleconference / videoconference

Occupational Safety and Health Standards Board

Meeting Agenda

DEPARTMENT OF INDUSTRIAL RELATIONS
Occupational Safety and Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833
Tel: (916) 274-5721
www.dir.ca.gov/oshsb



MISSION STATEMENT

The mission of the Occupational Safety and Health Standards Board is to promote, adopt, and maintain reasonable and enforceable standards that will ensure a safe and healthful workplace for California workers.

AGENDA

PUBLIC MEETING AND BUSINESS MEETING
OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

December 15, 2022 at 10:00 a.m.

Attend the meeting in person:

Rancho Cordova City Hall
Council Chambers
2729 Prospect Park Drive
Rancho Cordova, CA 95670

Attend the meeting via Video-conference:

1. Go to www.webex.com
2. Select "Join"
3. Enter the meeting information: **268 984 996**
4. Enter your name and email address then click "Join Meeting"
5. Video-conference will be opened to the public at 9:50 a.m.

Attend the meeting via Teleconference:

1. Dial (844) 992-4726
2. When prompted, enter **268-984-996**
3. When prompted for an Attendee ID, press #
4. Teleconference will be opened to the public at 9:50 a.m.

Live video stream and audio stream (English and Spanish):

1. Go to <https://videobookcase.com/california/oshsb/>
2. Video stream and audio stream will launch as the meeting starts at 10:00 a.m.

Public Comment Queue:

Those attending the meeting in person will be added to the public comment queue on the day of the meeting.

Those attending the meeting remotely who wish to comment on agenda items may submit a request to be added to the public comment queue either in advance of or during the meeting through one of the following methods:

ONLINE: Provide your information through the online comment queue portal at <https://videobookcase.org/oshsb/public-comment-queue-form/>

PHONE: Call **510-868-2730** to access the automated comment queue voicemail and provide*: 1) your name as you would like it listed; 2) your affiliation or organization; and 3) the topic you would like to comment on.

**Information requested is voluntary and not required to address the Board.*

I. **CALL TO ORDER AND INTRODUCTIONS**

II. **PUBLIC MEETING (Open for Public Comment)**

This portion of the Public Meeting is open to any interested person to propose new or revised standards to the Board or to make any comment concerning occupational safety and health (Labor Code section 142.2). *The Board is not permitted to take action on items that are not on the noticed agenda, but may refer items to staff for future consideration.*

This portion of the meeting is also open to any person who wishes to address the Board on any item on today's Business Meeting Agenda (Government Code (GC) section 11125.7).

Any individual or group wishing to make a presentation during the Public Meeting is requested to contact Sarah Money, Executive Assistant, at (916) 274-5721 in advance of the meeting so that any logistical concerns can be addressed.

A. PUBLIC COMMENT

B. ADJOURNMENT OF THE PUBLIC MEETING

III. **BUSINESS MEETING – All matters on this Business Meeting agenda are subject to such discussion and action as the Board determines to be appropriate.**

The purpose of the Business Meeting is for the Board to conduct its monthly business.

A. PROPOSED SAFETY ORDER FOR ADOPTION

1. **TITLE 8: GENERAL INDUSTRY SAFETY ORDERS**
New sections 3205, 3205.1, 3205.2, and 3205.3
[COVID-19 Prevention – Non-Emergency Regulation](#)
(Heard at the September 15, 2022 Public Hearing)

B. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. [Consent Calendar](#)

C. REPORTS

1. Division Update
2. Legislative Update
3. Executive Officer's Report

D. NEW BUSINESS

1. Future Agenda Items

Although any Board Member may identify a topic of interest, the Board may not substantially discuss or take action on any matter raised during the meeting that is not included on this agenda, except to decide to place the matter on the agenda of a future meeting. (GC sections 11125 & 11125.7(a).).

E. CLOSED SESSION

Matters Pending Litigation

1. Western States Petroleum Association (WSPA) v. California Occupational Safety and Health Standards Board (OSHSB), et al. United States District Court (Eastern District of California) Case No. 2:19-CV-01270
2. WSPA v. OSHSB, et al., County of Sacramento, CA Superior Court Case No. 34-2019-00260210

Personnel

F. RETURN TO OPEN SESSION

1. Report from Closed Session

G. ADJOURNMENT OF THE BUSINESS MEETING

Next Meeting: January 19, 2023
Harris State Building
Auditorium
1515 Clay Street
Oakland, CA 94612
10:00 a.m.

CLOSED SESSION

1. If necessary, consideration of personnel matters. (GC section 11126(a)(1)).
2. If necessary, consideration of pending litigation pursuant to GC section 11126(e)(1).

PUBLIC COMMENT

Efforts will be made to accommodate each individual who has signed up to speak. However, given time constraints, there is no guarantee that all who have signed up will be able to address the State body.

Each speaker is invited to speak for up to two minutes. The Board Chair may extend the speaking time allotted where practicable.

The total time for public comment is 120 minutes, unless extended by the Board Chair.

The public can speak/participate at the meetings before items that involve decisions.

In addition to public comment during Public Hearings, the Occupational Safety and Health Standards Board (Board) affords an opportunity to members of the public to address the Board on items of interest that are either on the Business Meeting agenda, or within the Board's jurisdiction but are not on the noticed agenda, during the Public Meeting. The Board is not permitted to take action on items that are not on the noticed agenda, but may refer items to staff for future consideration. The Board reserves the right to limit the time for speakers

DISABILITY ACCOMMODATION NOTICE

Disability accommodation is available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the public hearings/meetings of the Occupational Safety and Health Standards Board should contact the Disability Accommodation Coordinator at (916) 274-5721 or the state-wide Disability Accommodation Coordinator at 1-866-326-1616 (toll free). The state-wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1-800-735-2929 (TTY) or 1-800-855-3000 (TTY-Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the meeting.

TRANSLATION

Requests for translation services should be made no later than five (5) days before the meeting.

NOTE: Written comments may be emailed directly to oshsb@dir.ca.gov no later than 5:00 p.m. on the Tuesday prior to a scheduled Board Meeting.

Under GC section 11123, subdivision (a), all meetings of a state body are open and public, and all persons are permitted to attend any meeting of a state body, except as otherwise provided in that article. The Board Chair may adopt reasonable time limits for public comments in order to ensure that the purpose of public discussion is carried out. (GC section 11125.7, subd. (b).)

Members of the public who wish to participate in the meeting may do so via livestream on our website at <https://videobookcase.com/california/oshsb/>. The video recording and transcript of this meeting will be posted on our website as soon as practicable.

For questions regarding this meeting, please call (916) 274-5721.

Occupational Safety and Health Standards Board

Meeting Notice

DEPARTMENT OF INDUSTRIAL RELATIONS
Occupational Safety and Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833
Tel: (916) 274-5721 Fax: (916) 274-5743
www.dir.ca.gov/oshsb



NOTICE OF PUBLIC MEETING AND BUSINESS MEETING
OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting and Business Meeting:

PUBLIC MEETING: On **December 15, 2022**, at 10:00 a.m.
in the Council Chambers of the Rancho Cordova City Hall
2729 Prospect Park Drive, Rancho Cordova, California

as well as via the following:

- Video-conference at www.webex.com (meeting ID 268 984 996)
- Teleconference at (844) 992-4726 (Access code 268 984 996)
- Live video stream and audio stream (English and Spanish) at <https://videobookcase.com/california/oshsb/>

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

BUSINESS MEETING: On **December 15, 2022**, at 10:00 a.m.
in the Council Chambers of the Rancho Cordova City Hall
2729 Prospect Park Drive, Rancho Cordova, California

as well as via the following:

- Video-conference at www.webex.com (meeting ID 268 984 996)
- Teleconference at (844) 992-4726 (Access code 268 984 996)
- Live video stream and audio stream (English and Spanish) at <https://videobookcase.com/california/oshsb/>

At the Business Meeting, the Board will conduct its monthly business.

DISABILITY ACCOMMODATION NOTICE: Disability accommodation is available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the public hearings/meetings of the Occupational Safety and Health Standards Board should contact the Disability Accommodation Coordinator at (916) 274-5721 or the state-wide Disability Accommodation Coordinator at 1-866-326-1616 (toll free). The state-wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1-800-735-2929 (TTY) or 1-800-855-3000 (TTY-Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a

sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

DAVE THOMAS, Chairman

Occupational Safety and Health Standards Board

Business Meeting

Occupational Safety and Health Standards Board

**Business Meeting
Standards for Adoption**

**COVID-19 Prevention -
Non-Emergency
Regulation**

MOVED, That the following resolution be adopted:

WHEREAS, On July 29, 2022, the Occupational Safety and Health Standards Board, pursuant to Government Code Section 11346.4, fixed the time and place for a Public Hearing to consider the revisions to Title 8, General Industry Safety Orders, New sections 3205, 3205.1, 3205.2, and 3205.3, COVID-19 Prevention – Non-Emergency Regulation.

WHEREAS, Such Public Hearing was held in person in Sacramento, California and via teleconference and videoconference, on September 15, 2022, and there are now before the Occupational Safety and Health Standards Board the proposed revisions to Title 8, General Industry Safety Orders, New sections 3205, 3205.1, 3205.2, and 3205.3, COVID-19 Prevention – Non-Emergency Regulation; therefore, be it

RESOLVED By the Occupational Safety and Health Standards Board in regular meeting held in person in Rancho Cordova, California and via teleconference and videoconference, on December 15, 2022, that the proposed revisions to Title 8, General Industry Safety Orders, New sections 3205, 3205.1, 3205.2, and 3205.3, COVID-19 Prevention – Non-Emergency Regulation, be adopted.

RESOLVED That the Occupational Safety and Health Standards Board shall file with the Office of Administrative Law a sufficient number of copies of said filing documents and a copy of the rulemaking file for use by the Office of Administrative Law.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

DAVE THOMAS, CHAIRMAN

Certified As A Regulation
Of the Occupational Safety
And Health Standards Board

BY: _____
Christina Shupe, Executive Officer

DATED: December 15, 2022

TITLE 8

GENERAL INDUSTRY SAFETY ORDERS

NEW SECTIONS 3205, 3205.1, 3205.2, AND 3205.3

**COVID-19 PREVENTION – NON-EMERGENCY
REGULATION**

HYPERLINKS TO RULEMAKING DOCUMENTS:

[TEXT FOR BOARD CONSIDERATION](#)

[FINAL STATEMENT OF REASONS](#)

[INITIAL STATEMENT OF REASONS](#)

**COVID-19 PREVENTION – NON-EMERGENCY
REGULATION**

[15-DAY NOTICE \(OCTOBER 14, 2022\)](#)

**COMMENT LETTERS RESPONDING TO
15-DAY NOTICE**

From: [Derek Davis](#)
To: [DIR OSHSB](#)
Subject: COVID Prevention
Date: Friday, October 14, 2022 3:03:48 PM

CAUTION: [External Email]

This email originated from outside of our DIR organization. Do not click links or open attachments unless you recognize the sender and know the content is expected and is safe. If in doubt reach out and check with the sender by phone.

**NOTICE OF PROPOSED MODIFICATIONS TO
CALIFORNIA CODE OF REGULATIONS**

TITLE 8: New Sections 3205, 3205.1, 3205.2, and 3205.3
of the General Industry Safety Orders

COVID-19 Prevention - Non-Emergency Regulation

Written comments on these modifications or documents relied upon
must be received by **5:00 p.m. on October 31, 2022** by mail, email or fax:

MAIL

Occupational Safety and Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833

Comments:

Please provide a better definition of Close Contact. If we are going to factor in space why is 400k chosen and no consideration is given to all the thousands of dollars in HVAC upgrades, enhanced filtration, and accelerated maintenance that employers are doing not taken into consideration. No other ATD is subject these requirements.

Regards,

Derek Davis, Manager III

Stanislaus County CEO/HR-Risk and Safety Unit

Phone: 209-525-5770

Email: davisder@stancounty.com

1010 10th St., Modesto, CA 95354

This communication contains legally privileged and confidential information sent solely for the use of the intended recipient, and the privilege is not waived by the receipt of this communication by an unintended and unauthorized recipient. If you are not the intended recipient of this communication you are not authorized to use it in any manner, and must either immediately destroy it or return it to the sender. Please notify the sender immediately by telephone at the Office of Stanislaus County CEO/HR Risk and Safety Unit (209-525-5770) if you received this communication in error.

From: [Hubbard, Bethany](#)
To: [DIR OSHSB](#)
Subject: COVID-19 Prevention - Non-Emergency Regulation
Date: Monday, October 17, 2022 8:30:17 AM

CAUTION: [External Email]

This email originated from outside of our DIR organization. Do not click links or open attachments unless you recognize the sender and know the content is expected and is safe. If in doubt reach out and check with the sender by phone.

Good morning,

I'm taking the opportunity to respond to the proposed changes to the Notice of Proposed Modifications to California Code of Regulations, Title 8: New Sections 3205, 3205.1, 3205.2, and 3205.3 of the General Industry Safety Orders.

Since Public Health has ceased contact tracing and recommends individuals take personal precaution against infection, employers should follow suite. Perhaps we could instead adopt more trainings on sanitizing work stations, living healthy lifestyles, monitoring symptoms, handwashing, following state Health Orders, other precautions against becoming infected, etc. Continuing to modify these regulations, such as by defining the cubic feet of airspace that individuals could have possibly been exposed in to a known case, will likely not mitigate the spread of COVID-19 at this point, and will only continue straining organizations in their attempt to meet these near impossible standards.

Sincerely,
Bethany

Bethany Hubbard
Human Resources Analyst
County of Humboldt
825 5th Street, Room 100
Eureka, CA 95501
Phone: (707) 268-3668
Fax: (707) 445-7285

This communication may contain information that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please note that any dissemination, distribution or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete it from his or her computer.

Please note that e-mail correspondence with the County of Humboldt, along with attachments, may be subject to the California Public Records Act, and therefore may be subject to disclosure unless otherwise exempt. The County of Humboldt shall not be responsible for any claims, losses or damages resulting from the use of digital data that may be contained in this e-mail.

From: [O'Hanen, Zachary](#)
To: [DIR OSHSB](#)
Subject: COVID-19 Prevention - Non-Emergency Regulation Comments
Date: Tuesday, October 25, 2022 3:00:42 PM
Attachments: [image001.png](#)
[COVID thoughts.docx](#)

CAUTION: [External Email]

This email originated from outside of our DIR organization. Do not click links or open attachments unless you recognize the sender and know the content is expected and is safe. If in doubt reach out and check with the sender by phone.

Please see attached comments.

Thank you,



Zachary O'Hanen
Director of Human Resources
County of Humboldt
825 Fifth Street, Suite 100
Eureka, CA 95501
Direct Line: 707.476.2350

This communication may contain information that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please note that any dissemination, distribution or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete it from his or her computer.

§3205(b)(1) – Close Contact Definition creates a ridiculous new level of analysis to determine if there has been a close contact. Now we have to determine the cubic feet of many more specific areas. This is increasing the level of work on an already resource strained workforce. We should be looking for ways to simplify and this clearly makes the process much more complicated.

§3205(e) – This is contact tracing. Please get rid of this. You are asking non-medical professionals to do contact tracing for a communicable disease. Public Health does not even do this any longer. This is an administrative nightmare and a waste of funds (some of which are public funds) and does not provide the outcome that is intended. If you want to protect workers, make masks mandatory. Having an administrative staff person do contact tracing does not decrease COVID exposure. By the time the notification goes out, it is already far too late. This strains agencies that have little resources. When the entire state of California has masks off, the governor is ending the state of emergency, and every other aspect of COVID is being relaxed, why does this additional responsibility remain on employers.

From: [Todd Zey](#)
To: [DIR OSHSB](#)
Subject: Two year COVID standard revision
Date: Tuesday, October 25, 2022 3:09:40 PM
Attachments: [image001.png](#)

CAUTION: [External Email]

This email originated from outside of our DIR organization. Do not click links or open attachments unless you recognize the sender and know the content is expected and is safe. If in doubt reach out and check with the sender by phone.

There is no need for this standard any longer. At this point there is no reason to treat this any differently than the flu and the excessive burden you are placing on employers is not warranted.



Todd Zey

Director of Safety
Cell: 206.992.7573

todd.zey@silverbayseafoods.com

From: [Ryan McNeil](#)
To: [DIR OSHSB](#)
Subject: Comments for COVID-19 Workplace Standards
Date: Wednesday, October 26, 2022 3:51:16 PM

CAUTION: [External Email]

This email originated from outside of our DIR organization. Do not click links or open attachments unless you recognize the sender and know the content is expected and is safe. If in doubt reach out and check with the sender by phone.

As Governor Newsom has announced he will end the COVID-19 state of emergency on February 28th, 2023, any updates to COVID-19 emergency temporary standards are obsolete and unnecessary after this date. The current Cal/OSHA proposal extends into 2025, long after the state has declared the emergency is over. With no emergency declared, common sense dictates there is no need for emergency standards. If COVID-19 is no longer considered a threat, non-emergency standards are likewise unnecessary.

I urge Cal/OSHA to end all COVID-19 related standards and restrictions, emergency and non-emergency related, coordinated with the end of the state-mandated emergency in February 2023.

Thank you,

Ryan McNeil

Halsey Electric, Inc.
5863 E. Brown Avenue
Fresno, CA 93727
(559) 291-6226

October 25, 2022

DEPARTMENT OF INDUSTRIAL RELATIONS
Occupational Safety and Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833

Fax (916) 274-5743

Re: Exclusion Pay/Covid 19

Gentlemen/Ladies:

This letter is to request that you do not extend the exclusion pay in connection with the Covid 19 protocols for the following reasons.

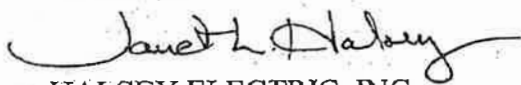
The pandemic effects are winding down, and the majority of the regulations in regard to Covid 19 were originally intended to be stop-gap emergency measures. I don't feel we have to continue in a state of emergency for an unlimited amount of time. We are still performing sanitation and safety measures in our business.

We are a contracting business, thus we only make money if we can charge out our hourly employees to our customers for work produced. To say the least, the pandemic has been a financial hardship not only for essential workers such as ourselves, but for every citizen in the State of California. There is only so much profit margin to be made, which is the only way we can afford to pay our employees, their benefits, all of the various insurances that we need to have, the overhead for our business, which includes things such as rent, vehicle fuel and maintenance, and the occasional purchase of a new vehicle, office personnel, equipment and supplies. These are only a drop in the bucket of expenses all businesses have to come up with out of their profit margins. No one hands us money to pay our bills for us.

If we are continually required to pay employees for Covid 19 protocols, both work related and social (the social contact we have absolutely no control over and should not be punished for) when they are not at work creating billable hours, it will not be long before we will be out of business, and the State of California will no longer receive not only the business income taxes, but the state taxes paid by the employees. It is just a simple economic fact, not just a whiny comment. This holds true for all businesses...the principle never changes.

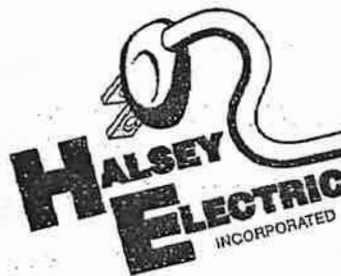
Please consider letting California businesses *stay* in business by eliminating the Exclusion Pay during your vote on the new revisions that will be in effect for two years. The financial consequences will be devastating if you do not. Thank you for your time.

Sincerely,



HALSEY ELECTRIC, INC.

By: Janet L Halsey, Secretary/Treasurer



5863 E Brown Avenue
Fresno, California 93727
Telephone (559) 291-6226
FAX (559) 292-2621

Lic. No. 569205

RECEIVED

via fax

OCT 25 2022

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

From: [Chan, Rick](#)
To: [DIR OSHSB](#)
Cc: [Chan, Rick](#)
Subject: Comments Regarding Proposed 8 CCR 3205-3205.3
Date: Friday, October 28, 2022 1:04:08 PM
Attachments: [image001.png](#)
[County of Orange Comments on Cal-OSHA Proposed COVID-19 Non-Emergency Standard.pdf](#)

CAUTION: [External Email]

This email originated from outside of our DIR organization. Do not click links or open attachments unless you recognize the sender and know the content is expected and is safe. If in doubt reach out and check with the sender by phone.

ATTN: Christina Shupe

Please accept the attached written comments from the County of Orange related to Cal/OSHA's proposed non-emergency regulation for COVID-19 Prevention (proposed Title 8, California Code of Regulations, Sections 3205, 3205.1, 3205.2 and 3205.3) published on October 14, 2022.

Thank you.

Rick Chan, CIH

County Safety Manager

CEO/Risk Management

400 W. Civic Center Drive, 5th Floor, Santa Ana, CA 92701/Desk 714.285.5535/Mobile 714.421.2602



 Please consider the environment before printing this email



**COUNTY OF ORANGE
COUNTY EXECUTIVE OFFICE**

RISK MANAGEMENT

MICHAEL ALIO

Director of Risk Management

- Safety & Loss Prevention
- Workers' Compensation Program Management
- Liability Claims Management Program
- Administration & Financial Management
- Contract Insurance Requirements
- Property Insurance Program
- ADA Title II Compliance

Telephone: (714) 285-5500
FAX: (714) 285-5599

October 28, 2022

Christina Shupe via email: oshsb@dir.ca.gov
Occupational Safety & Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833

SUBJECT: Proposed Title 8 California Code of Regulation, Sections 3205, 3205.1, 3205.2, and 3205.3 ("COVID-19 Prevention -- Non-Emergency Regulation")

The County of Orange does not believe that the proposed COVID-19 Prevention – Non-Emergency Regulation affords any greater worker protections than existing regulations impose and, therefore, urge the Occupational Safety & Health Standards Board not to adopt it.

Redundancy with Current Cal/OSHA Regulations

Title 8, California Code of Regulations, Section 3203 (Injury and Illness Prevention Program, or "IIPP") already adequately protects workers by requiring employers to identify and control known hazards in the workplace. Because of the State's declaration of a State of Emergency due to COVID-19 in March 2020, Cal/OSHA's implementation of a COVID-19 Prevention Emergency Temporary Standard (ETS) in November 2020, and the publishing of numerous orders, recommendations, and guidance through the Center for Disease Control (CDC) and the California Department of Public Health (CDPH), employers would be hard-pressed to argue that they are not acutely aware of this hazard potential and available control measures. Although we believe Cal/OSHA could have always used the IIPP regulation to enforce employee protections against COVID-19 infections, the actions of these last several years should make it even easier for Cal/OSHA to enforce such protections through its use of the IIPP regulation. Additionally, COVID-19 protections are already afforded under Title 8, California Code of Regulations, Section 5199 (Aerosol Transmissible Diseases, "ATD") for those workers covered by that standard.

CDPH Orders remain in place for high-hazard work settings for COVID-19 protections, and CDPH will continue to have the authority to issue new Orders in the future as deemed necessary.

Rigidity of the Proposed Non-Emergency Regulation

Having a prescriptive requirement could make protective measures less flexible and more burdensome on employers as science and knowledge change about the hazards of COVID-19 and the effectiveness of controls. For example, in the early versions of the ETS, protective measures such as surface disinfection and partitions/barriers were required, but later found not to have a demonstrable safety benefit for preventing transmission of COVID-19 in the workplace. However, employers continued to be burdened with this requirement until such time as the ETS was amended. With this proposed non-emergency regulation, if any of the proposed provisions are later

found ineffective or less effective than other options, employers would still be bound to these requirements until the standard ends under the sunset clause. If there are improved control measures specific to the workplace that are discovered, CDPH and CDC may not necessarily produce these in guidance and standards as quickly as they might for controls impacting the broader public. The rigidity of this proposed non-emergency COVID-19 standard may potentially work against protecting employees from COVID-19 in the workplace by limiting the ability of employers to implement changes through the IIPP as the science continues to evolve.

Lack of Demonstrable Benefit of the Non-Emergency Regulation

Employer compliance with the Cal/OSHA ETS has proven to be extremely burdensome without a clear demonstration of the effectiveness of those measures on reducing workplace exposures to COVID-19. Many critical infrastructure job classes have had to take on additional duties such as contact tracing, outbreak measures implementation, and workplace case reviews with little to no impactful demonstrated benefit. For the County of Orange, which serves the Orange County community with essential services, the burden of the ETS implementation on these critical infrastructure job classes effected a diversion of resources that otherwise may have been used to serve the public directly.

It is unclear whether the safety measures that were required in the ETS had an actual impact on reducing the volume of COVID-19 cases or severity of COVID-19 cases due to workplace exposures. Additionally, there is an absence of data comparing workplace (non-ATD type settings) COVID-19 cases to the general population (community spread). Even after vaccines were introduced and conditionally required to avoid wearing a face covering in the workplace, it is not evident whether that provision of the ETS actually contributed to a reduction in cases or whether a community acceptance and voluntary uptake of vaccines caused a decline in cases. Likewise, we have not been provided any evidence regarding the effectiveness of the measures in the proposed non-emergency regulation on reducing COVID-19 infections due to workplace exposures.

Governor's Termination of COVID-19 State of Emergency

The marked sunset date for the COVID-19 State of Emergency in California on February 28, 2023, suggests the level of urgency to act is no longer necessary. The ending of the State of Emergency suggests that the State will now consider COVID-19 to be more an endemic disease. We believe the IIPP regulation can be applied, as appropriate, for the control of endemic diseases in the workplace as it has in the past for chicken pox, measles etc.

Closing Remark

The County of Orange remains committed to the safety of its employees. However, we do not believe the proposed standard provides a demonstrated benefit towards that protection.

If you have any questions or would like to request clarification, I can be reached at 714-285-5535 or rick.chan@ocgov.com. Thank you for your consideration.

Regards,

A handwritten signature in black ink, appearing to read "Rick Chan".

Rick Chan, CIH
County Safety Manager

Copy: Kevin Pegg, County Industrial Hygienist, CEO/Risk Management
Laurie Shade, Senior Deputy County Counsel, Office of the Orange County Counsel
Jeff Griffin, HRS Operations Director, CEO/Human Resource Services

From: [Caruso, Joanne](#)
To: [DIR OSHSB](#)
Cc: [Conn, Rachel](#)
Subject: Comments to Draft COVID-19 Non-Emergency Regulation
Date: Friday, October 28, 2022 2:13:23 PM
Attachments: [2022-10-28 Comments to Draft COVID-19 Non-Emergency Regulation.pdf](#)

CAUTION: [External Email]

This email originated from outside of our DIR organization. Do not click links or open attachments unless you recognize the sender and know the content is expected and is safe. If in doubt reach out and check with the sender by phone.

Please see attached letter from Rachel Conn.

Thank you,



Joanne M. Caruso
Practice Assistant
jcaruso@nixonpeabody.com
T/ 415.984.8479 F/ 415.984.8300

Nixon Peabody LLP
One Embarcadero Center, 32nd Floor, San Francisco, CA 94111
nixonpeabody.com [@NixonPeabodyLLP](https://twitter.com/NixonPeabodyLLP)

This email message and any attachments are confidential and may be protected by the attorney/client or other applicable privileges. The information is intended to be conveyed only to the designated recipient(s) of the message. If you are not an intended recipient, please notify the sender immediately and delete the message from your email system. Unauthorized use, dissemination, distribution or reproduction of this message by other than the intended recipient is strictly prohibited and may be unlawful. Thank you.



Nixon Peabody LLP
One Embarcadero Center, 32nd Floor
San Francisco, CA 94111

Rachel L. Conn
Partner

T / 415.984.8216
F / 855.887.8999
rconn@nixonpeabody.com

October 28, 2022

Via e-mail-oshsb@dir.ca.gov

Occupational Safety and Health Standards Board (OSHSB)
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833

RE: Comments to Draft COVID-19 Non-Emergency Regulation

Dear OSHSB:

My firm represents many California employers who have expressed a variety of concerns over the additional revisions to the proposed COVID-19 Non-Emergency Regulation.

Most notably, the proposed regulation defines “close contact” as “sharing the same air space as a COVID-19 case for a cumulative total of 15 minutes or more over a 24-hour period during the COVID-19 case’s infectious period” in buildings with under 400,000 cubic feet per floor. This definition is far too vague. Because of the inclusivity of all employees in the same air space as being “close contacts,” it imposes burdensome and onerous follow up and testing requirements on employers, and will take employees out of the workplace unnecessarily, impacting business operations. In addition, the only exception to being considered a “close contact” is when employees wear fit-tested respirator masks as PPE, which is impractical. Notably, face coverings are not required in the current Cal/OSHA Emergency Temporary Standard unless required by CDPH.

Accordingly, many employers have advocated for removing the differentiation between less than or greater than 400,000 cubic feet per floor, and define “close contact” based on both duration and proximity for all spaces, as the CDC defines it: “someone who was less than 6 feet away from an infected person (laboratory-confirmed or a clinical diagnosis) for a total of 15 minutes or more over a 24-hour period.” And they also advocate for exceptions to include the wearing of all types of face coverings (as defined in the proposed standard), not just respirators.

Sincerely,

A handwritten signature in black ink, appearing to be "Rachel L. Conn", with a long horizontal flourish extending to the right.

Rachel L. Conn
Partner

RLC

From: [Dawn Stone](#)
To: [DIR OSHSB](#)
Subject: Proposed Modifications of the General Industry Safety Orders: Title 8: New Sections 3205, 3205.1, 3205.2, and 3205.3
Date: Friday, October 28, 2022 4:07:14 PM

CAUTION: [External Email]

This email originated from outside of our DIR organization. Do not click links or open attachments unless you recognize the sender and know the content is expected and is safe. If in doubt reach out and check with the sender by phone.

California Occupational Safety and Health Standards Board,

The board members of the California State Association of Occupational Health Nurses (CSAOHN) reviewed the proposed modifications of the COVID-19 Prevention - Non-Emergency Regulation. The CSAOHN board supports the following:

- The easing of the outbreak reporting requirement
- The clarification of "close contact"
- The continuing worker protection afforded by extending the standard for two more years

However, the mandate for portable HEPA filtration units in outbreak areas without MERV 13 filtration requires critical assessment to inform decisions, since situations and circumstances may vary.

Thank you for your consideration.

Dawn Stone, PhD, RN, ANP-BC, COHN-S, FAAOHN
CSAOHN, Director of Governmental Affairs

Associate Professor
Assistant Dean, Academic Affairs
College of Graduate Nursing
Western University of Health Sciences
(909)469-5549
dstone@westernu.edu

From: [John Frattali](#)
To: [DIR OSHSB](#)
Subject: Covid-19 Prevention - Non-Emergency Standard
Date: Friday, October 28, 2022 5:07:16 PM

CAUTION: [External Email]

This email originated from outside of our DIR organization. Do not click links or open attachments unless you recognize the sender and know the content is expected and is safe. If in doubt reach out and check with the sender by phone.

Permanent covid-19 standard and proposed modified language are not reducing the probability of covid in the workplace. This standard and the proposed language is only burdening the employer by reducing the number of people in the workplace through quarantine and testing, all while costing money to the employer and employee. Other states are not regulating this and they seem to have healthy workforces.

Proposed language for close contact is arbitrary at the least. How is > 400,000 ft³ of indoor space safer when the requirement for proper ventilation and filtration exists regardless of room volume. This adds burden and hardship to employer and employee. One person who has covid, whose desk is 100 feet away from other workers, now transmits the virus across that distance? The “science” has been 6 feet throughout this entire pandemic. This will cost the employer more in testing and contact tracing. Contact tracing is already difficult enough now we need to figure out volumes. This will cost the employee for being out of the workplace and not working.

I urge the Board to vote no on the permanent standard. There once was a time when cold and flu was not regulated, by approving this standard you are setting the precedent that every illness needs to be regulated. Covid-19 is no longer an emergency. There are vaccines and other drugs that people can choose from on their own.

Respectfully,
John Frattali, CSP, CIH
Representing self

[Sent from Yahoo Mail for iPhone](#)

From: [Andrew Sommer](#)
To: [DIR OSHSB](#)
Cc: [Shupe, Christina@DIR](#); [Killip, Jeff@DIR](#); [Berg, Eric@DIR](#); [Megan Shaked](#)
Subject: Comments Re: Modifications to the Proposed Non-Emergency COVID-19 Rule
Date: Monday, October 31, 2022 10:28:19 AM
Attachments: [image003.png](#)
[image004.png](#)
[image005.png](#)
[image008.png](#)
[Conn Maciel Carey - Comments to the Proposed Permanent Cal-OSHA COVID-19 Rule - Submitted 10-31-22 .pdf](#)

CAUTION: [External Email]
This email originated from outside of our DIR organization. Do not click links or open attachments unless you recognize the sender and know the content is expected and is safe. If in doubt reach out and check with the sender by phone.

Good morning,

On behalf of the California Employers COVID-19 Prevention Coalition, attached are comments to the Modifications concerning the Proposed Non-Emergency COVID-19 Rule.

We appreciate the opportunity to participate in this rulemaking process.



Andrew J. Sommer | [Bio](#)
Partner
Conn Maciel Carey LLP

O (415) 268-8894 | asommer@connmaciel.com
100 OceanGate Avenue • 12th Floor • Long Beach, CA 90802

Check out our [Employer Defense Report blog](#) and [Cal/OSHA Defense Report blog](#)

NOTICE: This transmission is intended only for the use of the addressee and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately via reply e-mail, and then destroy all instances of this communication. Thank you.



Andrew J. Sommer
asommer@connmaciel.com
(415) 268-8894

October 31, 2022

Via Electronic Mail

Chair David Thomas and Board Members
Occupational Safety and Health Standards Board
Department of Industrial Relations
State of California
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833
OSHSB@dir.ca.gov

Re: Comments and Recommendations About Modifications to Cal/OSHA's Proposed Non-Emergency/Permanent COVID-19 Prevention Rule

Dear Chair Thomas and Members of The Board:

On behalf of the **California Employers COVID-19 Prevention Coalition** (“the Coalition” or “Coalition Members”), we have served on the Advisory Committee for the Cal/OSHA COVID-19 Prevention Emergency Temporary Standard (the “Emergency Temporary Standard” or “ETS”) and the Proposed Non-Emergency/Permanent COVID-19 Prevention Standard (the “Proposed Non-Emergency Rule” or “Rule”). We respectfully offer these comments and recommendations concerning the revisions to the Proposed Non-Emergency Rule under consideration.

As a reminder, the California Employers COVID-19 Prevention Coalition is composed of a broad array of California and national employers and trade groups substantially impacted by Cal/OSHA’s ETS and which would be substantially impacted by the Proposed Non-Emergency Rule. The common thread among our Coalition Members is that they are responsible employers who care deeply about their employees’ health and safety.

Specific Comments Regarding Modifications to the Proposed Rule

§ 3205(b)(1) – Close Contact Definition

Our Coalition appreciates the revision to the “close contact” definition to return to the Centers for Disease Control and Prevention’s (“CDC”) measurable “close contact” standard, incorporating the 6-foot benchmark consistently relied upon by OSHA and public health agencies and employers across the country for over two years. However, we believe that

the CDC's definition should apply to all indoor workspaces, not just large spaces greater than 400,000 cubic feet per floor.

As we discussed in our initial comments, this new CDPH definition under subsection (b)(1)(A) ("sharing the same indoor airspace as a COVID-19 case....") injects a novel ambiguous term with no reference to proximity that has unnecessarily complicated Coalition Members' efforts to determine whether their employees have experienced a close contact. Therefore, we urge the use of the CDC definition including a component of physical proximity for all workspaces, regardless of the size.

Nonetheless, should the Board be inclined to retain the expansive close contact definition under subsection (b)(1)(A), the Coalition encourages adding clarifying language recognizing the importance of proximity to the COVID-19 case, as well as the direction of airflow, the facility's configuration and engineering controls, as considerations in determining close contacts. Otherwise, employers will lack the guidance to meaningfully determine whether there has been a close contact without unnecessarily implicating the entire workplace.

Discussion at the October 20, 2022 Board Meeting

At the last Standards Board meeting, several members inquired into the benefits and legal protections applicable to COVID-19 that exist outside of the Board's present rulemaking.¹ To support the Board in evaluating these questions, we have provided a summary of some of the applicable benefits and legal protections otherwise available under California law.

Multiple Sources of Leave Entitlements for COVID-19 Purposes

California law currently provides benefits under a variety of statutes that have been applied to COVID-19 related absences from work:

- Workers' Compensation Paid Benefits
 - As Deputy Chief Eric Berg explained at the last Standards Board meeting, workers' compensation benefits are available for employees who contract COVID-19 in the workplace.² Generally a COVID-19 illness is deemed work related for workers' compensation purposes where there is a workplace outbreak. Specifically, Senate Bill 1159 (as extended through January 1, 2024

¹ Cal/OSHA's COVID-19 emergency rule mandates exclusion pay for employees who are COVID-19 cases or experience a close contact. Although the rule provides an exception where an employer "demonstrates" the employee's COVID-19 exposure was not work related, that is a hefty burden as the employer must rely on what information is shared by employees regarding their non-occupational sources of exposure. See [COVID-19 Emergency Temporary Standards Frequently Asked Questions](#), Exclusion Pay and Benefits.

² DIR's ["A Worker May Be Sick or Exposed to COVID-19."](#)

by Assembly Bill 1751) creates a rebuttable presumption, for employers with 5 or more employees, that a COVID-19 illness is work-related and therefore eligible for workers' compensation benefits where an employee tests positive for COVID-19 during an outbreak at the employee's specific place of employment.³

- State Disability and Paid Family Leave Benefits
 - Employees who are unable to work because of an infection or suspected infection with COVID-19 can file a Disability Insurance (DI) claim. DI provides benefit payments to eligible workers with full or partial loss of wages due to a non-work-related illness or injury. In addition to paid DI benefits, employees are eligible for state Paid Family Leave benefits where they are unable to work because they are caring for a family member diagnosed with COVID-19 or related symptoms.⁴
- Paid Sick Leave (Healthy Workplace, Healthy Families Act of 2014)
 - Under California's regular paid sick leave law (Healthy Workplace, Healthy Families Act of 2014, Labor Code §§ 245-249), employees are covered, whether they are a full-time, part-time, or temporary employee. Employees can earn one hour of paid leave for every 30 hours worked and use at least 24 hours of paid leave per year, though many employers do not impose a cap on the use of accrued sick pay. In addition, a number of municipalities throughout the state have sick pay ordinances that confer more generous benefits to employees.
 - State law allows employees to use paid sick leave to:
 - Recover from illness or injury including due to COVID-19 illness;
 - Seek medical diagnosis, treatment or preventative care including for COVID-19;
 - Self-isolate as a result of potential exposure to COVID-19; and
 - Care for a family member who is ill or needs medical diagnosis, treatment, or preventative care.⁵
- 12 weeks of Leave under the California Family Rights Act
 - Employers with 5 or more employees must provide up to 12 weeks of leave under the California Family Rights Act ("CFRA") (as well as the federal Family and Medical Leave Act). Eligible employees may take leave for a variety of

³ Cal. Labor Code section 3212.88

⁴ [COVID-19 FAQs: Disability and Paid Family Leave Benefits.](#)

⁵ See [FAQs on Laws Enforced by the California Labor Commissioner's Office.](#)

circumstances including to attend to their own serious health condition or care for a family member's serious health condition.

- Leave as a Reasonable Accommodation under California's Fair Employment and Housing Act
 - California's Fair Employment and Housing Act is the primary source of protection for employees from discrimination, retaliation and harassment in employment. Specifically, the FEHA requires employers to provide leave as a reasonable accommodation due to an employee's disability or medical condition (as construed broadly). Leave is required if it appears likely that the employee will be able to return to work in the foreseeable future. See 2 Cal. Code of Reg. § 11068, subd. (c).

Job Protections Already Afforded to Employees Under Multiple Sources

At the last Board meeting, Ms. Stock requested that the Proposed Non-Emergency Rule include "job protections" of some sort. It should be noted, however, that such protections already exist under numerous state statutes including for circumstances where employees test positive for COVID-19, are absent from work or denied a request for time off related to COVID-19 illness, and otherwise assert their rights under the law. We have highlighted some examples of California employment laws that confer legal protections to employees under these circumstances, which may be enforced through civil actions and/or Labor Commissioner administrative proceedings:

- Labor Code section 6310 (broadly prohibits employers from discharging or in any manner discriminating against an employee because the employee has exercised any rights under the California Occupational Safety and Health Act).
- Labor Code section 6409.6 (prohibits employers from retaliating against an employee for disclosing a positive COVID-19 test or diagnosis or order to quarantine or isolate).
- Paid Sick Leave (Healthy Workplace, Healthy Families Act of 2014) (prohibits employers from denying an employee the right to use accrued sick days, or discharging, threatening to discharge, demoting, suspending, or in any manner discriminating against an employee for using accrued sick days, attempting to exercise the right to use accrued sick days, filing a complaint with [the enforcement agency] or alleging a violation of [the paid sick leave law], cooperating in an investigation or prosecution of an alleged violation of [the paid sick leave law], or opposing any policy or practice or act that is prohibited by [the paid sick leave law]"). Labor Code § 246.5(c)(1).

- Labor Code section 232.5 (prohibits employers from discharging, formally disciplining, or otherwise discriminating against an employee who discloses information about the employer's working conditions).
- California Family Rights Act (during family medical leave, employee shall retain employee status with the employer, and the leave shall not constitute a break in service for purposes of longevity, seniority under any collective bargaining agreement, or any employee benefit plan). Gov. Code § 12945.2(f).
- California Fair Employment and Housing Act (prohibits retaliation against an employee for requesting a reasonable accommodation based on mental or physical disability, regardless of whether the employer granted the request). 2 Cal. Code of Reg. § 11068(k).

Exclusion Pay Provision Under the ATD Standard Is Unique to That Rule

At the Board meeting, Ms. Burgel referenced the pay provision from the Aerosol Transmissible Diseases ("ATD") Standard seemingly requesting that it be incorporated into the Proposed Non-Emergency Rule. That pay provision is unique to the ATD Standard, as it applies to "precautionary removal" at the recommendation of a physician/licensed health care professional or local health officer under limited circumstances. See 8 Cal. Code of Reg. § 5199(h)(8)(B):

Where the PLHCP[physician or other licensed health care provider] recommends precautionary removal, or where the local health officer recommends precautionary removal, the employer shall maintain until the employee is determined to be noninfectious, the employee's earnings, seniority, and all other employee rights and benefits, including the employee's right to his or her former job status, as if the employee had not been removed from his or her job or otherwise medically limited.⁶

The ATD Standard is generally limited to certain enumerated health care industries such as hospitals and skilled nursing facilities where employees are at an *elevated risk* of contracting an infectious disease than employees working in public contact businesses like retail that are not covered under this standard. For example, where an employee performs a procedure in the course of treating a patient with an aerosol transmissible disease, there is an increased risk for transmission than in a typical direct contact outside of this setting.

Here, however, the Proposed Non-Emergency Rule is far reaching, applying to all employers across all industries (except those covered by the ATD standard), yet specifically tailored to COVID-19, an illness for which there is pervasive community spread creating a

⁶ Emphasis added.

reliable source of non-work related exposure. There is thus no clear nexus to the workplace as there often is under the ATD Standard, nor any gate keeping as there is with ATD's requirement that a licensed health care provider or local health officer recommend precautionary removal as a condition for pay continuation.

The community-spread characteristic of COVID-19 infection, and evolving COVID-19 conditions, including the availability of vaccinations, milder symptoms and significantly lower rates of COVID-19 related hospitalizations and fatalities, support omitting exclusion pay from the Proposed Non-Emergency Rule. In announcing that California's COVID-19 State of Emergency will end on February 28, 2023, Governor Newsom cited these very circumstances to support that decision.

Sunset Clause in the Proposed Non-Emergency Rule

In our initial written comments concerning the Proposed Non-Emergency Rule, we recommended including alternative bases for terminating the Rule – for example, where the COVID-19 State of Emergency is rescinded, or the Rule is repealed by Executive Order. In light of Governor Newsom's announced end of the State of Emergency, it is more critical than ever that an earlier sunset clause be recognized so the Rule can be aligned with the governor's action. These alternative triggering events are preferable to the Standards Board later having to undertake a time-consuming rulemaking process to consider and execute the repeal of the Rule.

* * * * *

On behalf of the *California Employers COVID-19 Prevention Coalition*, thank you for the opportunity to comment and share this information.

Sincerely,



Andrew J. Sommer
Megan S. Shaked
Conn Maciel Carey LLP

Counsel to the California Employers COVID-19 Prevention Coalition

cc: Jeff Killip (JKillip@dir.ca.gov)
Eric Berg (eberg@dir.ca.gov)
Christina Shupe (cshupe@dir.ca.gov)

From: [Oakley, Jennifer](#)
To: [DIR OSHSB](#)
Cc: [Oakley, Jennifer](#)
Subject: Proposed Modifications Written Comment
Date: Monday, October 31, 2022 11:39:48 AM
Attachments: [image001.png](#)
[CalOsha Concerns Letter Title 8, Division 1, Chapter 4.pdf](#)

CAUTION: [External Email]

This email originated from outside of our DIR organization. Do not click links or open attachments unless you recognize the sender and know the content is expected and is safe. If in doubt reach out and check with the sender by phone.

Dear Board,

Please see the attached letter pertaining to written comments regarding the proposed modifications of Title 8, Division 1, Chapter 4.

Thank You,



Jennifer Oakley
Human Resources Technician
County of Humboldt – Human Resources
825 Fifth Street, Suite 131
Eureka, CA 95501
Main Line: 707.476.2354
Personnel: 707-476-2349

CONFIDENTIALITY NOTICE: This e-mail message and any attachments are intended only for the use of the addressee named above and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If you are not the intended recipient, any dissemination, distribution, or copying is strictly prohibited. If you received this e-mail message in error, please destroy the e-mail and immediately notify the sender by replying to this e-mail message. Thank you.

October 31, 2022

Dear Occupational Safety and Health Standards Board Members,

Thank you for taking the opportunity to hear the concerns of the governed. My name is Jennifer, and I am the current COVID investigator for the County of Humboldt. I am the sole COVID-19 investigator and contact tracer for all the County's employees, and I'm writing to you to share my concerns regarding the changes being made to your COVID-19 Prevention—the proposed State Standard Title 8, Division 1, Chapter 4.

My concern lies with the new definition of a “close contact” in the workplace. According to the new proposal, a “close contact” would be defined by airspace and would consider every employee in a building of 400,000 cubic feet or less as a “close contact” whereas any indoor space larger than 400,000 cubic feet would maintain the current practice of defining a “close contact” as an employee who was within 6 feet of the positive individual for a cumulative total of fifteen minutes or more over a 24-hour period.

I believe this reliance on cubic feet to determine who is a close contact is highly impractical to execute for our County. For context, the County of Humboldt spans 3,567.98 square miles and is on the larger side of California Counties. Within that space, we have literally hundreds of buildings and work locations that accommodate over 2,000 County employees. It is overwhelming to consider what I would need to do to determine who in a work location would be a “close contact.” How would I manage the task of calculating every county building's cubic foot each time I'm notified of a new positive case?

Furthermore, we have many other work locations that are not in traditional office settings. We have employees in roadcrews who share utility trucks, and sheriffs patrolling our bay by boat, just to name a few examples. With all these variables in mind, this new requirement seems like a very daunting task to place on one individual. Our current practice of designating “close contacts” on physical distance between employees and the time that they share in close parameters would allow for a clearer practice to determine who would be a close contact, and it is a realistic way for our County to continue our tracing efforts in a practical way.

Again, thank you for your time and attention regarding this matter. I hope you will consider my argument that the proposed change poses a severe burden on employers if close contacts were to be defined in the way the modifications outline. In the case of a large-scale employer such as the County of Humboldt, this change in protocol is not a simple task to execute given the sheer scale of our agency.

Sincerely,



Jennifer Oakley

From: [Woods, Stephen](#)
To: [DIR OSHSB](#)
Cc: [Magill, Hollis](#); [Johnson, Stephen](#)
Subject: County of Fresno Public Comment on Proposed Permanent COVID-19 Standard
Date: Monday, October 31, 2022 2:13:45 PM
Attachments: [image001.png](#)
[OSHA.pdf](#)

CAUTION: [External Email]

This email originated from outside of our DIR organization. Do not click links or open attachments unless you recognize the sender and know the content is expected and is safe. If in doubt reach out and check with the sender by phone.

Good Afternoon,

The attached is sent on behalf of Hollis Magill, Director of the Human Resources Department for the County of Fresno.



Stephen Woods | HR Analyst – Risk Management

County of Fresno, Department of Human Resources

Direct: (559) 600-1857 Main: (559) 600-1850

ENGAGE, EMPOWER, EMPLOY

Human Resources – We Exist to Assist

October 28, 2022

Occupational Safety & Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833

Submitted electronically: oshsb@dir.ca.gov

Dear Standards Board Members,

The County of Fresno submits this letter to provide comment upon the proposed adoption of a non-emergency COVID-19 Standard (Section 3205, or “the proposed regulation”), as well as providing a brief summary of its experience as a public agency delivering critical services to its community.

Specific Regulatory Concerns

1. Section 3205(b)(1) – The New “Close Contact” Creates Extraordinary Staffing and Resource Burdens

The County has previously appreciated the bright line initially implemented by CAL OSHA with the long-standing “6 feet for 15 minutes” method of identifying close contacts. It is easily comprehended, and fits well with general office construction methods, including cubicle, hallway, and staircase design. Though it may not have reflected the extremes of particulate dispersion, it resulted in measurable – and easily maintained – forms of engineering controls.

The implementation of CDPH’s new definition of “close contact” as breathing the same air in a single-story, 200’ x 200’ x 10’ dimensions (400,000 cubic feet) creates a heavy burden in terms of staff resources and potential lost time. Instead of conducting well-defined contact tracing, and thereby delivering services and potential aid to staff with higher probability of meaningful exposure, this new standard is likely to result in a superfluous offers of injury packets to personnel that do not have a reasonable chance of interacting with the infectious case. Any increase in these notices generally has resulted in an increase in workers compensation filings, with no appreciable increase in services delivered. Further, the constant barrage of notices has notably increased tension and fear among employees, and in in discussions with bargaining groups.

The County notes that the Emergency Temporary Standard (ETS) and the proposed regulation both revolve around cases which enter the workplace and not on cases which are found to be transmitted on premises. While this approach was appropriate in the early waves of COVID-19 – due to lack of sufficient scientific understanding of the virus – the County believes that the regulation should consider the plethora of data that shows our current endemic reality of transmission largely being attributed to social gatherings. Our experience with several of our open-floor buildings – with staff populations of between 400 and 750 staff – has shown that a preponderance of cases can be documented as having been transmitted outside the workplace.

2. Section 3205(b)(7) – Exposed Group Definition Rendered Useless in Context of New Close Contact

The impacts of the new “close contact” definition create unprecedented burdens, particularly in large public agency buildings that may have been built when the industry wisdom focused on collaboration and open-floor design. The question arises: How can an employer reasonably subdivide their workplace save for fully enclosed rooms on all six sides (including floor and ceiling, with floor-to-ceiling walls and a closed door)?

While the prior guidance on exposed groups was helpful in enabling work areas to be subdivided – with the proviso that staff not congregate in nominally termed “pass-through areas” – this approach would not seem to function when made to agree with the new norm for contact tracing. An individual identified as a close contact is necessarily part of an exposed group. In the County’s case, this has caused the “exposed group” in certain of our buildings to encompass between 750 and 1500 staff.

The County recently invited CAL OSHA Consultation to review the impacts of the ETS and the new definitions on a new campus that was completed amid the pandemic. Our newest buildings feature staff loads of 500-800+ with one and two stories. There are few floor-to-ceiling walls in the 28-foot bays of the original structures, and even in those portions where split levels may be found, there are still over 400 staff in cubicles with low dividers. Notably, each of the cubicle stations maintain 6 feet or more in distancing from the employees surrounding them, as do the many aisles which run through the workspace. The consultants’ comments could be reduced to: “the regulation doesn’t take into account a layout like this”.

There is no feasible way to create a reasonable cohort for an exposed group while the definition rests at 400,000 cubic feet or less. Indeed, the result of the over-under approach to contact tracing seems to encourage excessively large space and exposed group counts in terms of cubic footage and covered employees. In practice, this would lead to a higher propensity to enter “outbreak” and “major outbreak”, out of balance with the extreme numbers of personnel in the group – 20 cases in a 40 or 100 employee unit is a far cry from 20 in 750.

3. Section 3205.1(g) – Major Outbreak Protocol Continues to Impose Severe Hardships for Delivery of Critical Services

The impacts of the last revision to Major Outbreak protocols, as well as those found in this proposed regulation, to our County cannot be understated. In June of this year, the County Department of Social Services reached the threshold of 20 reported cases within 30 days in two of its 4 main buildings. For background, the County completed this campus amid the pandemic (on already finalized open floor plans begun prior to the pandemic), and centralized nearly all services for a County with 53% of its more than 1 million residents on some form of public assistance. Substantially all client intake, job program support, cash aid, and medical eligibility services occur in the two buildings where these cases were present. Over 1500 staff were

immediately subject to the test or exclusion orders based on 20 cases over 30 days – many of which had transited between the two locations.

Due to a lack of a public health testing order for the local jurisdiction, and labor relations, the County was unable to compel all staff to meet the twice-per-week testing threshold. Per both versions of the regulation, this would have necessarily compelled the buildings to exclude non-compliant staff. Our agency has its own mandates from CDSS and could not function with that level of staff reduction. There are statutorily mandated services for which the County has no recourse but to comply and deliver. We sought an emergency waiver of the test-or-exclude component and were allowed to refrain from exclusion subject to requirements for increased testing availability, and the requirement that all staff wear at least a KN-95 or better respirator in the event they failed to test as required.

We complied with the terms of the waiver, but at excessive cost; the period of June 1, through September 22, saw 18,053 tests conducted on site at no cost to our staff, in addition to a similar number of home tests being provided to all employees. Our burn rate for one month was over \$400,000. The County acknowledges that the State and Federal governments, through ARPA, ELC, and other grants, have covered these outlays. However, a permanent standard – without any supporting funds considering the rescinded emergencies – would leave significant budgetary gaps in the event similar circumstances arise in the future.

4. Section 3205.1 – Lack of Mechanism to Downgrade “Major Outbreak”

The ETS currently in effect includes 3205.2(a)(2), which provides for exiting “Major Outbreak”. The proposed regulation is lacking that clarity, and could be construed that a location will remain in that status until it is in fact completely out of “outbreak”.

5. Proposed Regulation Duration of 2 years.

The County is concerned that the pandemic is transitioning into its endemic state, as demonstrated by the withdrawal of emergencies in most jurisdictions. We question why a standard should be maintained at that marker.

Request for Consideration:

1. Remove, or Substantially Narrow, the Definition of “Close Contact” to The Original 6’ for 15 Minutes, or Reduce The Cubic Footage Threshold to 25,000 cubic feet, or lower.

The County desires a return to easily comprehended definitions of “close contact”. It is difficult to convince an employee that there is a health risk just by working in a 200’ by 200’ room with someone who is symptomatic, when their personal life regularly features visits to grocery stores and entertainment venues with far heavier populations. Staff need relatable cues, and the County suggests that a cubic footage of 25,000 ft³ – the volume of a 50’ by 50’ room with a 10’ ceiling – would be simpler to explain as a reasonable standard for contact.

2. Provide a Carve-Out for Public Agencies Where the Work is Substantially Related to Economic, Medical, or Safety Services – not including Administrative Services.

The County deeply appreciates its partners in the Division and had an excellent experience obtaining the waiver. However, the requirement to re-apply at any new outbreak presents a burden that threatens the delivery of critical services which are vital to the survival of its citizens. The safety of our workers is core to our mandate to serve our community; that commitment is frustrated when regulatory text fails to scale with worker population, or physical layout.

We suggest that the Division and Standards Board allow an exception from the exclusion requirement of this section in the case of government agencies which provide fiscal, medical, and public safety services. The intent of this exclusion is to allow employees directly involved in facilitating relief to members of the public to continue working in the even that they refuse to test.

3. Re-Define “Major Outbreak” as a Function of population and square footage.

The definition of “major outbreak” lacks context as currently written. The County suggests that a better metric could be utilized with precedent from the early stages of the pandemic, where 4%, or 4 persons in a 100 person location, would indicate an “outbreak”. Your Board could then create tiers in concert with CDPH to determine the threshold for truly concerning transmission. Alternatively, or in tandem, your Board could opt to instead define a number of cases based on square footage of a location with the average office complex as a basis.

This would also necessarily include the method of leaving “major outbreak” status.

4. Redefine “Exposed Group” with a new section on guidance for sub-dividing work areas without full floor-to-ceiling barriers.

The regulation could resolve many questions regarding contact tracing and exposed groups by defining methodology for sub-sectioning areas that are otherwise considered open floor plans. The County suggests using the 6’ rule for hallways and using barriers that may not reach floor to ceiling, but which approach 8’ or 10’ in height as a reasonable method of obtaining sufficient geographical spacing.

We are grateful for the opportunity to comment on this proposed regulation.

Sincerely,

A handwritten signature in cursive script that reads "Hollis Magill".

Director of Human Resources
County of Fresno

From: [QUAN, FELIX H.](#)
To: [DIR OSHSB](#)
Subject: comments on revised proposal for Covid rule changes
Date: Monday, October 31, 2022 2:18:24 PM

CAUTION: [External Email]

This email originated from outside of our DIR organization. Do not click links or open attachments unless you recognize the sender and know the content is expected and is safe. If in doubt reach out and check with the sender by phone.

Good Afternoon,

I'm commenting with regards to the proposal to the 400,00 ft³ close contact rule change.

400,000 ft³ is a large area and a lot of buildings have a large open space for shared office. This rule change

for close contact to require any shared air space under 400,000 ft³ would not be feasible because

of the size and coverage. E.g a lot of buildings have open workspaces that are shared by multiple

companies and divisions. It would be difficult to be responsible for cover a different part of the floor that is directly

across the floor; as it is even difficult for companies to keep track who goes in and out of some building

locations like cafeterias, lobbies, shared common areas, non-interacting groups, etc. The current 6 feet rule work for contact tracing

is effective and works. Changing close contact to cover 400,000 ft³ makes it difficult to do contact tracing and be responsible for people who work

in different locations and don't interact with our employees.

Thanks,

Felix Quan

From: [Leder, Leslie](#) on behalf of [Moutrie, Robert](#)
To: [DIR OSHSB](#)
Cc: [Killip, Jeff@DIR](#); [Berg, Eric@DIR](#); [Shupe, Christina@DIR](#)
Subject: Comment Letter - Covid-19 Regulation 15-day Change Notice
Date: Monday, October 31, 2022 3:17:04 PM
Attachments: [10.31.22.15-day Change Comment Letter Final.pdf](#)

CAUTION: [External Email]

This email originated from outside of our DIR organization. Do not click links or open attachments unless you recognize the sender and know the content is expected and is safe. If in doubt reach out and check with the sender by phone.

Good afternoon,

Attached please find our comment letter regarding the 15-day change notice on the proposed non-emergency COVID-19 Standard. If you have questions, please feel free to reach out to me.

Rob Moutrie
Policy Advocate



California Chamber of Commerce
1215 K Street, 14th Floor
Sacramento, CA 95814

T 916 930 1245
F 916 325 1272

Visit calchamber.com for the latest California business legislative news plus products and services to help you do business.

This email and any attachments may contain material that is confidential, privileged and for the sole use of the intended recipient. Any review, reliance or distribution by others or forwarding without express permission is strictly prohibited. If you are not the intended recipient or have reason to believe you are not the intended recipient, please reply to advise the sender of the error and delete the message, attachments and all copies.

October 31, 2022

Occupational Safety & Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833

Submitted electronically: oshsb@dir.ca.gov

RE: COVID-19 Regulation 15-day Change Notice

Dear Chair Thomas and Esteemed Standards Board Members,

The California Chamber of Commerce and the undersigned coalition of both public and private employers/organizations submit this letter to provide comment regarding the 15-day change notice (the “Change Notice”)¹ on the proposed non-emergency COVID-19 Standard (Section 3205 or “the Proposed Regulation”),² as well as respond to comments made at the October 20th Occupational Safety and Health Standards Board (the “Standards Board”) meeting.

Comments on Proposed Changes in 15-day Change Notice

- 1. Redefining “Close Contact” as anyone sharing a 400,000 cubic feet or smaller space.** As noted in prior coalition letters, the definition of a “close contact” has led to widespread confusion since the shift away from the traditional “six foot/fifteen minutes” rule. The Change Notice integrates the new California Department of Public Health (CDPH) definition based on the internal volume of a workplace, with workplaces larger than 400,000 cubic feet using the old six-foot standard, and those smaller using the June 2022 “same indoor airspace” standard.³

We appreciate the attempt to respond to stakeholder concerns that the “same indoor airspace” standard had absurd application in larger workplaces, and was difficult to apply. While we believe the Change Notice helps some of California’s very largest workplaces with a clear, feasible standard to determine close contacts, we have a number of outstanding concerns.

First, the determinations surrounding the 400,000 cubic feet standard for a workplace are difficult for a number of reasons. Most employers do not know the cubic footage of their building, let alone individual rooms. Second, it appears an open or closed door may change the size of the space – by separating one potential space into two smaller spaces – which will make calculations around whether a workplace falls above or below the threshold difficult for California’s businesses to determine. These feasibility issues will fall particularly hard on smaller employers, who do not have the resources to have a dedicated compliance team, and need a simple, clear standard to apply. In contrast – the original use of a simple proximity-based standard (such as six feet) was feasible and practicable for employers.

Second, the selection of 400,000 cubic feet seems bizarrely calculated, given it is based on an 8-hour exposure estimate, but the regulation’s provisions are triggered by a 15-minute exposure.

¹ 15-day notice, dated October 14, 2022 available here: <https://www.dir.ca.gov/oshsb/documents/COVID-19-Prevention-Non-Emergency-15-Day.pdf>.

² The text of the proposed regulation, without the changes of the 15-day change notice, is available here: <https://www.dir.ca.gov/oshsb/documents/COVID-19-Prevention-Non-Emergency-txtcourtesy.pdf>

³ This “indoor airspace” standard is contained in CDPH’s June 8th Order (<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Beyond-Blueprint.aspx>), and reflected in Cal/OSHA’s June 21st FAQ update ([COVID-19 Emergency Temporary Standards Frequently Asked Questions \(ca.gov\)](https://www.dir.ca.gov/oshsb/documents/COVID-19-Emergency-Temporary-Standards-Frequently-Asked-Questions-ca.gov))

Third, from an organizational perspective, we do not believe this new confusing standard should be enshrined in the regulatory text. Instead, we believe the regulatory text should maintain the traditional six foot/fifteen-minute standard, and CDPH's orders can supersede the text for their duration, with a return to the text when CDPH revokes their overriding orders.

- 2. Change to Outbreak Exit Threshold.** The Change Notice includes an adjustment to the conditions under which an outbreak can end. (See Section 3205.1(a)(2)). Under the Change Notice, an outbreak could end even if one case arises in a two-week period in the exposed group – but outbreak precautions would need to continue if two cases arose.

We believe this change is entirely appropriate and better reflects when an outbreak is actually occurring in a workplace. For context – an outbreak is triggered by three cases, and a major outbreak is triggered by 20 cases. (Section 3205.1 & 3205.2).⁴ In light of these thresholds, the prior standard of remaining in outbreak protocols until zero cases occurred in a workplace for a 2-week period was always an outlier. The same one case that would not trigger an outbreak could, bizarrely, extend outbreak protocols for weeks.

Functionally, this meant that large workplaces were often unable to end outbreak protocols because one worker who caught COVID-19 socially would extend expensive and disruptive outbreak protocols for weeks. This became increasingly true as state-wide opening meant cases were increasingly due to day-to-day social interactions, and vaccination greatly reduced the consequences (and symptoms) of COVID-19 cases. As a result, we believe this change strikes an appropriate balance and reflects the transition away from emergency-level precautions, while still protecting worker safety and maintaining outbreak protocols where necessary.

- 3. Recordkeeping change.** We support the adjustment of the recordkeeping obligations in Change Section 3205(j). In light of the recent broadening of “close contacts” in June of 2022 to the “indoor airspace” definition, the breadth of close contacts to be identified under this provision would have been absurd. Moreover, contact tracing is no longer broadly recommended by the CDC as of February of 2022.⁵ We particularly support this change as contact tracing made more sense in earlier stages of the pandemic, when identifying, isolating, and quarantining cases was the focus. However, as COVID-19 has become socially common (but less dangerous), the benefit to be gained from the onerous recordkeeping obligations contained in the Proposed Regulation was negligible.
- 4. Ventilation.** We are concerned that the change to the ventilation requirements in Change Section 3205(h) appears to create a mandatory obligation for employers to act, regardless of the workplace's situation. This is in contrast with the prior language, which required analysis but not specific compliance measures regardless of workplace realities. For context: employers are currently required to “evaluate whether current ventilation is adequate” in the Proposed Regulation.⁶ However, the Change Notice deletes this language, and instead provides that “[e]mployers shall develop, implement, and maintain effective methods to prevent transmission of COVID-19 including one or more of the following actions to improve ventilation...” (Change Section 3205(h), emphasis added). The newly compulsory strategies are covered in 3205(h)(a):(1) [maximize ventilation], (2) [upgrade building air filtration to MERV-13], and (3) [use portable HEPA filters]. While we believe all three of these can be helpful strategies to improve ventilation in some workplaces and may reduce COVID-19 transmission risk (depending on the workplace) we do not

⁴ Where it is necessary to refer to a section that is numbered differently in the Proposed Regulation and the Change Notice, “Change Section” will refer to the Change Notice’s proposed text. “Section” will refer to the proposed Regulation’s text.

⁵ See “Prioritizing Case Investigation and Contact Tracing for COVID-19”, available here: <https://www.cdc.gov/coronavirus/2019-ncov/php/contact-tracing/contact-tracing-plan/prioritization.html#:~:text=Universal%20case%20investigation%20and%20contact,and%20groups%20at%20increased%20risk>.

⁶ This requirement is also more consistent with the broader approach supported by the CDC’s ventilation guidance, which offers a myriad of strategies, but does not limit itself to the three identified in the Change Notice.

understand the shift away from the current language to the requirement to implement “one or more” of these. Moreover, we believe that, in certain workplaces, these strategies may add no benefit, making the shift from flexibility to compulsory usage baffling. Should this language be passed in December, we believe an FAQ clarifying that the intent of this change was not to compel usage of these three strategies over other suitable means would be urgently necessary.

5. **Exposed Group definition.** We support the adjustment to the definition of Exposed Group to allow persons to momentarily pass through a space unmasked without bringing that space into the Exposed Group. (Change Section 3205(b)(7)(A).) This change aligns with the general reliance on more than a fleeting proximity inherent in our long-standing usage of 15 minutes as a benchmark for identifying close contacts.
6. **Clarification of Hazard Analysis.** We support the adjustment to hazard analysis contained in Change Section 3205(c)(1), which clarifies that employers must consider all employees as potentially contagious *when determining measures to prevent transmission* in the workplace.

COVID-19 Exclusion Pay Discussion

During the October Standards Board meeting, there was extensive comment on the fact that the Proposed Regulation did not extend exclusion pay requirements – and that the Change Notice did not re-add exclusion pay into the Proposed Regulation.⁷ There were also statements made with acknowledgements of limited legal knowledge regarding other related protections in California’s labor law. The below comments seek to both answer some of the questions raised in this discussion, as well as provide context for why we support the decision by the Division to not extend exclusion pay into the non-emergency regulation.

Context: Changes from 2020 as we consider 2023 & 2024.

When the COVID-19 emergency regulation (Section 3205, 3205.1, &3205.2) was first passed in the Fall of 2020, California (and the world) looked very different. To name just a few differences – our state was in lockdown, schools were closed, and vaccine development for COVID-19 was still a matter of national news, not an available reality in California cities. At that point, the federal government, as well as California’s elected representatives and state agencies were scrambling to develop and implement emergency precautions to blunt the rising curve of COVID cases.

As a result, a rush of both legislative and regulatory actions were taken to address the terrifying reality of a disease that we were truly unready to confront. Federally, FFCRA leave was passed in the Spring of 2020, but bizarrely only applied to employers with less than 500 employees. California’s Legislature passed additional leave in August of 2020 to provide 80 hours of leave to workers at larger employers as well as healthcare workers and emergency responders.⁸ The Legislature also passed SB 1159 (Hill) to create a presumption for Worker’s Compensation that all COVID-19 cases in workplaces with an “outbreak” were workplace-related, and therefore covered by workers compensation. Cal/OSHA’s rush to put out guidance, and then switch to an emergency regulation was part of this emergency process – and it was moved as quickly as possible (with an advisory committee promised after its passage) in order to get *something* into effect. We acknowledge that, in times of unprecedented challenges, rapid actions must be taken that may – in the minds of some – go too far or try new ideas.

However, that time of uncertainty and instability is now passed. Though COVID-19 certainly remains, we have vastly improved scientific understanding, including vaccination and improved therapeutics. California

⁷ Notably, exclusion pay’s removal from the Proposed Regulation is not a recent change. From its first public release of the draft non-emergency regulation was in September of 2021, and also in its formal 45-day comment period began in July of 2022, exclusion pay has not been included in the Proposed Regulation.

⁸ AB 1867 (2020) is available here:

https://leginfo.Legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1867.

is fully open and COVID-19 is much better understood.⁹ In other words: we are no longer in a perpetual state of emergency – and the Governor correctly acknowledged that we are exiting the emergency stage of the pandemic by announcing his intention to lift the state of emergency in February of 2023.

Substantive Clarifications and Information Regarding October Meeting Discussion.

1. Protections and Leaves Available to Workers Besides Exclusion Pay.

When considering whether exclusion pay is necessary, some knowledge of the labor law protections that exist outside of Cal/OSHA is important. California workers are provided leave under a web of both local, state, and federal law.

- **Workers Compensation** - As noted by Deputy Chief Berg on September 20th, workers compensation has previously been – and continues to be – available to workers who contract COVID-19 in the workplace. Importantly, this is exactly the population that were previously covered by exclusion pay – meaning there is no gap in coverage. Also notably, legislation has repeatedly provided a presumption in favor of many workers when determining if their COVID-19 is workplace-related.¹⁰ This presumption presently remains in effect until Jan 1, 2024, and the Legislature may again extend it during the 2023 legislative year.
- **Paid Sick Leave** - Every employee in California is entitled to a minimum of 24 hours paid leave which can be used to recover from illness or injury or seek treatment and diagnosis.¹¹ Many cities have broader paid sick leave requirements through local ordinances, including Berkeley, Emeryville, Los Angeles, Oakland, San Diego, San Francisco, and Santa Monica. In addition, many employers offer more than 24 hours of paid leave.
- **State Disability** – an employee who is unable to work because of an infection or suspected infection with COVID-19 can file a Disability Insurance claim. Disability Insurance provides short-term benefit payments to eligible workers who have a full or partial loss of wages due to a non-work-related illness or injury.¹²
- **Twelve Weeks of Leave Under the California Family Rights Act**¹³ - Workers are entitled to twelve weeks of “protected” leave under the California Family Rights Act (“CFRA”). Under CFRA, employers have no discretion to deny leave or ask employees to modify their leave to accommodate employers’ business operations – and employees can take this leave to care for potentially sick family members as noted by legislators when discussing the legislation. In fact, legislators specifically noted that CFRA leave could be used for COVID-19 when expanding it in 2020.¹⁴ Also, workers who take CFRA leave can receive wage replacement.¹⁵

⁹ Notably, Deputy Chief of Health Eric Berg acknowledged the arc these changes in his comments to the Board on September 15, 2022. He noted that COVID-19 is now “widespread” in the population (making identification of true workplace cases difficult), but that vaccination has been “effective in reducing serious acute illness”.

¹⁰ See SB 1159 (Hill – 2020), and AB 1751 (Daly – 2022).

¹¹ CA Labor Code Section 246.

¹² See https://edd.ca.gov/en/about_edd/coronavirus-2019/faqs/disability-paid-family-leave/. (“Can I qualify for Disability Insurance benefits if I’m quarantined? Yes, if you are unable to work because you are infected or suspect you are infected with COVID-19, you can apply for Disability Insurance (DI)...”)

¹³ CFRA applies to all businesses with 5 or more employees.

¹⁴ In support of SB 1383 (2020), Senator Jackson stated that the bill was “necessary to ensure California workers affected by the coronavirus can take time to care for themselves or a sick family member and keep their workplaces and communities healthy and safe.” (Assem. Com. On Labor and Employment, Analysis of Senate Bill No. 1383 (2019-2020 Reg. Sess.), as amended June 29, 2020, p. 5.

¹⁵ Wage replacement is available through State Disability Insurance or Paid Family Leave programs.

- **Twelve Weeks of Leave Under the Family and Medical Leave Act¹⁶** – the federal Family and Medical Leave Act (FMLA) also provides twelve weeks of leave, which is protected similar to CFRA leave.
- **California Fair Employment and Housing Act** – Sick leave may also be available to employees as a reasonable accommodation due to an employee’s disability or medical condition. Leave is required as an accommodation if it appears likely that the employee will be able to return to work in the foreseeable future. 2 Cal. Code of Reg. § 11068, subd. (c).

2. Worker Job Protections While on Leave.

There were repeated comments from stakeholders (and some unanswered Board Member questions) regarding job protections for workers who are excluded from the workplace and on leave due to COVID-19.

As an initial matter, under the Proposed Regulation (even without exclusion pay), the status of being excluded by the employer functionally creates job protected leave.¹⁷ As a result, we do not believe that any additional other authority is necessary to protect workers jobs while excluded.

Moreover, the above-identified leaves also guarantee that an employee *cannot be disciplined related to taking protected leave*. The California Family Rights Act, Fair Employment and Housing Act and California Labor Code all *prohibit retaliation against an employee for taking protected leave/time off*. Further, Labor Code section specifically 6310 broadly prohibits discharge or discrimination against an employee who exercises any rights under the California Occupational Safety and Health Act. In addition, Labor Code section 6409.6 prohibits retaliation against a worker for “disclosing a positive COVID-19 test or diagnosis or order to quarantine or isolate.”

Again – this is *basic* tenant of labor law that is already in effect – and means that employers cannot discipline employees for taking leave from the office due to COVID-19, *regardless of whether exclusion pay is included in the Proposed Regulation*.

3. Unprecedented Nature of COVID-19 Exclusion Pay and Scope of Cal/OSHA.

There were multiple questions regarding why exclusion pay should be included in the COVID-19 regulation if it is utilized in other regulations like the Lead¹⁸ and the Aerosol Transmissible Disease standard (ATD).

Here, some context for those regulations is important. For the ATD standard and the toxin-based regulations, they are focused on exposures that are unambiguously *workplace-related exposures*. The ATD standard focuses specifically on those whose workplace roles *directly involve caring for those with aerosol transmissible diseases*. For example: doctors and nurses are covered – but dentists are not. The reasoning behind this separation was that, though dentists (and many other professions) may have some incidental exposure to individuals who happen to be sick, *confronting diseases is not their workplace purpose*. In other words – though they may be at risk as a member of the public, their job-responsibilities are not specific to the hazard of aerosol transmissible diseases. Similarly, blood lead testing under the lead regulation is specific to individuals whose *work with lead* as part of their duties – therefore their exclusion to allow recovery is clearly tied to a work-related hazard. In other words: in the above situations, the employer *has control of the hazard, because it is a part of the workplace*.

¹⁶ FMLA applies to all businesses with 50 or more employees.

¹⁷ See *Barton v. New United Motor Manufacturing, Inc.*, 43 Cal. App. 4th 1200, 1205 (“It is settled that an employer’s discharge of an employee in violation of a fundamental public policy embodied in a constitutional or statutory provision gives rise to a tort action.”).

¹⁸ California’s lead regulation (8 CCR 1532.1/5198) is provided as an example of regulations surrounding exposure to workplace toxins, but it is not the only such regulation. Benzene (8 CCR 5218) is another example.

COVID-19, like any disease, may be present where people are present ... but is not a workplace-caused hazard. Therefore, though keeping COVID in mind with safety precautions may be appropriate via the protections of the Proposed Standard and Change Notice, requiring exclusion pay on a state-wide basis for two years is a striking departure from Cal/OSHA's traditional scope – particularly as we leave the state of emergency for COVID-19 and move into non-emergency precautions.

Moreover, the scope of industries covered by the Proposed Regulation is massively different from the ATD and toxin-related regulations. Where those regulations apply to mostly larger employers, or in relatively specific industries, the COVID-19 regulation applies to virtually every workplace in the state. This contrast is important when considering the feasibility of compliance for the regulated employers. For the ATD standard (with covered employers consisting mainly of healthcare facilities), their expertise and resources are more equal to the ATD standard's relatively onerous requirements.¹⁹

In contrast, the COVID-19 regulation's obligations are state-wide, and the obligation of exclusion pay is by no means as feasible for smaller employers across California. Notably, we appreciate that Board Chair Thomas acknowledged the cost of this ongoing obligation at the September Board Meeting when discussing his support for exclusion pay – and even suggested that potentially state funds would be appropriate to help with this cost.²⁰ However, at this point, we remain unaware of any state funds made available or even discussed to assist with this 2-year extension of costs for a non-workplace-specific disease.

4. SRIA Issues with Potential Re-introduction of Exclusion Pay.

Notably absent from the September meeting discussion was mention of perhaps the most serious procedural hurdle to making a substantial change to the Proposed Regulation (such as re-adding exclusion pay): it would make a December vote impossible. The Standardized Regulatory Impact Assessment ("SRIA") process requires that state agencies promulgating a major regulation must "submit its completed SRIA" to the Department of Finance "not less than 60 days prior to filing a notice of proposed action with OAL..."²¹

Here, the present SRIA draft – which analyzed the Draft Regulation without exclusion pay – would need considerable revisions to "consider all costs and all benefits" of the inclusion of exclusion pay, and alternatives to such an action. Given that, as of the date of this letter, only approximately 45 days remain until the Standards Board's December meeting – it is literally impossible to: (1) prepare an altered draft text and put out a 15-day change order to alter the draft; (2) make the related substantive revisions to SRIA; (3) submit to the Department of Finance 60 days prior to the December vote.

Assuming the emergency regulation expires without extension in December – then presumably a new rulemaking process would be required to pass a COVID-19 non-emergency regulation. This new rulemaking process would be subject to traditional regulatory timelines. In other words – this change would appear to effectively end the Board's ability to have a seamless transition from the emergency regulation into the non-emergency COVID-19 regulation, and might delay adoption by years.

5. Legislature's Primacy Regarding Sick Leave & Ability to Respond.

Some discussion was also had regarding the Legislature's ability to respond to changes in COVID-19 or to a future spike in the next two years (when the Proposed Regulation would, potentially, be in effect).

¹⁹ Notably, that equality for the covered parties and obligations is reflected in the fact that it was a carefully negotiated consensus regulation.

²⁰ Specifically, Chair Thomas commented, regarding exclusion pay: "... I don't know exactly how we do this. I don't know if it is going to come from the Senate or the Assembly. But there has to be some way to do this that the state funds partially or all. ..."

²¹ SRIA analysis is required by Government Code 11346.36, and the precise requirements for compliance are provided in 1 CCR 2000 *et seq.*

Looking backward, the Legislature has traditionally been in charge of creating sick leave – with the Labor Commissioner enforcing leave-related issues.²²

Throughout the pandemic, the legislature has shown that it remains very capable of creating sick leave – and doing so much more quickly than a Cal/OSHA regulation can be adjusted. As recently as February 7, 2022 (barely one month into the 2022 legislative session), the California Legislature passed SB 114,²³ reviving and extending COVID sick leave – and made it apply retroactively.²⁴ In fact, approximately one month ago, on September 29, 2022, the Governor signed another budget bill, AB 152, which again extended the sunset date on SB 114’s sick leave from September 30 to December 31, 2022. In other words: if additional COVID-19 sick leave is necessary in the coming years due to an unexpected variant or spike, the Legislature has the power to react quickly and has shown its willingness to do so.

With this history in mind, we believe that creating state-wide sick leave across all industries for a non-workplace-specific disease (such as COVID-19) is the proper prerogative of the Legislature – not Cal/OSHA. Though we understand the extreme circumstances that led to such exclusion pay as an emergency measure²⁵ when the pandemic was in its most dangerous phase, we do not believe it is proper for Cal/OSHA to exceed its scope in this way on a non-emergency basis.

Conclusion

Thank you for your work on this difficult and complicated issue – and for the opportunity to comment on the Change Notice.

Sincerely,



Robert Moutrie
Policy Advocate
California Chamber of Commerce
on behalf of

Acclamation Insurance Management Services
Advanced Medical Technology Association
Agricultural Council of California
Allied Managed Care
American Composites Manufacturers
Association
Anaheim Chamber of Commerce
Associated Builders and Contractors of
California
Associated General Contractors of California
Associated General Contractors – San Diego
Chapter

Associated Roofing Contractors of the Bay Area
Counties
Association of California Healthcare Districts
Auto Care Association
BizFed Los Angeles County Business
Federation
Brea Chamber of Commerce
California Apartment Association
California Assisted Living Association
California Association of Health Facilities
California Association of Joint Powers
Authorities

²² A quick glance at the Labor Commissioner’s Office website shows a plethora of resources and information about sick leave policies. For example, see “California Paid Sick Leave” at https://www.dir.ca.gov/dlse/paid_sick_leave.htm.

²³ The legislation was SB 114 (2022), and was codified in Labor Code Section 248.6. Available here: https://leginfo.Legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=202120220SB114&showamends=false.

²⁴ “Retroactively” means, in this context, that employees who had taken sick time between January 1, 2022 and the legislation’s passage were entitled to pay for any time they might have taken off, and were entitled to have whatever leave they had used re-added to their pool

²⁵ To be clear – many signatories opposed exclusion pay at that time – both as outside of Cal/OSHA’s scope and as duplicative of sick leave. However, regardless of our views then, we understand that in rush of the early pandemic, emergency measures may have been understandable which – in the present non-emergency moment – are no longer appropriate.

California Association of Sheet Metal and Air Conditioning Contractors, National Association
 California Association of Winegrape Growers
 California Attractions and Parks Association
 California Bankers Association
 California Beer and Beverage Distributors
 California Builders Alliance
 California Building Industry Association
 California Business & Industrial Alliance
 California Business Properties Association
 California Chamber of Commerce
 California Cotton Ginners and Growers Association
 California Craft Brewers Association
 California Credit Union League
 California Farm Bureau
 California Framing Contractors Association
 California Grocers Association
 California Hotel & Lodging Association
 California League of Food Producers
 California Life Sciences
 California Manufacturers and Technology Association
 California New Car Dealers Association
 California Restaurant Association
 California Retailers Association
 California Self Storage Association
 California Special Districts Association
 California Travel Association
 California Trucking Association
 Carlsbad Chamber of Commerce
 CAWA - Representing the Automotive Parts Industry
 Citrus Height Chamber of Commerce
 Coalition of Small and Disabled Veteran Businesses
 Construction Employers Association
 Corona Chamber of Commerce
 Costa Mesa Chamber of Commerce
 Costa Mesa Chamber of Commerce
 Dairy Institute of California
 Dana Point Chamber of Commerce
 Family Business Association of California
 Family Winemakers of California
 Flasher Barricade Association
 Fresno Chamber of Commerce
 Garden Grove Chamber of Commerce
 Glendora Chamber of Commerce
 Greater San Fernando Valley Chamber of Commerce
 Grower-Shipper Association of Central California
 Harbor Association of Industry & Commerce
 Housing Contractors of California
 Imperial Valley Regional Chamber of Commerce
 Laguna Niguel Chamber of Commerce
 Lake Elsinore Valley Chamber of Commerce
 Lomita Chamber of Commerce
 Los Angeles Area Chamber of Commerce
 Motion Picture Association
 NAIOP California
 National Association of Theater Owners of California
 National Electrical Contractors Association
 National Federation of Independent Business
 Newport Beach Chamber of Commerce
 Northern California Allied Trades
 Oceanside Chamber of Commerce
 Official Police Garages of Los Angeles
 Palos Verdes Peninsula Chamber of Commerce
 Painting and Decorating Contractors of California
 Plumbing-Heating-Cooling Contractors Association of California
 PRISM – Public Risk Innovation, Solutions, and Management
 Rancho Cordova Area Chamber of Commerce
 Redondo Beach Chamber of Commerce
 Residential Contractors Association
 Rural County Representatives of California
 Sacramento Metropolitan Chamber of Commerce
 Sacramento Regional Builders' Exchange
 San Diego Regional Chamber of Commerce
 San Gabriel Valley Economic Partnership
 San Marcos Chamber of Commerce
 San Pedro Chamber of Commerce
 Santa Ana Chamber of Commerce
 Santa Barbara South Coast Chamber of Commerce
 Santa Maria Valley Chamber of Commerce
 South Bay Association of Chambers of Commerce
 Torrance Area Chamber of Commerce
 Tulare Chamber of Commerce
 United Ag
 United Contractors
 United Chambers of Commerce of the San Fernando Valley
 United Contractors
 Valley Industry & Commerce Association
 West Ventura County Business Alliance
 Western Agricultural Processors Association
 Western Carwash Association
 Western Electrical Contractors Association
 Western Growers Association
 Western Steel Contractors
 Wine Institute
 Yorba Linda Chamber of Commerce

Copy: Jeff Killip JKillip@dir.ca.gov
Eric Berg eberg@dir.ca.gov
Christina Shupe cshupe@dir.ca.gov

From: [Alex Torres](#)
To: [DIR OSHSB](#)
Cc: [Matt Regan](#)
Subject: Bay Area Council's Comments on Proposed Modifications to the COVID-19 Prevention – Non-Emergency Regulations
Date: Monday, October 31, 2022 3:25:02 PM
Attachments: [Bay Area Council OSHSB Letter December 2022.pdf](#)

CAUTION: [External Email]

This email originated from outside of our DIR organization. Do not click links or open attachments unless you recognize the sender and know the content is expected and is safe. If in doubt reach out and check with the sender by phone.

Good Afternoon-

On behalf of our over 300 members, please find the attached letter from President and CEO of the Bay Area Council, Jim Wunderman, providing comments on the proposed modifications to the draft non-emergency COVID-19 Standard regulations.

Thank you for the opportunity to provide comments, please do not hesitate to reach out should you have any questions!

Best,

Alex Torres | Director, State Government Relations | **BAYAREA COUNCIL**
1215 K Street, Suite 2220 | Sacramento, CA 95814 | Cell- 916-203-0809
atorres@bayareacouncil.org | www.bayareacouncil.org | twitter: [@bayareacouncil](https://twitter.com/bayareacouncil)



October 31, 2022

Occupational Safety & Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833

Submitted electronically: oshsb@dir.ca.gov

RE: COVID-19 Non-Emergency Regulation Proposal

Dear Standards Board Members:

On behalf of the Bay Area Council, representing over 300 major employers across the Bay Area, I write to provide comment on the draft two-year extension of the COVID-19 regulations that would take effect January if approved by the Board. On October 14, Cal/OSHA issued a 15-day change notice and made **considerable changes to the draft regulation's text**. We want to thank the Board and staff for working with stakeholders to improve the draft regulations but must again, reiterate some concerns on the proposal. If adopted, these proposals still represent a disincentive for employers to bring workers back into office settings, particularly with "open floorplans". It also creates obligations for employers that will continue for a couple of years.

The proposed change in the definition of "close contact" is for many employers (offices with 400,000 cubic feet or less of airspace per floor) more burdensome than the definition that has been in effect for the duration of the pandemic. For example, the Salesforce tower has 25,000 square foot floorplates. Unless the floor heights are greater than 15 feet, then every time an employee tests positive for COVID then everyone on the floor is considered a "close contact" per the draft ETS. Currently (and since the start of the pandemic) only employees who have been within six feet of the COVID positive employee for a cumulative total of 15 minutes or more over a 24-hour period have been a "close contact". Various employer obligations (e.g. contact tracing, notifying employees, providing access to COVID tests on company time, etc.) are tied to this definition.

The draft ETS also obligates employers to update their Injury and Illness Prevention Program (IIPP) to address COVID. It states that "COVID-19 prevention measure include remote work, physical distancing, reducing the density of people indoors..." Also, the updated IIPP obligation regarding COVID appear to be a permanent ongoing obligation for employers.

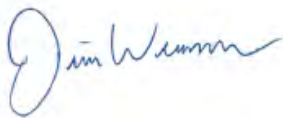
On the question of exclusion pay, we believe the removal of this provision from the proposed regulation draft is a reasonable and appropriate change, given that exclusion pay was an emergency-level precaution that was relatively unprecedented and given the Governor's recent announcement that the state emergency likely will end in February 2023 (i.e., just after an anticipated holiday spike).

This blanket requirement has essentially created unlimited paid sick leave related to COVID-19 throughout the pandemic for both positive cases and those excluded due to an exposure. Though employers were eventually permitted to require employees to use their employer-provided paid sick leave until such leave was exhausted exclusion pay was effectively unlimited and went past any exhaustion of paid leave. Notably, exclusion pay did not include any of the traditional elements of sick leave legislation, such as an accrual rate or a cap on usage.

In addition, though exclusion pay was supposed to be used for COVID-19 cases contracted at the workplace, the burden was on the employer to prove that a case was due to social spread in order to avoid paying—which many employers found impossible to do, leading to exclusion pay being used for social cases, as well as workplace cases in virtually all workplaces.

Thank you for considering our views and we appreciate the opportunity to comment on the Proposed Regulation.

Best,



Jim Wunderman
CEO, Bay Area Council

From: [Anne Katten](#)
To: [DIR OSHSB](#)
Subject: CRLA and CRLAF COVID-19 Regulation 15 day comment
Date: Monday, October 31, 2022 3:31:08 PM
Attachments: [COVID non-emerg req CRLAF and CRLA Inc. 15-day comments 10.31.22.pdf](#)

CAUTION: [External Email]

This email originated from outside of our DIR organization. Do not click links or open attachments unless you recognize the sender and know the content is expected and is safe. If in doubt reach out and check with the sender by phone.

Our comments on the Proposed Modifications to Non-Emergency Covid-19 Prevention Standards are attached. Thank you.

--

Anne Katten
Pesticide and Work Safety Project Director
2210 K Street, Suite 201 | Sacramento, CA 95816
Tel. [\(916\) 446-7904](tel:(916)446-7904) ex 110 | Fax. [\(916\) 446-3057](tel:(916)446-3057)
akatten@crlaf.org | www.crlaf.org



Since 1981, CRLAF has been *Luchando Por Justicia!* Click [here](#) to make a donation.



CONFIDENTIALITY NOTICE: This communication and its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.



October 31, 2022

Dave Thomas, Chair
Occupational Safety and Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833

VIA ELECTRONIC MAIL TO: OSHSB@dir.ca.gov

RE: Proposed Modifications to Non-Emergency Covid-19 Prevention Standards

Dear Chair Thomas and Members of the Occupational Safety and Health Standards Board:

We continue to strongly support the need for and enactment of a non-emergency COVID-19 prevention standard but are deeply troubled that the proposed modifications to the proposed non-emergency standard fail to include the requirements for exclusion pay and job protection, key provisions which are both effective and necessary to ensure that clear and enforceable worker safety requirements are present in the workplace; and that workers are encouraged to report and refrain from working when infected with Covid-19. Omission both lessens protective restrictions and eliminates incentives to report illness in a manner inconsistent with this Agency's role.

Over the course of the pandemic, employers, workers and the agency have gained knowledge and understanding that warrant the elimination of some aspects of the original emergency standard. But the fundamental facts remain, workers who are infected, are communicable; that co-workers and supervisors may have no way of knowing whether an employee has Covid-19; and the best way to prevent exposure by an infected employee is to have that worker removed from the workplace. The best way to promote that is by encouraging self-reporting. Eliminating exclusion pay and job protection sends the singular message to workers: you are at risk if you report that you are sick.

Essential employees who are at higher risk of contracting COVID-19 because they do not have the luxury of working from home should not be left without pay if they contract COVID-19 or need to quarantine due to a close contact at work. Workers in industries like agriculture, non-union construction and food service lack employer provided sick leave that would get them through the exclusion period.

The draft appropriately preserves the requirement that employers exclude Covid-19 cases (3205(c)(5)(A)). However, by eliminating exclusion pay the regulation places the economic burden of the measure on employees who are unfortunate enough to have contracted or been exposed to the disease. The extended sick leave provisions are gone for employees of small businesses and will expire at the end of the year for larger operations so the proposed regulation leaves these workers high and dry.

Deleting this provision will disparately impact low wage and seasonal workers in essential industries, who are predominately persons of color, and non-unionized. Those industries have persistently disregarded the health needs and economic well-being of their workers by failing to provide health benefits and paid sick leave, except as mandated by law.¹ Many employees are exempted from even those limited mandates due to short term or intermittent nature of their work. (See, Labor Code §246.) By repealing the paid exclusion leave and retained benefits, seniority and retention protections, even long-term workers will be put at risk if they report their illness. By proposing a regulation without these protections, the Division and Board are turning its back on these workers and leaving them vulnerable to the economic pressure not to report an illness, or to come to work even when ill. This puts those workers who contract COVID-19 at risk, but more importantly given the charge of this body, puts the workers with whom they work at risk as well.

Cal-OSHA clearly has authority to enforce exclusion pay, as demonstrated by existing exclusion pay requirements within the Aerosol Transmissible Disease Standard, Lead Standard, cadmium, methylene chloride, formaldehyde, benzene, and cotton dust standards.

We continue to recommend that the following language of ETS 3205(c)(9)(C) be inserted into 3205(c)(5) as new subsection F:

(F) For employees excluded from work under subsection (c)(9), employers shall continue and maintain an employee's earnings, wages, seniority, and all other employee rights and benefits, including the employee's right to their former job status, as if the employee had not been removed from their job. Employers may use employer-provided employee sick leave for this purpose to the extent permitted by law. Wages due under this subsection are subject to existing wage payment obligations and must be paid at the employee's regular rate of pay no later than the regular pay day for the pay period(s) in which the employee is excluded. Unpaid wages owed under this subsection are subject to enforcement through procedures available in existing law. If an employer determines that one of the exceptions below applies, it shall inform the employee of the denial and the applicable exception.

¹ While AB 152 extends Covid related sick leave requirements for some employers, it expires December 31, 2022. Current law otherwise mandates only 3 days of paid sick leave, even for long term employees, and many seasonal workers do not meet the eligibility requirements. (See, Labor Code § 246) According to national figures only 35% of low wage workers nationally have paid sick leave. See. Bureau of Labor Statistics, Economic News Release, Table 6. Selected paid leave benefits: Access, March 2021, found at <https://www.bls.gov/news.release/ebs2.t06.htm>.

Exception 1: Subsection (c)(9)(C) does not apply where the employee received disability payments or was covered by workers' compensation and received temporary disability.

Exception 2: Subsection (c)(9)(C) does not apply where the employer demonstrates that the close contact is not work related.


(D) Subsection (c)(9) does not limit any other applicable law, employer policy, or collective bargaining agreement that provides for greater protections.

(E) At the time of exclusion, the employer shall provide the employee the information on benefits described in subsections (c)(5)(B) and (c)(9)(C).

We also urge the Board not to amend the proposal to include any escape clause which would terminate the standard at some time earlier than the two year period. While the Governor laid out a plan to end the State of Emergency at the end of February, he has made it clear that the state will be moving into a new phase rather than ending all protections. Health and Human Services Secretary Dr. Mark Ghaly has stressed that the threat of the virus is still real. For the week ending October 27th, 2022, the CDC Tracker data shows that there were 20,000 COVID infections and 206 COVID related deaths recorded for California. This is most certainly a low count of infections because many positive home test results are never reported. A surge is once again expected over the holidays and there is still no treatment available for long COVID which can cause persistent and debilitating symptoms even after a mild COVID infection. As DOSH Chief Killip stressed at the September Standards Board meeting, "Community and occupational transmission cannot be separated. An infection in the community can be brought into the workplace and result in a workplace outbreak. And as we know the opposite is true: a workplace outbreak can result in spread of disease widely throughout the community."

We appreciate the hard work of the Division and the Board in developing this proposal. In particular, preserving the housing protections are critically important to agricultural workers, who have no control over their housing conditions. We urge you to reinstate the requirements for exclusion pay and maintaining job security for employees who are excluded from work due to COVID-19 infection and to carefully consider the other fairly minor revisions we have recommended in our previous comments

Sincerely,



Anne Katten, MPH
Pesticide and Work Health and Safety Specialist
CRLA Foundation
akatten@crlaf.org



Cynthia L. Rice
Director of Litigation, Advocacy & Training
California Rural Legal Assistance, Inc.

From: [Mitch Steiger](#)
To: [DIR OSHSB](#)
Subject: Labor coalition comments regarding the 15-day version of the COVID prevention standard
Date: Monday, October 31, 2022 3:37:53 PM
Attachments: [COVID-19 Prevention Semi-Permanent Standard letter \(Oct 25\)--Labor Fed coalition.pdf](#)

CAUTION: [External Email]

This email originated from outside of our DIR organization. Do not click links or open attachments unless you recognize the sender and know the content is expected and is safe. If in doubt reach out and check with the sender by phone.

Mitch Steiger
Legislative Advocate
California Labor Federation, AFL-CIO
1001 K Street, Suite 200
Sacramento, CA 95814-3832

cell (916) 524-5182
msteiger@calaborfed.org
www.calaborfed.org



A Union of Educators & Classified Professionals



October 25th, 2022

Chief Jeff Killip
Division of Occupational Safety and Health
1515 Clay Street, Suite 1901
Oakland, CA 94612

Chairman Dave Thomas
Chair, Occupational Safety and Health
Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833

Submitted via email to rs@dir.ca.gov

RE: Proposed Update to California's COVID-19 Emergency Temporary Standard (15-day notice of proposed modifications version released on October 14th, 2022)

Dear DOSH Chief Killip and OSHSB Chair Thomas:

The signed organizations write regarding the proposed semi-permanent version of California's COVID-19 Prevention Standard. Specifically, the plan to delete exclusion pay—while *requiring* employers to exclude COVID-19 cases—would spike case numbers and fatalities during what remains a very deadly stage of the pandemic. We are, frankly, stunned that this idea is under serious consideration and strongly urge Cal/OSHA and the OSHSB to return exclusion pay to the

standard. We also would like to raise concerns with various other changes included in the July 29th proposal and cover a few new problematic changes made by the version released on October 14th.

The original ETS was adopted in 2020 to protect workers from COVID-19 exposure and slow community spread of the virus, and on both counts, this first version was a major success. Countless lives were saved as a result of the standard's training, testing, exclusion pay, administrative controls and other measures, and we applaud the work of both DOSH and the OSHSB in getting this landmark standard in place so quickly.

The update that took effect June 17th, 2021, however, ignored the Delta variant's rise and took a major step back. By effectively removing face coverings from most workers, by eliminating much of the physical distancing language, and by placing unrealistic faith in the ability of vaccines to end the pandemic, what appeared at first to be a bad idea was immediately confirmed as a catastrophic one: the California Workers' Compensation Institute estimates that COVID-19-related workers' compensation claim rates spiked 480% in the month of July, as compared to Juneⁱ. While we are not blaming the June 17th update for all of these cases and deaths, eviscerating the ETS doubtlessly played a significant role.

Rather than learning from this disastrous mistake, the new proposal doubles down and deletes exclusion pay from the standard. As proposed on October 14th, 2022, this version not only eliminates this key component but preserves the employer requirement to "exclude" any "COVID-19 case". This means that anyone testing positive or ordered to quarantine would be ordered to stay home, but employers would not be required to pay that worker anything.

The end result of this deeply concerning proposal would be to force workers without adequate sick leave to lose their jobs or go home without pay for days or weeks. As most cannot absorb such a devastating loss of income, many would have to avoid this outcome by avoiding testing, and thus, contagious workers would have to quietly stay on the job, infecting other employees and members of the public. Workers would fall ill, others would die, and the pandemic would worsen.

Further, this change would create a deeply concerning precedent that workers can be sent home, without pay, as punishment for contracting a work-related illness through no fault of their own. Workers' compensation temporary disability benefits will not apply in most cases and, even if applicable, typically take too long to be of much help to COVID-infected workers. Exclusion pay has been a lifeline to so many; this proposal cuts workers off on January 1st and will absolutely worsen a likely winter surge.

Deleting exclusion pay would also ignore the brutal reality of long COVID faced by millions of California workers. This condition, estimated to affect 20-50% of those infected with the virusⁱⁱ, can mean chronic fatigue, crippling brain fog, severe respiratory distress, and countless other symptoms. Anxiety, fear and ever deepening depression are also very common among those suffering from long COVID. It's now estimated that 2.4% of the U.S. full time workforce is unable to work as a direct result of this conditionⁱⁱⁱ.

Evidence also suggests that working through COVID can raise the risk of long COVID^{iv}. Given that eliminating exclusion pay will leave many Californians with no option other than working while sick, their risk of winding up with this horrible disease will rise. More workers will lose their ability to provide for their families, or enjoy time with their children, or visit outdoor locations they love, or engage in any number of activities that bring joy to their lives. For those affected individuals, their overall quality of life will decline sharply. For the state of California, the mass disabling event created by long COVID will worsen.

Related to the loss of exclusion pay, this version of the standard no longer includes language protecting workers' *"...seniority, and all other employee rights and benefits, including the employee's right to their former job status, as if the employee had not been removed from their job."* Deleting this language means that workers forced out of work—as a result of their employer's failure to protect staff from COVID—will be further punished by potentially losing seniority, health care, retirement contributions, or other benefits. This compounds the harm of eliminating exclusion pay and heaps additional distress on workers already suffering potentially very serious illness.

The two-year re-adoption should also retain the requirement to notify employees and their representatives of COVID-19 cases and close contacts. This measure, included in AB 685 (Reyes, 2020) and clarified by AB 654 (Reyes, 2021) is slated to expire on 1/1/2024— long before COVID-19 will cease to dominate life in California. Rather than risk these incredibly helpful provisions going away before the pandemic does, we should take this opportunity to make these protections permanent.

In addition, the definition of "outbreak" should match the California Department of Public Health (CDPH) definition. In the original adoption of the ETS, the definition aligned with that established by CDPH, in that three or more cases at a worksite qualified. However, in the June 2021 re-adoption of the ETS, the definition was significantly limited to three or more "employee" COVID-19 cases. In some settings, such as schools, this would drastically limit the value of this section and absolutely risk countless workers' lives.

COVID-19 is just as transmissible and deadly regardless of who it's contracted from; limiting the definition to only consider certain cases would ignore the science and hide many outbreaks from

this critically important section. The Standards Board should revert to the original definition of outbreak, consistent with CDPH, which simply stated that 3 or more cases constitutes a worksite outbreak, whether the cases are technically employees.

The October 14th version also further weakens the outbreak section (3205.1) by allowing employers out of outbreak status while a worker continues to test positive. This baffling change permits employers to more quickly escape the very modest requirements under 3205.1, even if and while a victimized worker is fighting off an occupational COVID infection. For reference, these requirements include such benefits as making testing available, offering a reminder that workers can request N95s, and monthly reviews of any new COVID-related hazards. We would argue that these are all actions all employers should take always, and weakening the standard to apply for a shorter period of time during outbreaks defies reason.

During testimony on this proposal during OSHSB hearings, employer lobbyists have argued that the two-year readoption standard should either be rejected entirely or allowed to expire when the COVID State of Emergency is withdrawn—a change currently slated to happen on February 28th, 2023. This argument, essentially that the end of the SOE means the end of the threat, severely misunderstands the Governor’s intent with this announcement and even ignores explicit statements to the contrary from top public health officials.

A state of emergency (SOE) is a legal construct, defined in Government Code § 8558 (b), that extends a variety of obligations, powers and rights to the Governor’s office during enumerated types of disasters. The current SOE is legally unrelated to the COVID-related Emergency Temporary Standard (ETS) currently in effect; the administration did not need the SOE to promulgate the ETS. To argue otherwise is to imply a false connection between the two and ignore the well-established history of other SOEs.

According to this online [list](#) of Governor Newsom’s previous SOE declarations, most have related to wildfires. It would make no more sense to end the COVID standard with the expiration of the COVID SOE than it would have to end all wildfire-related OSH standards when a given wildfire-related SOE was withdrawn. The end of an SOE does not, in any way, mean the end of the hazard.

Rather, in the announcement regarding the COVID SOE, Secretary of the California Health & Human Services Agency Dr. Mark Ghaly reports that “[w]hile ***the threat of this virus is still real***, our preparedness and collective work have helped turn this once crisis emergency into a manageable situation.” The COVID prevention standard is a key component of the collective work that has helped California manage this situation, and removing the standard while COVID remains such a threat would risk reversing progress and renewing our emergency status.

Most importantly, the COVID ETS is already slated to expire on December 31st, 2022. The two-year readoption version would take effect at some point a few weeks later, so the employer community appears to be arguing that the ETS should expire, and then the two-year readoption should expire a month or two after being adopted. Put another way, the standard that will be in effect on February 28th of 2023 will not even be an emergency standard, further distancing this regulation from the SOE and further invalidating this argument. The proposed two-year readoption should continue for two years, and that time should be spent quickly developing the best possible general infectious disease standard to follow.

In summary, we strongly reject this proposal's problematic elements, but particularly the exclusion pay deletion. We strongly reject the idea that workers should be forced out of work without pay when sick from occupational illness; we also question the legality of doing so. We fervently oppose encouraging sick workers to avoid testing, keep working and hope for the best. We implore those behind this proposal to learn from our past mistakes and reconsider this ill-advised change. We also urge the Division and OSHSB to consider other points raised by this letter and use the final adoption to enact a stronger, more protective regulation.

Thank you for the opportunity to comment on this proposal, and we again strongly recommend that the OSHSB and Cal/OSHA return exclusion pay to the proposed COVID-19 Prevention Standard.

Sincerely,

California Labor Federation, AFL-CIO
California Conference Board of the Amalgamated Transit Union
California Conference of Machinists
California Federation of Teachers
California Nurses Association
California School Employees Association
California Teamsters Public Affairs Council
Engineers & Scientists of California, IFPTE, Local 20
SEIU California State Council
SMART-Transportation Division
UNITE HERE
United Food and Commercial Workers, Western States Council
Utility Workers Union of America

Cc: Christy Bouma, Legislative Secretary, Office of the Governor
Natalie Palugyai, Secretary, Labor & Workforce Development Agency
Assemblyman Ash Kalra, Chair, Assembly Labor & Employment Committee
Senator Dave Cortese, Chair, Senate Labor, Public Employment & Retirement Cmte.

Assemblywoman Wendy Carrillo, Chair, Assembly Budget Subcommittee #4
Senator Maria Elena Durazo, Chair, Senate Budget & Finance Subcommittee #4
Cesar Diaz, President pro Tempore Toni Atkins' Office
George Wiley, Speaker Anthony Rendon's Office

ⁱ https://www.cwci.org/press_release.html?id=847

ⁱⁱ <https://www.statnews.com/2022/07/06/understanding-long-covid-estimates/#:~:text=That%2020%25%20figure%2C%20from%20a,seriously%20affecting%20their%20daily%20life>

ⁱⁱⁱ <https://www.latimes.com/california/story/2022-07-07/working-through-covid-sleep-rest-infection-test-positive>

^{iv} <https://www.latimes.com/california/story/2022-07-07/working-through-covid-sleep-rest-infection-test-positive>

From: [Michael Pimentel](#)
To: [DIR OSHSB](#)
Subject: California Transit Association: Letter in Response to Non-Emergency Regulation
Date: Monday, October 31, 2022 3:38:41 PM
Attachments: [image003.png](#)
[CTA COVID-19 Non-Emergency Req - Comment Letter - 10-31-22.pdf](#)

CAUTION: [External Email]

This email originated from outside of our DIR organization. Do not click links or open attachments unless you recognize the sender and know the content is expected and is safe. If in doubt reach out and check with the sender by phone.

Attached here please find the Association's comment letter in response to the COVID-19 prevention non-emergency regulation.

Thanks,

Michael Pimentel
California Transit Association
Executive Director
michael@caltransit.org

1415 L Street, Suite 1000
Sacramento CA 95814
T : (916) 446-4656
M : (323) 594-6342
caltransit.org

Connecting us.





October 31, 2022

Christina Shupe, Executive Officer
California Occupational Safety and Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833
oshsb@dir.ca.gov

RE: COVID-19 Prevention Non-Emergency Regulation

Ms. Shupe:

On behalf of the California Transit Association, I write to you today to formally register the following comments on the proposed COVID-19 Prevention – Non-Emergency Regulation, as amended and released on October 14. The Association represents 85 transit and rail agencies in California as well as over 130 transit business members.

The comments we share today build on the comments we previously filed in response to the draft non-emergency regulation released on July 29 and the various iterations of the COVID-19 Prevention Emergency Temporary Standards (ETS) adopted in 2020 and 2021. The comments present a series of concerns with the non-emergency regulation, as amended, that we believe require further evaluation and response from the Occupational Safety and Health Standards Board before action is taken to adopt the proposed non-emergency regulation. While we will detail our specific concerns in the pages that follow, we continue to note the apparent and troubling dissonance in the general relaxation by federal and state public health organizations of COVID-19 prevention protocols impacting individuals in their private lives (as well as our communities), and the more stringent COVID-19 prevention protocols for employers being advanced by the Occupational Safety and Health Standards Board in the proposed non-emergency regulation. Regrettably, this dissonant approach to combatting COVID-19 shifts the financial responsibility of addressing COVID-19 outbreaks (whether occupational or not) to employers, including public transit agencies.

Additionally, we will voice our long-standing concern that the non-emergency regulation, like the various iterations of the COVID-19 Prevention ETS that preceded it, fails to differentiate requirements on employers for COVID-19 cases contracted at the workplace and those contracted elsewhere. What's more, the non-emergency regulation doubles down on the flawed application of its requirements by introducing new language, which states *"[a]n employee is potentially exposed to COVID-19 hazards when near other persons, whether or not the employee is performing an assigned work task."*

As we present these general and specific concerns, please know that we understand the changes to the non-emergency regulation made since July and that we do not disagree with the intent of the proposed non-emergency regulation – i.e., to ensure the safety of our transit workers. As an association, we led efforts in 2021 to guarantee the public transit workforce had priority access to the

COVID-19 vaccine and our members each took unprecedented and costly steps to protect their workforce during the height of the pandemic, including but not limited to, imposing vaccine mandates, installing operator barriers, and adopting work-from-home policies, where practical. Rather, we are asserting that, just as the tools for responding to COVID-19, including innovations in vaccines (inclusive of new bivalent boosters) and antiviral therapies, have changed the impact of COVID-19 on our communities, so too should COVID-19 prevention protocols for employers adapt to the evolution of COVID-19's impact on the workforce.

Expand the Exception to “Close Contact” to Fully Vaccinated and Boosted Employees: The proposed non-emergency regulation already provides an exception to the definition of “*close contact*” for employees who wore a respirator whenever they shared the same indoor airspace as a COVID-19 case. We urge the Occupational Safety and Health Standards Board to expand this exception to also include employees who have “*completed their primary vaccination with any authorized or approved monovalent COVID-19 vaccine and received the latest single dose booster of any authorized or approved bivalent COVID-19 vaccine.*” Expanding this exception would serve as incentive for employers to strongly encourage their workforce to receive the latest, effective bivalent COVID-19 vaccine, delivering public health benefits beyond the workplace.

Revise the Definition of “Outbreak” and “Major Outbreak” to Account for Workplace Size: Additionally, the proposed non-emergency regulation defines “*outbreak*” and “*major outbreak*” in much the same way as previous iterations of the ETS – i.e., as three or more COVID-19 cases within an exposed workplace within a 14-day period and 20 or more COVID-19 cases in an exposed workplace within a 30-day period, respectively. While the definition of “*outbreak*” used in the ETS is consistent with those used in Labor Code Section 6325 by cross-reference to definitions established by the State Department of Public Health, it differs from the definitions used in Labor Code Section 3212.88, where outbreak is defined as 4 employees at a specific place of employment testing positive for COVID-19 within 14 calendar days for employers with 100 employees or fewer; and, 4 percent of the number of employees who reported to the specific place of employment testing positive for COVID-19 for employers with 100 or more employees. It is concerning that the definitions of “*outbreak*” and “*major outbreak*” used in the proposed non-emergency regulation remain entirely untethered to the number of workers in an exposed group, treating, for example, a workplace with fewer than 100 employees the same as one with hundreds more. Furthermore, these definitions may also be, at times, in conflict with definitions used by local public health offices.

We, therefore, urge the Occupational Health and Safety Standards Board to amend the proposed non-emergency regulation to include percentage thresholds for the definition of “*outbreak*” and “*major outbreak*” instead of fixed numbers to account for variability in workplace size.

Reduce the Cost Impacts on Struggling Public Transit Agencies: Public transit agencies across the state continue to face financial challenges precipitated by the COVID-19 pandemic, which will become more dire as one-time federal relief is depleted. We are concerned that the proposed non-emergency regulation will further worsen the financial position of public transit agencies by maintaining for the foreseeable future expansive and generally cost-prohibitive mandatory testing requirements that are often actively resisted or otherwise unutilized by our workforce. Lengthy periods of mandatory testing, particularly at large jobsites involving many employees, impose significant administrative burdens on, and a serious threat to the financial wellbeing of, vulnerable public transit agencies.

To help rectify our concerns, we urge the Occupational Safety and Health Standards Board to modify testing requirements to require only that employers make testing available to employees with close contact and under a COVID-19 “outbreak” or “major outbreak” upon request.

Limit the Duration of the Proposed Non-Emergency Regulation: The proposed non-emergency regulation would apply for two years after its effective date. During that period, still further innovations in vaccines and antiviral therapies are likely to become available, further reducing the impact of COVID-19 on our communities. To ensure the proposed non-emergency regulation’s provisions do not remain in effect beyond their usefulness, we urge the Occupational Safety and Health Standards Board to include language that specifies that the proposed non-emergency regulation will remain in effect for two years after its effective date or until the State of California has ended the remaining COVID-19 emergency orders and state of emergency, whichever is sooner.

We greatly appreciate the opportunity to comment on the proposed non-emergency regulation and look forward to working with the Occupational Safety and Health Standards Board to address the concerns the Association has raised in this letter.

If you have any questions about this letter, please contact me at michael@caltransit.org.

Sincerely,



Michael Pimentel
Executive Director

cc: The Honorable Gavin Newsom, Governor, State of California
Eric Berg, Deputy Chief of Health, Occupational Safety and Health Standards Board
Sarah Money, Executive Assistant, Occupational Safety and Health Standards Board
Jacque Roberts, Deputy Cabinet Secretary, Office of Governor Gavin Newsom
Toks Omishakin, Secretary, California State Transportation Agency

From: [Tresten Keys](#)
To: [DIR OSHSB](#)
Subject: COVID-19 Non-Emergency Standard Written Comments Submission
Date: Monday, October 31, 2022 3:40:18 PM
Attachments: [10.31.2022 AGC Written Comment To Cal-OSHA.pdf](#)

CAUTION: [External Email]

This email originated from outside of our DIR organization. Do not click links or open attachments unless you recognize the sender and know the content is expected and is safe. If in doubt reach out and check with the sender by phone.

Good Afternoon,

Please see attached AGC of California written comment letter regarding the draft COVID-19 Non Emergency Standard. I am sending this letter on behalf of Brian Mello, Vice President of Engagement and Regulatory Affairs. If there are any questions regarding our comments please feel free to reach out at any time.

Regards,

Tresten T. Keys

Safety and Regulatory Affairs Manager

AGC of California

Office: 916.371.2422

Mobile/Direct: 916.342.4145

keyst@agc-ca.org

www.agc-ca.org

The Voice of the Construction Industry

Join us for #CONSTRUCT2022, presented by [Milwaukee Tool](#), at the beautiful Omni Rancho Las Palmas Resort & Spa, in Rancho Mirage, on Nov. 2-4, 2022! [Register today.](#)





PRESIDENT

Dina Kimble
Royal Electric Company

PRESIDENT-ELECT

Steve Rule
Turner Construction Company

**VICE PRESIDENT
BUILDING**

Brad Jeanneret
Hensel Phelps

**VICE PRESIDENT
HIGHWAY &
TRANSPORTATION**

Ural Yal
Flatiron West, Inc.

**VICE PRESIDENT
UTILITY & INFRASTRUCTURE**

Jim Blois
Blois Construction, Inc.

**VICE PRESIDENT
SPECIALTY CONTRACTORS**

Greg Timmerman
ISEC, Inc.

TREASURER

Pat Kelly
Granite Construction Company

**IMMEDIATE PAST
PRESIDENT**

Mike Blach
Blach Construction Company

CEO

Peter Tateishi
AGC of California

HEADQUARTERS OFFICE

3095 Beacon Blvd.
West Sacramento, CA 95691
Office: 916.371.2422
Fax: 916.371.2352
member_services@agc-ca.org

Jeff Killip

Chief, Division of Occupational Safety and
Health
1515 Clay Street, Suite 1901
Oakland, CA 94612

Christina Shupe, Executive Officer
Members of Cal/OSHA Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833

Submitted electronically: oshsb@dir.ca.gov

October 31, 2022

RE: COVID-19 Non-Emergency Regulation Draft Proposal

Dear Chief Killip, Executive Officer Shupe, and Members of the Standards Board,

On behalf of the Associated General Contractors (AGC) of California, we are submitting comments to the Division of Cal/OSHA in response to the new proposed adoption of a non-emergency COVID-19 Standard.

AGC of California is a member-driven organization that statewide consists of over 950 companies. Our members provide commercial construction services on a broad range of projects ranging from high-rise buildings, tilt-ups, road and bridgework, and port and airport projects. We pride ourselves with being leaders of the industry and within all best practices; safety is always the number one priority.

In our last comment letter, we spoke on the burden that contact tracing has put on the construction industry, particularly when it comes to record keeping. We support the adjustment of the recordkeeping obligations in Section 3205(j). Given the large number of unique individuals that work in a multi-employer environment contact tracing and its recordkeeping can be a large burden for employers. With the modifications made to Section 3205(j), now have a reduce burden. Although, contact tracing was a useful tool in the start of the pandemic during unprecedented times, its usefulness and impact has diminished significantly due to the information and resources we have now regarding COVID-19.



Outlined Concerns:

- Section 3205(b)(1) – The New “Close contact” Definition
- COVID-19 Exclusionary Pay

1. Section 3205(b)(1) – The New “Close contact” Definition

As noted in California Chamber coalition letter, which AGC of California signed onto as of July 1, 2022, the measure of a “close contact” has been one of the most central and long-standing definitions in our COVID-19 response. Virtually every adult in the state was familiar with the ubiquitous six feet/fifteen minutes standard – and though it may not have been scientifically perfect, it certainly prioritized those at the greatest risk, and was feasible to enforce.

The new definition of close contact integrates the California Department of Public Health definition which uses 400,000 cubic feet as a threshold, identifying any space smaller as a “same indoor airspace”, while any room large you’d need to be within 6 feet of someone for 15 minutes to be consider a close contact.

We acknowledge that this language was added to give a clearer definition for “close contact”, however the additional language has left the construction industry concerned. Many employers do not have exact calculations for their workspaces in cubic feet, furthermore if you take into consideration active jobsites, the constant change in environment would make calculating the cubic feet that much harder. The current text also seems to mention that closing and opening doors can impact the room measurement, adding further confusion. A simple and clear definition for close contact is needed, like the previous definition, stating that if you were indoors for 15 minutes or more when within six feet. As opposed to giving threshold rooms size, Cal/OSHA should look at better defining what is consider a “indoor workspace”.

We would urge a return to the prior definition which uses a proximity-based approach, with the ongoing ability for a public health order to supersede the Proposed Regulation for the duration of its effect.

2. COVID-19 Exclusionary Pay

The Division of Occupational Safety and Health (DOSH), better known as Cal/OSHA, protects and improves the health and safety of working men and women in California and the safety of passengers riding on elevators, amusement rides, and tramways – through the following activities: Setting, and enforcing standard, providing outreach, education, and assistance, and issuing permits, licenses, certifications, registrations, and approvals all in regards to the health and safety of those working in California. During such unprecedented times that the world experience over the last two years the Division of Cal/OSHA and the Cal/OSHA standards board issued an Emergency Temporary Standard, which included exclusionary pay. Over the past few months there has been deliberation amongst the Cal/OSHA Standards Board, and the Division to include exclusionary pay or not within a permanent standard.



Under Article 6 of Chapter 3.5 Administrative Regulations and Rulemaking titled: Review of Proposed Regulations section 11349.1(2) and 11349.1(4) The office shall review all regulations adopted, amended, or repealed pursuant to the procedure specified in Article 5 (commencing with Section 11346) and submitted to it for publication in the California Code of Regulations Supplement and for transmittal to the Secretary of State and make determinations using all of the following standards: (2) Authority, (4) Consistency.

All California workers are entitled to Workers Compensation, Paid Sick Leave, State Disability, CFRA, FMLA, and the California Fair Employment and Housing Act. By adding in exclusionary pay Cal/OSHA would be creating inconsistent regulation with discrepancies against many labor laws that address worker being unable to obtain wages due to contracting COVID-19, having symptoms, or taking care of someone else.

Another concern regarding the addition of COVID-19 Exclusionary Pay is The Standardized Regulatory Impact Assessment (SRIA). The present SRIA draft analyzed the Proposed Regulation without exclusionary pay. To get the current SRIA up to date to include “all the benefits and costs” of Exclusionary Pay would be a very timely process.

After drafting another proposed change draft and having a 15 day comment period, updating the current SRIA to include Exclusionary Pay, and submit everything to the Department of Finance, adding Exclusionary Pay to the Standard could make passing a vote on the standard practically impossible by the December sunset date.

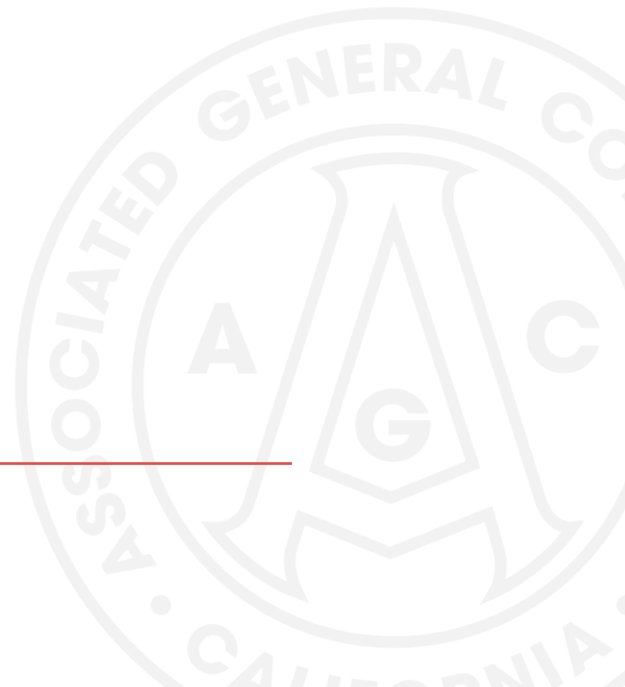
Conclusion

AGC of California appreciates the Division of Cal/OSHA allowing AGC of California to comment the proposed adoption of the non-emergency COVID-19 Standard. If you have any questions regarding the comments, please contact Brian Mello at (603) 770-9264 (email: bmello@agc-ca.org). We appreciate the opportunity to comment and hope these concerns are addressed.

Sincerely,

Brian Mello

Brian Mello
Associate Vice President, Engagement & Regulatory Affairs
Associated General Contractors of California



From: [Carmen Comsti](#)
To: [DIR OSHSB](#)
Subject: COVID-19 Prevention – Non-Emergency Regulation 15-Day Notice of Proposed Modifications
Date: Monday, October 31, 2022 3:47:10 PM
Attachments: [image001.png](#)
[CNA Comments Semi-Permanent Covid-19 Standard 15-Day Modification 20221031 FINAL.pdf](#)

CAUTION: [External Email]

This email originated from outside of our DIR organization. Do not click links or open attachments unless you recognize the sender and know the content is expected and is safe. If in doubt reach out and check with the sender by phone.

Please see attached the comments from the California Nurses Association regarding the 15-Day Proposed Modifications to the Non-Emergency Covid-19 Prevention Standard.

Carmen Comsti (pronouns: she/her/hers)
California Nurses Association/National Nurses United | Lead Regulatory Policy Specialist
ccomsti@calnurses.org | (510) 206-6083 (mobile)



This message (including any attachments) contains confidential information intended for a specific individual and purpose, and is protected by law. If you are not the intended recipient, you should delete this message. If you are not the intended recipient, any disclosure, copying, or distribution of this message, or the taking of any action based on it, is strictly prohibited.



California
Nurses
Association



National
Nurses
United

OUR PATIENTS. OUR UNION. OUR VOICE.

OAKLAND
155 Grand Avenue
Suite 100
Oakland CA 94612
phone: 800-287-5021
fax: 510-663-1625

SACRAMENTO
Government Relations
980 9th Street
Suite 700
Sacramento CA 95814
phone: 916-446-5019
fax: 916-446-3880

Via Electronic Mail to OSHSB@dir.ca.gov

October 31, 2022

Chief Jeff Killip
Division of Occupational Safety and Health
1515 Clay Street, Suite 1901
Oakland, CA 94612

Mr. David Thomas, Chair
Occupational Safety and Health Standards
Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833

RE: Non-Emergency Covid-19 Prevention Standard, 15-day Notice of Proposed Modifications on October 14, 2022

Dear Chief Killip, Chair Thomas, and Members of the Occupational Safety and Health Standards Board:

The California Nurses Association/National Nurses United (CNA), representing more than 100,000 California registered nurses, appreciates the opportunity to submit written comments to the Division of Occupational Safety and Health (Cal/OSHA) and the Occupational Safety and Health Standards Board (OSHSB) regarding the 15-day Notice of Proposed Modifications to the Non-Emergency Covid-19 Prevention Standards, which was posted on October 14, 2022.

The continued deletion of exclusion pay and other precautionary removal protections from the non-emergency Covid-19 standard as well as some of the proposed modifications described below places California's workers needlessly at risk of exposure to and infection from SARS-CoV-2. The lack of exclusion pay in the proposed non-emergency standard blatantly disregards the disease trajectory of SARS-CoV-2 and its variants and subvariants. As nurses, CNA's members recognize and are acutely aware that California should expect the continued transmission of Covid-19 in the coming years. Despite the planned expiration of the Covid-19 State of Emergency in February 2023, the risks that Covid-19 presents to workers across California will continue beyond legal proclamations of a public health emergency. CNA members continue to care for patients with Covid-19 infections and hospitalizations. Nurses are also witnessing increases of patients who need care related to long Covid. Covid-19 cases persist across California as we again brace for another winter surge and as new variants continue to spread around the world potentially with increased transmissibility and immune evasiveness.

In other words, Covid-19 will remain an occupational health and safety risk to California's workers for the foreseeable future. As such and as the emergency Covid-19 standard for general industry is set to expire at the end of this year, CNA reiterates our support for the prompt adoption of a non-emergency Covid-19 standard for general industry. We again urge Cal/OSHA and the OSHSB to ensure that the non-emergency standard includes strong pay and other protections for workers when precautionary removal is recommended. Below, we

additionally raise concerns regarding some of the proposed modifications noticed on October 14, 2022, and urge the previous language that is more protective for workers be restored in the final non-emergency standard.

I. Exclusion pay and other job protections for precautionary removal must be returned to the standard.

CNA reiterates our support and urging to include exclusion pay and job protections for workers who are required to be removed from the workplace as a result of a Covid-19 exposure or infection, in the non-emergency Covid-19 standard. We are dismayed that the proposed modifications to the standard did not return exclusion pay into the draft. Exclusion pay and job protections for removal are critical elements of any occupational safety and health standard. Removal of such protections from the non-emergency Covid-19 standard unjustly placed the burden of occupational exposure and illness from a serious and potentially deadly infectious disease squarely onto workers. Cal/OSHA and the Standards Board have the responsibility of ensuring that no worker is forced to make the impossible choice of going to work while sick or staying home without pay or job protection.

As CNA has stated previously, it is consistent with other Cal/OSHA standards to include exclusion pay and job protections for precautionary removal under the non-emergency Covid-19 standard. For example, Cal/OSHA's aerosol transmissible disease standard for health care includes requirements that employers maintain a worker's pay, benefits, and job status if they are required to be removed from the workplace.¹ All workers should be able to access these same pay and job protections for precautionary removal related to Covid-19. The lack of necessary pay and job protections for workers under the non-emergency Covid-19 standard will unnecessarily lead to further occupational exposure and illness. If a worker is exposed to or ill from an infectious disease, they may be compelled to return to work while potentially infectious because they cannot afford the loss in income or fear they will lose other benefits or job status.

By leaving exclusion pay and other precautionary removal protections out of the non-emergency standard, Cal/OSHA and the OSHSB would set the standard up for failure. Without exclusion pay and other job protections, workers would rightly worry about the loss of income and job status if they followed the standard's requirements to stay out of the workplace after exposure to or infection from Covid-19. On the other hand, employers would have little incentive to comply with the standard's precautionary removal requirements if they could refuse to pay or otherwise punish workers who attempt to isolate or quarantine after a workplace exposure to Covid-19. Cal/OSHA and the OSHSB must ensure that employers provide workers with all the support and protections necessary to ensure they can properly isolate and quarantine as a result of workplace exposure to Covid-19. Exclusion pay and other job protections for precautionary removal must be returned back into the non-emergency standard.

¹ Cal. Code of Regs. tit. 8, § 5199(h)(8)(B).

II. The definition of “close contact” should not be based on the California Department of Public Health’s definition.

CNA additionally wants to express our concern about a number of other changes in the modified draft of the Covid-19 non-emergency standard. We are deeply concerned with the proposed changes to the definition of “close contact” in subsection 3205(b)(1). Specifically, by tying the definition of “close contact” to any regulation or order of the California Department of Public Health (CDPH), Cal/OSHA would astonishingly abdicate its duties to protect workers and to develop occupational safety and health standards to CDPH and its regulatory and political decision-making processes.

Cal/OSHA and the OSHSB should implement a strong, protective Covid-19 standard with consistent rules that California’s workers can rely on to protect them from the ongoing threat of workplace Covid-19 exposure and the health effects of Covid-19 infection. The non-emergency standard should not bind itself to invariably changing CDPH guidance. Cal/OSHA and the OSHSB must make independent decisions using your expertise on occupational safety and health and tailored to your responsibilities to protect California’s workers from hazards on the job. Cal/OSHA and the OSHSB must not surrender these responsibilities to another agency with different priorities and goals.

CDPH does not have the expertise in occupational safety and health as does Cal/OSHA. CDPH develops its Covid-19 guidance on the basis of what it determines is best for public health and may prioritize other considerations above worker health and safety. By contrast, Cal/OSHA and the OSHSB has an enduring responsibility to reduce significant risks to workers safety and health in the workplace. Unlike CDPH’s public health guidance-making role, Cal/OSHA and the OSHSB are obliged to follow procedural requirements when creating and updating standards. Tying standards to future changes in CDPH guidance would cause confusion among employers due to changing CDPH recommendations, none of which include instructions for designing a workplace health and safety program. CDPH also does not consider the hierarchy of controls to eliminate or reduce exposure to a hazard when considering its definitions or guidance. In other words, what may or may not be appropriate for public health guidance should not determine what is appropriate for occupational safety and health precautions.

Closer examination of the modified definition of “close contact” demonstrates how binding a Cal/OSHA standard to another regulatory authority is inappropriate. The modified text of the non-emergency standard would create tiers of protection for California’s workers, distinguishing between indoor spaces of 400,000 cubic feet or more per floor at other spaces. This distinction is completely arbitrary and has no basis in the evidence base regarding aerosol disease transmission of Covid-19. There appears to be no such data to support this cut-off.

Moreover, when considering transmissibility of an aerosolized disease, it is not always appropriate to consider spaces that are separated by floor-to-ceiling walls or by floors as distinct indoor spaces where SARS-CoV-2 cannot be spread from space to space. Airflow patterns

throughout a space may vary widely, particularly considering ventilation systems. Outbreaks have been noted related to transmission through the ventilation systems. For example, this study reported on an outbreak in a German nursing home where the ventilation system contributed to the outbreak.²

The modified definition also reverts to the arbitrary six-foot exposure cut off in large indoor spaces. We know that Covid-19 occurs beyond six feet and that physical distancing is not sufficient by itself to stop transmission of the virus. Transmission of Covid-19 beyond six feet of distance between individuals has occurred multiple times. As a result, by adopting CDPH's definition of "close contact" and six foot exposure cut-off, Cal/OSHA will undermine the effectiveness of testing, contact tracing, quarantine and removal measures, and other precautions within the non-emergency standard. For a list of studies regarding the inadequacy of six-foot physical distancing measures to stop transmission of SARS-CoV-2, please see Appendix A.

III. The standard should revert to a zero case threshold before an outbreak definitionally ends.

CNA is also concerned about the modified language regarding employer obligations during an outbreak in subsection 3205.1(a)(2), which increases the threshold at the end of an outbreak under the standard from zero cases in a 14-day period to one case in a 14-day period. The lowering of the "outbreak" threshold goes in the wrong direction. The modified language dangerously allows a positive case to continue in a workplace but relieves employers of its obligations to protect workers from the risks of exposure despite knowing that exposure risks within the workplace continue. If there is still one case detected in the workplace during an outbreak, then transmission could still be occurring. It is safer and more effective to keep the zero case threshold.

IV. The standard should restore the previous definition of an "exposed group" that required face coverings be worn by all before applying an exception.

The modification to subsection 3205(b)(7)(A) inappropriately deletes "while everyone is wearing a face covering" from the definition of "exposed group." This change weakens the definition of "exposure group" and would lead to fewer workers falling under the protections of the standard. Under the prior definition, if a worker walked through an area, like a busy hallway, they would be considered as exposed to Covid-19 if some people also in the area were not wearing face coverings. Now, the exception to the "exposed group" definition applies regardless of whether everyone in the space is or is not wearing face coverings.

Considering the evidence of Covid-19 transmission in brief exposure intervals including when face coverings are worn by workers, the prior definition should be restored in the standard.

² Hurraß, J. et al, "Explosive COVID-19 outbreak in a German nursing home and the possible role of the air ventilation system," *J Hosp Infect*, 103: 34-43 (2022), <https://pubmed.ncbi.nlm.nih.gov/36179793/>.

The transmission of Covid-19 can occur in short exposure intervals, even with face mask usage. For example, an outbreak investigation in an Israeli pediatric hospital identified six health care worker nosocomial infections from an asymptomatic patient that tested negative for Covid-19 upon admission. All six health care workers became infected despite wearing surgical masks at all times after providing routine patient care, which lasted less than ten minutes. Three of the six health care workers had no contact with the patient and maintained physical distance.³

V. The standard should restore employer recordkeeping requirements for close contact.

The modified language, in subsection 3205(j)(2), inappropriately removes the requirement for employers to keep records of persons who had close contact with a Covid-19 case and the data upon which workers were provided notice of close contact. Recordkeeping and effective tracking are necessary to ensure that the transmission of Covid-19 in the workplace is monitored and controlled. Understanding Covid-19 transmission in the workplace is particularly important as the virus is still evolving and the need to identify spread and variants of concerns are necessary to prevent surges. With the deletions of these recordkeeping requirements in the modified text, it remains unclear how Cal/OSHA would be able to enforce the requirements of subsection 3205(e) if employers are not required to keep records of close contacts and the provision of close contact notification to exposed workers.

VI. Other proposed modifications to the non-emergency rule.

Subsection 3205(b)(11): Definition of “returned case”

The modified definition of “returned case” is an improvement which properly recognizes that reinfections can occur in quick succession, particularly with the Omicron subvariants of SARS-CoV-2 circulation.” We agree with the change in that it functions to tighten when exceptions to testing requirements under the standard apply. One study found a significant number of reinfections occurred at an interval of less than 60 days, with a mean interval between infections of 47 days, including among both vaccinated and unvaccinated individuals.⁴ A majority of individuals in this study received at least one negative polymerase chain reaction (PCR) test result in between the two infections. Importantly, the study authors noted, “with a high reinfection rate due to a high genetic variability within the Omicron variant, one cannot generally assume reduced infectivity in reinfected individuals.”⁵

³ Goldberg, L., Y. Levinsky, et al., “SARS-CoV-2 Infection Among Health Care Workers Despite the Use of Surgical Masks and Physical Distancing—the Role of Airborne Transmission,” *Open Forum Infectious Diseases*, Jan. 27, 2021, <https://academic.oup.com/ofid/advance-article/doi/10.1093/ofid/ofab036/6121257>.

⁴ Vera-Lise, I., E. Dominik, et al., “Rapid reinfections with different or same Omicron SARS-CoV-2 sub-variants,” *J of Infection*, 85(4): E96-E98, July 7, 2022, [https://www.journalofinfection.com/article/S0163-4453\(22\)00412-1/fulltext](https://www.journalofinfection.com/article/S0163-4453(22)00412-1/fulltext).

⁵ *Ibid.*

Subsection 3205(c)(1): Assumptions regarding potential infectiousness

CNA appreciates that the changes to subsection 3501(c)(1) maintains an approach that considers the significant role of both asymptomatic and presymptomatic transmission in the spread of SARS-CoV-2. Scientific evidence suggests that asymptomatic and pre-symptomatic cases play a significant role in the spread of Covid-19. For example, the Centers for Disease Control and Prevention's best estimate is that 50% of transmission occurs prior to symptom onset.⁶

Subsection 3205(h)(1): Ventilation

CNA supports the continued inclusion of clear requirements for ventilation in the non-emergency Covid-19 standard as an engineering control to reduce the transmission of SARS-CoV-2, in combination with other measures.

Subsection 3205.1(e): Periodic review

The modified text in subsection 3205.1(e) now requires employers to perform a review of Covid-19 policies and to implement changes when the standard "initially applies and periodically thereafter." However, it is not clear what "periodically" means under the modified language. To clarify the requirement under the non-emergency standard, Cal/OSHA could require employers to review their Covid-19 policies at least annually, which is similar to other Cal/OSHA requirements to review injury and illness prevention programs.⁷

VII. Conclusion.

CNA appreciates Cal/OSHA and the OSHSB's continued work on a non-emergency Covid-19 standard for general industry. We again urge that exclusion pay and other job protections for precautionary removal are returned into the standard. With the expiration of the Covid-19 emergency temporary standard set for the end of this year, it is of utmost importance that Cal/OSHA complete and the OSHSB approve a non-emergency Covid-19 standard promptly to ensure there is no gap in occupational protections for California's workers from this ongoing, deadly disease.

Thank you for your consideration of these comments to the proposed modifications to the Non-Emergency Covid-19 Prevention Standard.

⁶ Centers for Disease Control and Prevention, "COVID-19 Pandemic Planning Scenarios," Centers for Disease Control and Prevention, Updated Mar 19, 2021, <https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios.html> (Accessed Oct 30, 2022).

⁷ See, e.g., Cal. Code Regs. tit. 8 § 5193 (bloodborne pathogens standard, Cal. Code Regs. tit. 8 § 3342 (workplace violence prevention in health care)).

Sincerely,



Carmen Comsti
Lead Regulatory Policy Specialist
California Nurses Association/National Nurses United

Appendix A

Studies regarding the inadequacy of six-foot physical distancing measures to stop transmission of SARS-CoV-2

By itself, six-foot physical distancing is not sufficient to stop transmission. Combined with other measures, such as wearing cloth or surgical masks, it is also not sufficient to *stop* transmission, though the combination of measures (e.g., six-foot physical distancing plus increased ventilation with filtration plus mask wearing) can reduce the risk of transmission.

When infected individuals breathe, cough, sneeze, or vocalize, they emit aerosol particles containing SARS-CoV-2 virus. Studies show that these aerosol particles can travel farther than six feet and remain infectious:

Bourouiba, Lydia, “Turbulent Gas Clouds and Respiratory Pathogen Emissions: Potential Implications for Reducing Transmission of Covid-19,” *JAMA*, March 26, 2020.

- Available at <https://jamanetwork.com/journals/jama/fullarticle/2763852>.
- A study by world-recognized aerosol expert, Lydia Bourouiba, found that pathogen-carrying gas clouds emitted when people breath, cough, and sneeze can travel up to 23-27 feet.

Abkarian et al., “Speech can produce jet-like transport relevant to asymptomatic spreading of virus,” Proceedings of the National Academy of Sciences, September 2020.

- Available at <https://www.pnas.org/content/early/2020/09/24/2012156117>.
- This study examined and visualized airflows during breathing and speaking, with a high-speed camera to capture the movement of aerosols. Researchers found that normal conversations can create a turbulent, jet-like airflow that can transport exhaled breath over two meters (six feet) in front of the speaker, potentially further, within 30 seconds.

Santarpia et al., “Aerosol and surface contamination of SARS-CoV-2 observed in quarantine and isolation care,” *Scientific Reports*, July 29, 2020.

- Available at <https://www.nature.com/articles/s41598-020-69286-3>.

- Researchers collected air and surface samples to examine viral shedding from isolated Covid-19 patients. Significant environmental contamination was found in bedrails, toilets, ventilation grates, window ledges and hallways. SARS-CoV-2 was found in air samples taken greater than 6 feet from the patients.

Santarpia et al., “The Infectious Nature of Patient-Generated SARS-CoV-2 Aerosol,” *medRxiv*, July 21, 2020.

- Available at <https://www.medrxiv.org/content/10.1101/2020.07.13.20041632v2>.
- This study looked at the presence and viral replication of SARS-CoV-2 in aerosol samples around 6 patients admitted into mixed acuity wards in April 2020. Samples were collected greater than 6 feet from patients, beyond the foot of the bed. SARS-CoV-2 RNA was found in respired aerosols <5 µm around all 6 patients. When placed in cell cultures, aerosol samples <1 µm in diameter replicated. Researchers note that the study shows that some aerosol particles smaller than 5µm produced through normal breathing, vocalization, and coughing can contain infectious SARS-CoV-2.

Lednický et al., “Viable SARS-CoV-2 in the air of a hospital room with Covid-19 patients,” *Int'l J Infectious Diseases*, September 15, 2020.

- Available at [https://www.ijidonline.com/article/S1201-9712\(20\)30739-6/fulltext#%20](https://www.ijidonline.com/article/S1201-9712(20)30739-6/fulltext#%20).
- Researchers recovered viable (infectious) SARS-CoV-2 virus in the air from a hospital room with 1 Covid-19 patient and a 2nd patient who had previously tested positive for Covid-19 but tested negative prior to the study. The air was collected 2 to 4.8 meters (6.5 to 15.7 feet) away from the patients. Airborne virus was detected in the absence of health-care aerosol-generating procedures. The virus strain detected in the aerosols matched the virus strain isolated from a patient with acute Covid-19.

De Oliveira et al., “Evolution of spray and aerosol from respiratory releases: theoretical estimates for insight on viral transmission,” *Proceedings of the Royal Society A: Mathematical, Physical and Engineering Sciences*, Jan 20, 2021.

- Available at <https://royalsocietypublishing.org/doi/10.1098/rspa.2020.0584>.
- This paper provides a description of and exploration into the physics of aerosol and droplet emission, evaporation, and settling. It considers the important dynamics of composition (respiratory droplets are not just pure water but contain proteins and salts that impact evaporation rates) in the context of relative humidity and gravity-induced settling. They found, “The time-of-flight to reach 2m is only a few seconds resulting in a viral dose above the minimum required for infection, implying that physical distancing in the absence of ventilation is not sufficient to provide safety for long exposure times.” (Emphasis added)

Fears, Alyssa C. et al. “Persistence of Severe Acute Respiratory Syndrome Coronavirus 2 in Aerosol Suspensions,” *Emerg Infectious Diseases*, June 22, 2020.

- Available at https://wwwnc.cdc.gov/eid/article/26/9/20-1806_article.

- This study found that SARS-CoV-2 virus can survive up to 16 hours suspended in aerosols.

Several outbreaks have been documented where transmission occurred over distances greater than 6 feet:

- South Korea restaurant (transmission at 15 and 21 feet)⁸
- Skagit County choir outbreak: No one was located within 3 m in front of the index case, therefore droplet transmission did not occur. This outbreak was transmitted via aerosols/airborne.⁹
- Germany meatpacking plant outbreak (transmission between workers over distance of 8 meters/26 feet)¹⁰
- Mall in China (transmission likely over long distances)¹¹
- Long distance transmission of the virus via ventilation system in hospital in Sweden¹²

Several outbreaks have been documented where transmission occurred over distances greater than 6 feet even in combination with wearing surgical masks:

- Israel pediatric hospital outbreak¹³
- Vermont correctional facility transmission event¹⁴

⁸ Kwon et al., “Evidence of Long-Distance Droplet Transmission of SARS-CoV-2 by Direct Air Flow in a Restaurant in Korea,” *J Korean Med Sci*, Nov 2020, <https://jkms.org/DOIx.php?id=10.3346/jkms.2020.35.e415>.

⁹ Miller et al. “Transmission of SARS-CoV-2 by inhalation of respiratory aerosol in the Skagit Valley Chorale superspreading event,” *Indoor Air*, Sept 2020, <https://onlinelibrary.wiley.com/doi/10.1111/ina.12751>.

¹⁰ Günther et al., “SARS-CoV-2 outbreak investigation in a German meat processing plant,” *EMBO Mol Med*, Oct 27, 2020, <https://www.embopress.org/doi/full/10.15252/emmm.202013296>.

¹¹ Jiang et al., “Aerosol transmission, an indispensable route of COVID-19 spread: case study of a department-store cluster,” *Front Environ Sci Eng*, epub Dec 25, 2020, <https://pubmed.ncbi.nlm.nih.gov/33391845/>.

¹² Nissen et al., “Long-distance airborne dispersal of SARS-CoV-2 in COVID-19 wards,” *Scientific Reports*, Nov 11, 2020, <https://www.nature.com/articles/s41598-020-76442-2>.

¹³ Goldberg et al., “SARS-CoV-2 Infection Among Health Care Workers Despite the Use of Surgical Masks and Physical Distancing—the Role of Airborne Transmission,” *Open Forum Infectious Diseases*, Jan 27, 2021, <https://academic.oup.com/ofid/article/8/3/ofab036/6121257>.

¹⁴ Pringle, et al., “COVID-19 in a Correctional Facility Employee Following Multiple Brief Exposures to Persons with COVID-19 — Vermont, July–August 2020,” *MMWR Early Release*, Oct 21, 2020, <https://www.cdc.gov/mmwr/volumes/69/wr/mm6943e1.htm>.

From: [Andrew Wylam](#)
To: [DIR OSHSB](#)
Subject: Re: 15-Day Notice of Proposed Modifications: General Industry Safety Orders
Date: Monday, October 31, 2022 3:50:16 PM
Attachments: [Cal OSHA Sign-on Letter 10.31.2022.pdf](#)

CAUTION: [External Email]

This email originated from outside of our DIR organization. Do not click links or open attachments unless you recognize the sender and know the content is expected and is safe. If in doubt reach out and check with the sender by phone.

Hello,

Please see the attached letter from Pandemic Patients in regards to the Proposed General Industry Safety Orders.

Thank you for considering our position on this matter.

Sincerely,

Andrew Wylam
President



Pandemic Patients
1165 Broad St. #313
Sumter, SC 29150
<https://pandemicpatients.org>

ATTN: The information contained in this email is for informational purposes only. This email communication does not create an attorney-client relationship and is not legal advice. Do not take any action in reliance on the contents of this email without seeking the advice of counsel.



Submitted electronically to oshsb@dir.ca.gov.

Re: 15-Day Notice of Proposed Modifications; General Industry Safety Orders

Members of the California Department of Industrial Relations Occupational Safety and Health Standards Board (Cal/OSHA):

My name is Andrew Wylam, and I am the President of Pandemic Patients. We are a 501(c)(3) non-profit patient advocacy organization that works to relieve the harm caused by COVID-19 and Post-COVID Conditions. I am writing to you on behalf of the undersigned organizations, which represent the interests of millions of COVID-19 patients, survivors, caregivers, and their family members nationwide.

General Industry Safety Orders

The undersigned organizations support the implementation of the General Industry Safety Orders (Safety Orders) published by the Occupational Safety and Health Standards Board on July 29, 2022, and the proposed modifications issued on October 14, 2022.¹ We believe that state and federal regulatory agencies with jurisdiction over occupational health and safety must act with urgency to implement effective safety standards to reduce occupational exposure to COVID-19.

Occupational Exposure to COVID-19

An estimated 10 percent of American workers experience occupational exposure to disease or infection at least once per week, while 18.4 percent experience such occupational exposure at least once per month.² The types of occupations that are associated with heightened exposure risk include healthcare, protective services, office and administrative support, education, community and social services, and construction.³ Specifically, occupational exposure to COVID-19 is disproportionately higher for minority groups, including black and Latino populations.⁴ Research conducted by Kaiser Permanente of Southern California and published in the *Annals of Internal Medicine* in August 2021 found that members of these minority populations have a heightened relative risk of being diagnosed with COVID-19, being hospitalized and receiving intensive-level care, and experiencing severe COVID-19 outcomes.⁵ Their heightened risk for

¹ <https://www.dir.ca.gov/dosh/doshreg/COVID-19-Prevention-Regulatory-Text.pdf>;
<https://www.dir.ca.gov/oshsb/documents/COVID-19-Prevention-Non-Emergency-15-Day.pdf>

² <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0232452>

³ <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0232452>

⁴ <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0256085>

⁵ <https://www.acpjournals.org/doi/10.7326/M20-8283>

occupational exposure and severe COVID-19 outcomes demonstrates how minority populations are left particularly vulnerable to COVID-19 by the absence of workplace safety standards. However, this also implies that strong workplace safety standards can achieve considerable health improvements by providing greater protection to the communities who have experienced the worst COVID-19 health outcomes. By implementing the Safety Orders to protect workers against occupational exposure to COVID-19, Cal/OSHA will accrue significant benefits to California's public health alongside a reduction in health expenditures.

Long COVID

COVID-19 interrupts business operations not only when workers are exposed to or become infected with COVID-19, but also when workers continue to experience symptoms following their recovery from an acute COVID-19 infection. A global analysis published in the *Journal of Infectious Diseases* on April 26, 2022, estimates that 49 percent of patients will continue to experience COVID-19 symptoms 120 days after infection.⁶ These persistent symptoms, referred to as "long COVID," include fatigue, difficulty breathing, pain, cognitive dysfunction, and many others, which can be severe and disabling.⁷ Current research suggests that the risk of developing such persistent symptoms increases each time a person is infected with COVID-19.⁸

Additionally, following their recovery from COVID-19, individuals have a heightened risk of developing one or more associated health conditions, known as Post-COVID Conditions.⁹ These conditions can affect nearly every major organ in the body, including the heart, lungs, brain, and kidneys, which can be fatal. Examples of Post-COVID Conditions include diabetes, depression, anxiety, impaired lung function, atrial fibrillation, and pulmonary embolism. Even asymptomatic and mild cases of COVID-19 place individuals at heightened risk of developing long COVID and one or more Post-COVID Conditions following their recovery.

Regarding cognitive dysfunction, the most common cognitive deficits associated with long COVID include reductions in processing speed, executive functioning, phonemic fluency, category fluency, memory encoding, and memory recall.¹⁰ Cognitive deficits have a significant impact on workers' functional capacity and a significant number of long COVID patients continue to experience these symptoms for over a year following their recovery from COVID-19.¹¹ A study published by the University of Cambridge estimates that the magnitude of cognitive loss associated with severe COVID-19 is equivalent to 20 years of aging or losing 10 IQ points.¹² Disabling cognitive symptoms contribute to the rising number of long COVID patients who are unable to work.

⁶ <https://academic.oup.com/jid/advance-article/doi/10.1093/infdis/jiac136/6569364>

⁷ <https://pandemicpatients.org/long-covid/>

⁸ <https://www.researchsquare.com/article/rs-1749502/v1>

⁹ <https://pandemicpatients.org/post-covid-conditions/>

¹⁰ <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2785388>

¹¹ <https://academic.oup.com/ofid/article/9/7/ofac355/6649885>

¹² <https://www.cam.ac.uk/research/news/cognitive-impairment-from-severe-covid-19-equivalent-to-20-years-of-ageing-study-finds>

The prevalence of disability associated with long COVID is poised to cause a significant deterioration in the American workforce's production capacity and economic output, which is particularly troubling as the number of new COVID-19 infections continues to exceed 35,000 per day.¹³ The Brookings Institution published a report on August 24, 2022, which estimated that 16 million Americans are currently experiencing long COVID, with 2 to 4 million experiencing symptoms so severe that they cannot work.¹⁴ In addition to contributing to the national labor shortage, the lost wages of those workers is between \$170-230 billion each year.¹⁵ Additionally, the estimated cost of medical care and lost quality of life associated with long COVID exceeds \$500 billion each year.¹⁶

A study published in September 2022 by the National Bureau of Economic Research found that workers who experience a week-long work absence due to COVID-19 are 7 percent less likely to be in the labor force one year later.¹⁷ This same study found that COVID-19 has reduced the labor supply by approximately 500,000 people, with 90 percent of the lost labor supply occurring past the initial absence week.¹⁸ The reduction in labor force participation and the direct costs associated with long COVID harm America's economic interests on a national level while threatening the financial security of American families and communities. Implementing workplace safety standards to reduce the spread of COVID-19 will mitigate the lost production capacity caused by workers' direct occupational exposure to COVID-19 and the dire economic consequences associated with long COVID.

Access and Inclusion

Places of public accommodation are subject to obligations under Title III of the Americans with Disabilities Act (ADA), which requires modifications of policies, practices, and procedures where necessary to provide equal access to individuals with disabilities.¹⁹ Many employers who will be subject to the requirements of the Safety Orders may also be considered places of public accommodation.²⁰ We believe that implementing the Safety Orders aligns with the spirit of the ADA by advancing equal access to places of public accommodation for individuals with disabilities. The Safety Orders are particularly important for individuals with long COVID who are disabled and hesitant to visit public venues for fear of additional exposure to COVID-19. Implementing the Safety Orders will support accessibility and inclusion for this population by reducing the total risk of exposure to COVID-19 they would endure if they chose to visit a public

¹³ <https://www.nytimes.com/interactive/2021/us/covid-cases.html>

¹⁴ <https://www.brookings.edu/research/new-data-shows-long-covid-is-keeping-as-many-as-4-million-people-out-of-work/>

¹⁵ <https://www.brookings.edu/research/new-data-shows-long-covid-is-keeping-as-many-as-4-million-people-out-of-work/>

¹⁶ <https://scholar.harvard.edu/cutler/news/long-covid>

¹⁷ https://www.nber.org/system/files/working_papers/w30435/w30435.pdf

¹⁸ https://www.nber.org/system/files/working_papers/w30435/w30435.pdf

¹⁹ https://www.ada.gov/ada_title_III.htm

²⁰ <https://www.dir.ca.gov/oshsb/documents/COVID-19-Prevention-Non-Emergency-15-Day.pdf>

venue. Reducing the total risk of occupational risk to COVID-19 will also support the inclusion of long COVID patients in the workforce by creating an environment that is safe and accessible for them.

Conclusion

For the reasons listed above, the undersigned organizations support the implementation of the proposed Safety Orders. Thank you for considering our position on this matter. If you have any questions or comments about our position on the Safety Orders, please contact me at a.wylam@pandemicpatients.org.

Respectfully,

A handwritten signature in black ink, consisting of the letters 'AW' in a stylized, cursive font.

Andrew Wylam
President
Pandemic Patients
a.wylam@pandemicpatients.org

Cosigners:

COVID Survivors for Change
Long COVID Families

From: [Sunny Dimas](#)
To: [DIR OSHSB](#)
Subject: Orange County Superior Court Public Comment for Proposed COVID-19 Prevention - Non-Emergency Regulation
Date: Monday, October 31, 2022 4:04:58 PM
Attachments: [OCSC-CalOSHA Public Comment Comment 10-31-2022.pdf](#)

CAUTION: [External Email]

This email originated from outside of our DIR organization. Do not click links or open attachments unless you recognize the sender and know the content is expected and is safe. If in doubt reach out and check with the sender by phone.

Occupational Safety and Health Standards Board,

Attached please find the Orange County Superior Court's Public Comment for the Proposed COVID-19 Prevention – Non-Emergency Regulation.

Thank you,

Sunny Dimas

COVID-19 Compliance Analyst

Court Facilities

Superior Court of California, County of Orange

Phone: 657-622-7753

Email: sdimas@occourts.org

Statement of Confidentiality

The contents of this e-mail message and any attachments are confidential and are intended solely for addressee. The information may also be legally privileged. This transmission is sent in trust, for the sole purpose of delivery to the intended recipient. If you have received this transmission in error, any use, reproduction or dissemination of this transmission is strictly prohibited. If you are not the intended recipient, please immediately **notify** the sender by reply e-mail or phone and **delete** this message and its attachments, if any.



Superior Court of California

County of Orange

October 31, 2022

Occupational Safety and Health Standards Board,

Orange County Superior Court would like to submit comment concerning the change in *close contact* definition in the proposed Non-Emergency Standard. Our comments are for the sole purpose of seeking clarification on best practices for implementing the regulations as proposed, and to contribute to ongoing discussions for the development of effective policy measures that maintain the availability of necessary public functions such as the administration of justice, while still protecting the health and safety of the citizens of Orange County, and our own employees. These comments should not be construed as legal advice and/or opinions.

Specifically, we note that the revised close contact definition, designating spaces that are less than 400,000 cubic feet as subject to the "indoor airspace" assessment of who qualifies as a close contact, has significant ramifications for employers and employees alike. For our agency, it would entail the following impacts:

1. A significant increase in the number of written close contact notifications required to be sent by our contact tracing teams, detracting from their ability to perform other necessary job functions.
2. A significant increase in the number of COVID-19 tests that our agency would be required to procure and provide using public funds, to our sizeable workforce.
3. A substantial number of our employees who are unwilling to submit to testing during outbreak, would potentially be excluded from work, without pay, for a workplace exposure that may or may not have happened. The nature of our work environment often necessitates that our employees momentarily visit a designated sub-unit of an open office floor plan for a brief period, or that they intermittently visit courtrooms to support their day-to-day operations. When contact tracing for such a large workforce, and in such a unique work environment, tracking these occurrences and the length of time for which contact between employees might have occurred, is extremely difficult. Given our agency's obligation to err on the side of caution in our employees', and the public's best interest in these situations, *entire* units of employees would now be considered close contacts, and potentially subjected to exclusion, under this revised definition. This would ultimately harm our agency's ability to provide needed public services, as well as our employees' rights to *not* submit to involuntary medical testing while maintaining uninterrupted wages.

In anticipation of these challenges, we would request that the board consider the following as possible solutions:

1. Updating the close contact definition so that in indoor spaces of 10,000 cubic feet or less, a close contact is anyone sharing the same indoor airspace as a positive COVID-19 individual for a period of 15

Page 2

minutes or more over a 24-hour period during the infectious period. This would ensure that contact tracing efforts and disclosure of positive COVID-19 cases in the workplace remained ongoing while also narrowing possible close contacts to individuals with the highest degree of likelihood of having had workplace exposure.

2. Removing the requirement to have close contacts test or be excluded during a minor or a major outbreak and modifying the regulation to require employers to *make testing available* to close contacts, instead.

Thank you for considering these comments and suggestions,

Orange County Superior Court

From: [Ken Smith](#)
To: [DIR OSHSB](#)
Cc: [Sarah Quiter](#); [Berg, Eric@DIR](#)
Subject: UC Comments on the Proposed Adoption of COVID-19 Prevention Non-Emergency Regulations
Date: Monday, October 31, 2022 4:28:33 PM
Attachments: [UC Comment Letter to CalOSHA Standards Board - COVID-19 permanent standard 10-31-22.pdf](#)
Importance: High

CAUTION: [External Email]

This email originated from outside of our DIR organization. Do not click links or open attachments unless you recognize the sender and know the content is expected and is safe. If in doubt reach out and check with the sender by phone.

Please see the attached comment letter.

-Ken

Ken Smith, CHP CIH RRPT
Executive Director of EH&S
University of California
mobile (510) 882-3499



OFFICE OF RISK SERVICES—
ASSOCIATE VICE PRESIDENT & CHIEF RISK OFFICER

OFFICE OF THE PRESIDENT
1111 Franklin Avenue, 10th Floor
Oakland, California 94607-5200

BY E-MAIL ONLY

October 31, 2022

Department of Industrial Relations
Occupational Safety and Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833
oshsb@dir.ca.gov

Re: Comment Letter - Proposed Adoption of COVID-19 Prevention Non-Emergency Regulations

Dear Honorable Members of the Occupational Safety and Health Standards Board:

The Regents of the University of California (“University”) would like to make the following comments on the proposed modifications to the proposed COVID-19 Prevention Non-Emergency Regulations. The University’s comments are limited to the following subsections within proposed Title 8, California Code of Regulations, Section 3205:

8 CCR § 3205(e) - Notice of COVID-19 cases

1. Subsection (e)(1) must be removed from the proposed regulations. Not only has it been rendered obsolete by recent legislation and public health strategies (as we discussed in our previous comment letter), but the new capitalization of the word “Notice” makes the language even more problematic than before. In capitalizing the word “Notice,” the Standards Board seemingly attempts to distinguish it from subsection (e)(2), which is the soon-to-be-effective workplace posting requirement under AB-2693. However, the Standards Board does not define “Notice,” nor does it provide any context as to the required content and process for providing this “Notice.” Indeed, subsection (e)(1) is stripped of the substance that currently appears in Section 3205(c)(3)(B)(3) of the Emergency Temporary Standards (“ETS”), leaving employers to wonder how this “Notice” differs from the ETS-version of the notification requirement, or, for that matter, how it differs from what is required under subsection (e)(2). Subsection(e)(1) is duplicative of subsection (e)(2) at best, and a very vague and confusing standard at worst. If the Standards Board’s intent is to require a *personal written notification* to potentially exposed employees, the Board will be adopting a standard incongruent with the Labor Code that will impose an undue burden on California employers, who will be forced to divert funds from existing employee health and safety priorities in order to ensure compliance. The best action the Standards Board can take with these proposed regulations is to delete subsection (e)(1) and simply defer to the statutory notification provisions in the Labor Code.

2. The proposed revisions to subsection (e)(2) and (e)(3) are a little confusing to read. The language should be simplified and combined into a single subsection. There is no need to specifically mention employees, independent contractors, and authorized representatives in this section of the regulations, because the Labor Code already contains the relevant details and language. It makes no sense to rewrite the same statute in a regulation, when doing so can just cause confusion. Accordingly, the University suggests the following revision: [Employers shall comply with the notification requirements of Labor Code section 6409.6\(a\) or any successor law that is in effect.](#)

8 CCR § 3205(j)(1) – Reporting and Recordkeeping

The first sentence of this revised regulation should be amended to read as follows: “The employer shall keep a record of and track all [employee](#) COVID-19 cases with the employee’s name, contact information, occupation, location where the employee worked, the date of the last day at the workplace, and the date of the positive COVID-19 test and/or COVID-19 diagnosis.” The addition of the word “employee” is necessary because the definition of “COVID-19 case” is not limited to employees and could include anyone in the community that enters the workplace. It is unreasonable to require employers to keep records of a non-employee’s positive test date and/or diagnosis, among other information. It is impossible for the University to keep track of every student and other member of the community that enters a given workplace on a given day.

Thank you for the opportunity to present comments to the Standards Board and for your consideration of these comments.

Sincerely,



Ken Smith, CHP CIH RRPT
Executive Director of Environment Health & Safety

cc: Kevin Confetti, UC Deputy Chief Risk Officer
Sarah Quiter, UC Legal Principal Counsel

From: [AnaStacia Wright](#)
To: [DIR OSHSB](#)
Cc: [Stephen Knight](#)
Subject: Worksafe's comment on the 2-year permanent COVID-19 standard
Date: Monday, October 31, 2022 4:37:15 PM

CAUTION: [External Email]

This email originated from outside of our DIR organization. Do not click links or open attachments unless you recognize the sender and know the content is expected and is safe. If in doubt reach out and check with the sender by phone.

Dear DIR OSHSB,

In addition to our already submitted comments on retaining work and job protections, we are writing to address the issue of considering inclusion of some sort of "escape clause" language. We have serious objections to any artificial premature path to terminating COVID-19 protections for workers.

Also, CDPH's close contact definition, objected to by the business community, merely sought to take into consideration that COVID-19 is an airborne virus. Due to the nature of the virus' transmission, it is capable of traveling long distances and infecting people within a shared space. Any new close contact definition should account for this particular mode of transmission.

Thank you for your time and consideration.

AnaStacia Nicol

--

AnaStacia Nicol Wright

Staff Attorney

(she/her)

(510) 815-3300

Worksafe: Safety, Health, & Justice for Workers

1736 Franklin St., Ste. 500, Oakland, CA 94612

www.worksafe.org | [Twitter](#) | [Facebook](#)

Why include pronouns? I include pronouns in an effort to share my personal and professional commitment to transgender inclusivity and visibility. Through sharing my pronouns, I hope to support a safer and braver space for transgender professionals to share their pronouns.

PRIVILEGED AND CONFIDENTIAL- All information transmitted hereby is intended only for the use of the addressee(s) named above. If you are not an intended recipient, please note that any distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately and return the original message via e-mail to sender.

From: [Helen Cleary](#)
To: [DIR OSHSB](#)
Cc: [Shupe_Christina@DIR](#); [Berg_Eric@DIR](#); [Killip_Jeff@DIR](#)
Subject: PRR Comments: 15-Day Notice of Modifications to COVID-19 Non-Emergency Regulation
Date: Monday, October 31, 2022 4:49:46 PM
Attachments: [PRR Comments_Cal_OSHA COVID-19 Non-Emergency Prevention 15-Day Proposed Modifications_Oct 31 2022 FINAL.pdf](#)

CAUTION: [External Email]

This email originated from outside of our DIR organization. Do not click links or open attachments unless you recognize the sender and know the content is expected and is safe. If in doubt reach out and check with the sender by phone.

Hello,

Please accept the attached comments on the Board's 15-Day Notice of Proposed Modifications to Cal/OSHA's COVID-19 Non-Emergency Regulations.

Happy Halloween!

Helen

Helen Cleary
Director
Phylmar Regulatory Roundtable (PRR)
m: 916-275-8207
e: hcleary@phylmar.com
w: www.phylmar.com/regulatory-roundtable



October 31, 2022

Chair David Thomas and Board Members
State of California
Occupational Safety and Health Standards Board
2520 Venture Oaks Way Suite 350
Sacramento, CA 95833
OSHSB@dir.ca.gov

RE: COVID-19 Non-Emergency Regulation 15-Day Notice of Modifications

Dear Chair Thomas and Members of the Board,

Please accept these comments and recommendations from the **Phylmar Regulatory Roundtable (PRR) Occupational Safety and Health, OSH Forum** in response to the Division of Occupational Safety and Health's (Cal/OSHA or Division) Proposed Changes¹ to the COVID-19 Non-Emergency Regulation² noticed by the Occupational Safety and Health Standards Board (OSHSB or Board) in the 15-Day Notice³ of Proposed Modifications (15-Day Notice) on October 14, 2022.

In addition to addressing the proposed modifications, we respectfully submit comments on the dialogue and requests made by Board members to the Division regarding additional changes to the text at the October 20, 2022, OSH Standards Board meeting.

PRR is a member-driven group of 37 companies and utilities, 19 of which rank amongst the Fortune 500. Combined, PRR members employ more than 1.7 million American workers and attain annual revenues in excess of \$1 trillion. Organizations are from various industries, including aerospace, apparel, biopharma, communications, energy, life sciences, tech manufacturing, retail, and utilities. Individual PRR members are Environmental Health and Safety (EHS) professionals committed to continuously improving workplace safety and health.

¹ Text of the proposed changes in the Standards Board COVID-19 Prevention Non-Emergency 15-Day Notice; p. 5-20; 14 October 2022; <https://www.dir.ca.gov/oshsb/documents/COVID-19-Prevention-Non-Emergency-15-Day.pdf>

² Cal/OSHA COVID-19 Prevention – Non-Emergency Regulation rulemaking documents, "Proposed regulation (showing changes from current emergency regulation – courtesy copy)"; 29 July 2022: <https://www.dir.ca.gov/oshsb/documents/COVID-19-Prevention-Non-Emergency-txtcourtesy.pdf>

³ Standards Board COVID-19 Prevention Non-Emergency 15-Day Notice; <https://www.dir.ca.gov/oshsb/documents/COVID-19-Prevention-Non-Emergency-15-Day.pdf>



PRR provides informal benchmarking and networking opportunities to share best practices for protecting employees. In addition, members work together during the rulemaking process to develop recommendations to Federal and State occupational safety and health agencies for effective workplace regulatory requirements.

These comments were developed from PRR member experiences and expertise in developing and implementing effective policies and procedures to reduce the spread of COVID-19 at their workplaces, from as early as March 2020. Nevertheless, the opinions expressed below are those of PRR and may differ from beliefs and comments of individual PRR members.

I. General Comments

PRR appreciates the Board and Division for considering the written comments submitted by PRR on September 9, 2022 and delivered at the Public Hearing on September 17, 2022. We were pleased to see some of the modifications in the 15-Day Notice and feel that our suggestions and feedback were heard. The concerted efforts by the Division and Board to continue to improve the Non-Emergency Regulation are appreciated.

The following are specific comments on the proposed modifications in the 15-Day Notice and feedback on the discussion at the October 20, 2022, OSH Standards Board meeting.

II. Specific Comments on Proposed Modifications

A. Close Contact Definition §3205(b)(1)

PRR has expressed to the Division and Board, on numerous occasions, our support for the inclusion of references to orders and guidance by the California Department of Public Health (CDPH) in the COVID-19 Non-Emergency Regulation. We have also shared PRR member experiences and frustrations in the implementation of definitions and requirements dictated by the CDPH that cannot be effectively applied to the workplace. It is clear that this strategy requires a balanced approach. Again, it is the inherent duty of the Board to ensure such references are applicable in occupational settings. In this instance, we continue to be concerned about the updated definition of close contact—specifically, the removal of the six-foot distance element and change to the overly broad “indoor airspace” reference. While we appreciate the CDPH’s incorporation of proximity in the new definition⁴, we believe it is still too non-specific and an impractical approach for all workplaces; operationally, it is ineffective and

⁴ CDPH Order updating the definition of close contact; 14 October 2022;
<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Beyond-Blueprint.aspx>

the impact will be untenable. Specifically, requiring all workers in an open workspace under 400,000 cubic feet to be considered a close contact and managed under the isolation and quarantine requirements is unreasonable.

PRR illustrated this operational challenge at the October 20, 2022, Board meeting and described how it will require extensive time and effort to contact trace, test, monitor, and exclude hundreds of workers on a potentially continual basis with little to no safety and health benefit. This is an unreasonable burden that should not be expected of California employers for the next two years.

Another recent concern is CDPH's ongoing authority and active management following the end⁵ of the State of Emergency in February 2023. The Division's inclusion of CDPH references was to add much needed flexibility to a regulation that cannot keep up with changing guidance and community situations. However, we are not confident, nor convinced it would be necessary, for CDPH to continue issuing orders and guidance until January 2025, which is well beyond the end of the State of Emergency. This has the potential to lock-in the CDPH's definition⁶ of close contact in the COVID-19 Non-Emergency Regulation for two more years with no recourse to change it. To be clear, per the regulation, the definition of close contact may change if CDPH issues an *order*. In the event an order is not issued, the definition in the text remains in effect and cannot be altered.

(a) Recommendation

PRR supports Chair David Thomas' request for a more specified definition of close contact. As we have previously recommended, proximity, ventilation, size of workspace, and actual exposure to the COVID-19 case needs to be considered. For more than two-years, using six-feet and 15-minutes as a guideline was effective, easily understood, and manageable. This approach was when the pandemic was in full swing, the virulent Alpha and Delta variants were threatening lives, and there were no vaccines or therapeutics available. Expanding the definition, now that we are moving out of the emergency phase and have a plethora of tools to reduce significant illness, is a clear step backwards.

In addition, we caution the Board on supporting proposed text that is overly reliant and verbatim of CDPH guidance and recommendations. There should be a strategy in place that ensures California workplaces are not locked into requirements that are not based in science or

⁵ "Governor Newsom to End the COVID-19 State of Emergency;" Office of Governor Gavin Newsom; Press Release; 17 October 2022; <https://www.gov.ca.gov/2022/10/17/governor-newsom-to-end-the-covid-19-state-of-emergency/>

⁶ The 15-Day proposed text includes the CDPH definition of close contact that uses 400,000 cubic feet as a threshold verbatim.

necessary because the rulemaking process cannot support changes to the rule for the next two years. We have learned this difficult lesson repeatedly from the COVID-19 ETS and should not knowingly continue this failed approach.

B. Defining COVID-19 as a Workplace Hazard - §3205(c)(1)

PRR appreciates the removal of language in §3205(c)(1) that defines COVID-19 as a workplace hazard because workers are near other persons. Our written comments submitted September 9, 2022, identified this expansive scope as a major concern, and we believe that this change helps to move us forward.

However, the proposed modification does not alleviate the overarching concern. PRR's concern with the proposed text in §3205(c)(1) highlights the significance of COVID-19 requirements in the workplace for the proposed effective period of two years. The truth and understanding of where the world is *now* is not being considered by the Division and the Board. We now have tools and knowledge that we did not have when the COVID-19 Emergency Temporary Standard (ETS) was promulgated and adopted in November 2020. The Centers for Disease Control and Prevention (CDC) have acknowledged this⁷ and have moved forward with "explicit goals of reducing medically significant disease."⁸

We are no longer in an emergency; this fact has been continually recognized by government leaders and public health. To maintain COVID-19 is a *significant* hazard in the workplace for two-more years does not align with this reality. COVID-19 will not be eradicated, and it will continue to mutate for many years—we are still experiencing influenza strains that originated in 1918. The Division has selected two-years as the end of COVID-19 management but has not presented concrete analysis or empirical modeling on how that decision was made. **The two-year time period seems purely subjective and based on theories and opinion; it demonstrates that we are not using data or actual impact of COVID-19 in the community or workplaces to drive public policy decisions;** this highly concerning. More concerning, however, is that **prevention methods will be the sole responsibility of employers when COVID-19 remains a public health disease fueled by community spread.**

⁷ "CDC streamlines COVID-19 guidance to help the public better protect themselves and understand their risk;" CDC Press Release; 11 August 2022; <https://www.cdc.gov/media/releases/2022/p0811-covid-guidance.html>

⁸ "Science Brief: Indicators for Monitoring COVID-19 Community Levels and Making Public Health Recommendations;" CDC; 12 August 2022: <https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/indicators-monitoring-community-levels.html>

COVID-19 has never strictly or exclusively been an *occupational* disease. Board members have acknowledged this in the past and we cannot lose sight of that now. In addition, it is no longer reasonable to unilaterally treat this disease as medically significant to every person. This is particularly important when considering the occupational worker. Regulatory requirements and mitigation measures in the workplace have always been specific to the worker who is at risk – the worker who is exposed or has the potential to be exposed to an unhealthy dosage. For example, N95 respirators are not required for doctors and nurses simply because they work in a hospital. They are required in compliance with the Aerosol Transmissible Disease Standard (ATD standard, §5199) "for protection against potentially infectious aerosols" (§5199(g)(3)(A)). In addition, respirators are required for very specific situations (e.g., being present during procedures or services for an Airborne Infectious Disease, case, or suspected case (§5199(g)(4)(A)-(H)).

Another example are requirements related to ergonomics – not all employees receive the same equipment or tools to prevent or reduce injuries. Integral to the decisions on preventative measures that the employer is required to implement are personal risk factors including medical history and specific job duties. There is also a level of responsibility on the employee to share and discuss an accommodation or need.

In contrast, **the COVID-19 Non-Emergency Regulation treats all workers and workplaces the same and assumes the health risk is the same for all.** This is simply not true. In addition, it is contrary to accepted methods used to determine occupational risks⁹ – **the regulation does not support any type of occupational risk assessment to determine actual exposure or potential health risks.** This approach may have been prudent two years ago when we did not understand the disease and how to manage it. But it is not an acceptable strategy now.

Experts agree and data clearly supports that individuals at risk of COVID-19 hospitalization and death are older population segments. According to the CDC¹⁰, the risk of hospitalization and death is exponentially greater for individuals 65 and older compared to younger populations. COVID-19 weekly deaths per 100,000¹¹ by age group shows the same trend and a considerable

⁹ "Occupational Risk Assessment, Overview;" The National Institute for Occupational Safety and Health (NIOSH); 9 February 2017; <https://www.cdc.gov/niosh/topics/riskassessment/default.html>

¹⁰ Risk for COVID-19 Infection, Hospitalization, and Death by Age Group; CDC; 16 September 2022; <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-age.html>

¹¹ COVID-19 Weekly Cases and Deaths per 100,000 Population by Age, Race/Ethnicity, and Sex; CDC; <https://covid.cdc.gov/covid-data-tracker/#demographicvertime>

decline from just last year. Significantly, individuals 65 years of age and older do not make up California's workforce.

Considering the fact that scientists have determined the risk factors and the individuals with the highest risk combined with the traditional approach taken to prevent occupational injuries and illness, it is clear that Cal/OSHA's strategy should be adjusted. Government leaders and public health officials have highlighted the importance of *individuals* focusing on reducing the risk of medically significant illness and death by *self-management* and awareness of *personal factors* that increase risk¹². This is an acceptable approach because the disease does not carry the same risk to all people. The CDPH¹³ also recommends strategies that consider "high-risk settings" and risk of severe illness or death from exposure.

Being required to consider every person in the workplace as infectious, but not in the community where the disease thrives, is an unbalanced approach. As PRR has expressed many times in comments and at Board meetings, COVID-19 continues to be a *public* health issue – management of the disease in the workplace cannot be different than in the community. Yet, as community and government leaders move away from generalized group management Cal/OSHA's approach remains stagnant.

PRR highly encourages the Board to ensure the burden of managing COVID-19 in the workplace aligns with the timeline, level of responsibility, and strategy of State and public health leaders.

C. Exposed group - §3205(b)(7)

PRR appreciates the Division incorporating our recommendation to revise the definition of exposed group. We believe this change will help maintain the original intent of the definition by focusing preventative measures during an outbreak on workers who may be at risk.

D. Returned case - §3205(b)(11)

The impact of changing the definition of returned case from 90 days to 30 days is a concern. This is exasperated by the expanded definition of close contact because it will increase the number of employees who must be tested or excluded. The confusion around the type of test and receiving a positive test result when employees are no longer infectious, further

¹² "Summary of Guidance for Minimizing the Impact of COVID-19 on Individual Persons, Communities, and Health Care Systems – United States, August 2022;" CDC Morbidity and Mortality Weekly Report; 19 August 2022; https://www.cdc.gov/mmwr/volumes/71/wr/mm7133e1.htm?s_cid=mm7133e1_x

¹³ Isolation and Quarantine Q&A; CDPH Guidance; 21, July 2022; <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Isolation-Quarantine-QA.aspx>

contributing to this issue. Moreover, **this change illustrates that a codified COVID-19 regulation will *never* be able to keep up with the changing science.**

E. Recording close contacts - §3205(j)(1)

One of PRR's major concerns with the previously proposed text was the requirement to record close contacts. We appreciate the Division removing this new requirement and believe that it will help alleviate some of the burden of contact tracing and notification while focusing on the goal of limiting transmission.

F. Outbreak threshold - §3205.1(a)(2)

PRR's previous recommendations included a change to the outbreak threshold. While we do not think that our full concern was addressed, we are supportive of the change that will let employers exit an outbreak if there are "one or fewer" cases. This modification will alleviate some of the operational challenges employers are experiencing and help align outbreak requirements with other elements that have been updated (i.e., shortened quarantine and definition of infectious period).

It needs to be reiterated, however, that the proposed change does not alleviate any of the employer's unnecessary responsibility, time, and financial burden for "outbreak" situations where none of the cases are connected or work-related.

III. Comments on the October 20, 2022, Board Meeting Discussion

A. Exclusion Pay

Regarding the request to include exclusion pay requirements in the Non-Emergency Regulation, PRR reiterates that we do not support this. We continue to believe that it is not appropriate for Cal/OSHA to determine and enforce requirements regarding pay and sick leave for every employee in the state. In addition, and in response to Board member discussion, we provide the following reasons to illustrate why we do not support this addition.

- i. **Exclusion pay requirements do not equate to pay protections in the ATD standard.** Pay protection in the ATD standard (§5199(h)(8)(B)) is required when precautionary removal is recommended. Precautionary removal is part of the "medical services" requirement that includes steps when there is an *occupational exposure* (§5199(h)). The ATD standard defines "**occupational exposure**" as:

*"Exposure from work activity or working conditions that is **reasonably anticipated to create an elevated risk of contracting any disease** caused by*

*ATPs or ATPs-L if protective measures are not in place. In this context, **"elevated"** means higher than what is considered ordinary for employees having direct contact with the general public outside of the facilities, service categories and operations listed...* [emphasis added]

In addition to drawing a clear distinction that an elevated risk is in response to the type of work and workplace, this definition acknowledges that to be considered an occupational exposure it must be different than a potential exposure from the general public.

Specific to COVID-19, CDPH has issued guidance on exposure risk assessments for healthcare personnel (HCP). CDPH's All Facilities Letter, AFL 21-08¹⁴ recommends:

"Hospitals should and SNFs [Skilled Nursing Facilities] must use the CDC's updated risk assessment to determine exposure risk for HCP with potential exposure to patients, residents, visitors, and other HCP with confirmed COVID-19 in a health care setting." [emphasis added]

This CDC guidance¹⁵ defines **higher risk and other exposures** for HCP's as:

"...generally involve[ing] exposure of HCP's eyes, nose, or mouth to material potentially containing SARS-CoV-2, particularly if these HCP were present in the room for an aerosol-generating procedure."

"Other exposures not classified as higher-risk, including having body contact with the patient...may impart some risk for transmission...When classifying potential exposures, specific factors associated with exposures (e.g., quality of ventilation, use of PPE and source control) should be evaluated on a case-by-case basis." [emphasis added]

Unlike the COVID-19 Non-Emergency Regulation, the process and determination of an actual occupational exposure under the ATD standard is clearly defined and requires the

¹⁴ "Exposure Risk Assessment for HCP; CDPH; AFL 21-08.8; 7 March 2022; <https://www.cdph.ca.gov/Programs/CHCQ/LCP/Pages/AFL-21-08.aspx#>

¹⁵ Interim Guidance for Managing Healthcare Personnel with SARS-CoV-2 Infection or Exposure to SARS-CoV-2; "Return to Work Criteria for HCP Who Were Exposed to Individuals with Confirmed SARS-CoV-2 Infection;" 23, September 2022; <https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-risk-assesment-hcp.html>

employer to not only have responsibility to determine actual exposure but ensures there is a level of oversight with regards to the process as well.

In addition, pay protection for precautionary removal provisions in the ATD standard **"only cover the period of precautionary removal. If the employee develops an active infection, they will likely be covered under workers compensation."**¹⁶

The process for precautionary removal is inherently different than the employer requirement to provide COVID-19 exclusion pay every time an employee experiences symptoms after a potential exposure simply from being somewhere in an open space less than 400,000 cubic feet with a COVID-19 case.

- ii. As stated above, COVID-19 is not a traditional occupational disease. **The scope and impact of requiring every employer in California to pay workers for an indefinite number of exclusion periods for the next two years is outrageous.** In particular, the risk of COVID-19 is not the same in every workplace nor for every individual and OSH regulations should address risks specific to occupational settings. For example, occupational exposure to lead is defined by a specific threshold which triggers employer responses such as monitoring and medical removal. It is inappropriate to compare exclusion pay in the Non-Emergency COVID-19 regulation to pay protections in other OSH standards because exclusion pay requirements would apply to all employees in the State with no consideration of actual risk. In addition, we are exiting the emergency phase; if pay protections are a concern the State should be responsible, not the Board.
- iii. PRR members continue to experience that the **majority of cases originate outside of the workplace. However, the presumption is that cases are work-related.** It has been acknowledged by the Board and Division that it is nearly impossible to definitively determine that a case is *not* work-related. **This fact places all of the financial responsibility on the employer despite the employer having zero control of worker behavior outside of the workplace – the likely place and cause for spread.**
- iv. There are currently **no controls or limits on the employer's responsibility to pay employees.**
 - a. For example, it is unfortunate, but true, that some employees take advantage and abuse this protection. An employee can receive this benefit simply by saying they have symptoms and continue getting paid until they produce a picture of an

¹⁶ The California Workplace Guide to Aerosol Transmissible Diseases; Department of Industrial Relations DOSH Publication Unit; p. 39; April 2020; https://www.dir.ca.gov/dosh/dosh_publications/ATD-Guide.pdf

at home positive test result. This faulty process continues despite the availability of doctor's appointments and ability to obtain a verified lab-result. In addition, despite the Division's FAQ stating that employers can force employees to test, PRR members are not confident this is a prudent or legal approach.

- b. Self-proclaimed symptoms can continue for 10 days which may be beyond the true infectious period.
- c. It is nearly impossible for the employer to prevent misuse because of the additional required elements in the rule that dictate how employers must manage potential exposures (e.g., exclusion requirements, the list of COVID-19 symptoms that are similar to allergies, the flu, common cold, and the expanded definition of close contact).
- d. Another contributing factor to the lack of control is the common experience to test positive beyond being infectious due to residual virus and the type of test being utilized.
- e. Finally, there is no limit to the number of times an employer must provide exclusion pay--this level of financial responsibility is simply unreasonable. Reducing the presumed immunity from 90 days to 30 days for prior positives in essence means that an employee could claim to be (but likely would not actually be) infected ten times a year.
- v. Offering **exclusion pay disincentivizes the employee from applying for other available benefits** placing the full burden on the employer.
- vi. The benefit of exclusion pay may also **disincentivize employees from becoming vaccinated or getting boosted**.
- vii. There are **multiple sources for job and wage protections** already available. Including, paid sick leave; workers compensation; disability; Family and Medical Leave Act (FMLA); California Family Rights Act (CFRA).
- viii. As the Division, Governor Newsom, and President Biden have communicated we are in a much different place than we were two years ago and are equipped with various tools to prevent serious illness and death. The availability of free vaccines and treatment options in addition to testing is a major factor that needs to be considered in this decision.
- ix. Finally, **this financial burden should no longer be the responsibility of California employers**.

It is also important to point out that if the Division decides to include exclusion pay requirements it will have significant economic impact on California employers and the Agency will be required to update the already completed Standardized Regulatory Impact Assessment (SRIA). This will need to be completed prior to the Board voting to adopt the Non-Emergency COVID-19 Regulation. This procedural requirement seems to conflict with



Cal/OSHA and the Board's goal to have a regulation in place immediately following the expiration of the COVID-19 ETS.

B. Escape Clause

As we have shared before, we do not support a blanket two-year time period for the Non-Emergency COVID-19 regulation. The Governor has announced the State of Emergency will end in February 2023 and the legislature has decided that notification requirements are not necessary beyond 2024.¹⁷ Cal/OSHA should not be an outlier. PRR supports Board member Kate Crawford's request for the Division to include an "escape clause" for the COVID-19 Non-Emergency regulation.

Closing

We hope that PRR's written comments and specific recommendations are helpful and provide additional insight to the Board. Please do not hesitate to contact us for additional information and feedback.

Sincerely,

A handwritten signature in black ink that reads 'Helen Cleary'.

Helen Cleary
Director
Phylmar Regulatory Roundtable

CC: Christina Shupe cshupe@dir.ca.gov
Jeff Killip jkillip@dir.ca.gov
Eric Berg eberg@dir.ca.gov

¹⁷ Labor code 6409.6 requires COVID-19 notification until December 31, 2024, after which the law will be repealed.

From: [Robert Ragland](#)
To: [DIR OSHSB](#)
Cc: [Joshua Bobrowsky](#)
Subject: Written Comment on COVID-19 Prevention - Non-Emergency Regulation
Date: Monday, October 31, 2022 4:53:49 PM
Attachments: [CalOSHA.pdf](#)

CAUTION: [External Email]

This email originated from outside of our DIR organization. Do not click links or open attachments unless you recognize the sender and know the content is expected and is safe. If in doubt reach out and check with the sender by phone.

Please find written comments from the County of Los Angeles Department of Public Health.

Robert Ragland
Chief Compliance Officer
County of Los Angeles
Department of Public Health
Office: (213) 288-7107
Mobile: (213) 458-0442

Notice of Confidential Communication: This email message, including any attachments, is intended for the official and confidential use of the recipients to whom it is addressed. It contains information that may be confidential, privileged, attorney work-product, or otherwise exempted from disclosure under applicable law. If you have received this message in error, be advised that any review, disclosure, use, dissemination, distribution, or of this message or its contents is strictly prohibited. Please notify us immediately by reply email that you have received this message in error, and destroy this message, including any attachments.



BARBARA FERRER, Ph.D., M.P.H., M.Ed.
Director

MUNTU DAVIS, M.D., M.P.H.
County Health Officer

MEGAN McCCLAIRE, M.S.P.H.
Chief Deputy Director

ROBERT E. RAGLAND
Chief Compliance Officer

313 North Figueroa Street, Suite 806
Los Angeles, CA 90012
TEL (213) 288-7107 • FAX (213) 975-1273

www.publichealth.lacounty.gov

BOARD OF SUPERVISORS

Hilda L. Solis
First District

Holly J. Mitchell
Second District

Sheila Kuehl
Third District

Janice Hahn
Fourth District

Kathryn Barger
Fifth District

Via Email & US Mail

October 31, 2022

Department of Industrial Relations
Occupational Safety and Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833

Email: oshsb@dir.ca.gov

RE: WRITTEN COMMENTS TO THE PROPOSED MODIFICATONS TO TITLE 8: NEW SECTIONS 3205, 3205.1, 3205.2, AND 3205.3 – COVID-19 Prevention – Non-Emergency Regulation BY THE COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC HEALTH

Dear Occupational Safety and Health Standards Board:

The Los Angeles County Department of Public Health (Public Health) provides these comments to the Standards Board to address its disease control and worker protection concerns with proposed modifications to sections 3204, 3205.1, 3205.2, and 3205.3 to title 8 of the General Industry Safety Orders.

By way of background, Public Health Outbreak Management physician teams have investigated over 8,700 COVID-19 outbreaks since the beginning of the COVID-19 pandemic. More specifically, approximately 2,900 of those outbreak investigations have occurred at worksites. The goal of these COVID-19 outbreak investigations is to work with employers and workers to implement the required outbreak mitigation measures to lower the risk to those present at the worksite and their families. Public Health has observed firsthand that COVID-19 has most heavily impacted industries with workers from the most vulnerable and underserved communities. Unlike other occupational illness, COVID-19 infection transmission can spread beyond the workplace into workers’ households that can include more vulnerable

individuals. To better protect all communities in California, it is important to maintain the reporting requirement to the local public health department and other case and contact response requirements in the 2023 version of these regulations.

Public Health's outbreak investigation experience has demonstrated that each worksite COVID-19 outbreak is unique. Public Health occupational health physicians have found that there is much variation in an employer's ability and willingness to comply with the CalOSHA COVID-19 Prevention Emergency Temporary Standards. It is this variability in employer responses to COVID-19 cases and close contacts in worksites and the need to continue to provide robust worker protection regulations, which requires Public Health to comment on the proposed modifications.

Even when COVID-19 community transmission is no longer considered a declared emergency, employers will need to practice the fundamentals of COVID-19 infection control to protect workers and make sure that small clusters of cases do not grow into large and longstanding outbreaks. Given the likelihood of new and more infectious COVID-19 variants that may potentially evade some immunity provided by both vaccination and prior infection, Public Health raises the enumerated concerns below.

1. THE COVID-19 CASE AND OUTBREAK REPORTING REQUIREMENT FOR EMPLOYERS IN SECTION 3205(j)(1) SHOULD BE RETAINED IN THE NON-EMERGENCY REGULATION

COVID-19 case and cluster reporting to local public health departments continues to be crucial to mitigating negative health outcomes for workers in various sectors. COVID-19 case reporting by employers to local public health agencies allows for immediate surveillance and investigation of the reported cases or cluster of cases among workers to determine if the situation at the worksite meets the definition of a COVID-19 outbreak. The local public health agency physician who has the epidemiologic and communicable disease control experience, and not the employer, must determine if an outbreak has occurred. Public Health has received approximately 22,500 case and cluster reports from worksites through its online reporting system, which was launched in December 2020. Since that time, 2,187 were determined to be outbreaks requiring Public Health intervention. These interventions are all possible by timely case and cluster reporting.

Early identification of a worksite outbreak is crucial for the implementation of mitigation measures and the requirements of Sections 3205.1 and 3205.2. This transmission control dynamic creates an imperative for continued COVID-19 case and cluster reporting by employer. Current CDPH guidance instructs employers to notify the local health department (LHD) within 48 hours or one business day when they identify three or more cases of COVID-19 among workers at the workplace within a 14-day period. Further, CDPH guidance advises that "employers should be proactive and keep in mind that identification of even a single positive case among workers may quickly develop into a large outbreak. As outbreak circumstances and work practices vary, employers should consider seeking assistance early on from their LHD to plan and coordinate a response that meets the needs of the workplace."

Public Health has assisted over 1,000 Los Angeles County employers with mitigating the impacts of the COVID-19 outbreak among workers. Unfortunately, during both 2021 and 2022 Public Health has experienced multiple instances of late COVID-19 case and cluster reporting by employers, who have waited until worksite cases within 14 days reach 10 or more before reporting. This late reporting resulted in delayed implementation of required outbreak mitigation measures including masking and likely allowed many of these outbreaks to unnecessarily expand to dozens of worker cases over a period of months. Thus,

it has been Public Health's experience that late case or cluster reporting by employers has had a significant negative impact on the health and safety of workers. Removal of the explicit case and cluster reporting requirement in Section 3205(j)(1) will have a similar negative impact, especially since COVID-19 cases are expected to increase during January – March 2023.

Although Section 3205(a)(3) provides that the COVID-19 Prevention – Non-Emergency Regulation do not limit more protective local health department orders or guidance, express removal of a COVID-19 reporting requirement from Section 3205(j)(1) is expected to lead to a drastic decrease in employer reporting to Public Health, even if required by a local Health Officer Order. It is anticipated that during the winter of 2023, COVID-19 cases and hospitalizations will increase. Accordingly, Labor Code section 6409.6(g), as amended, requires employers to provide a written notice to confirmed cases of COVID-19 and to employees who had close contact with the confirmed cases of COVID-19 within one business day. It is not an onerous requirement for those employers to also report that very same notification information to local public health departments. For the ongoing protection of the health and safety of workers and their families throughout California, the Standards Board must retain the most well-known and widely used mechanism for COVID-19 case reporting to local public health departments.

2. EMPLOYERS SHOULD CONTINUE TO KEEP A RECORD OF WORKERS WHO HAD A CLOSE CONTACT WITH THE COVID-19 CASE.

Employers have certain ongoing obligations regarding workers who are close contacts of a COVID-19 case. To accurately fulfill these obligations, employers need to maintain a record of workers who were a close contact of a COVID-19 case. Employers must review current CDPH guidance for persons who had close contacts, including any guidance regarding quarantine or other measures to reduce transmission. Current CDPH guidance for asymptomatic employees who are close contacts is:

- Exposed employees must test within three to five days after their last close contact. Persons infected within the prior 90 days do not need to be tested unless symptoms develop.
- Employees must wear face coverings around others for a total of 10 days after exposure.
- If an exposed employee develops symptoms, they must be excluded pending the results of a test.
- If an exposed employee who develops symptoms is unable to test or choosing not to test, they must be excluded until 10 days after the date of symptom onset.

It appears to be counterintuitive that employers could fulfill this CDPH guidance and provide the required notice to the workers who are close contacts of a COVID-19 case without keeping a record of those workers. As such, the following statement in Section 3205(j)(1) should be retained: "The employer shall also keep a record of persons who had a close contact, including their names, contact information, and the date upon which they were provide notice of the close contact."

3. THE DEFINITION OF FACE COVERING IN SECTION 3205(b)(8) SHOULD BE REVISED TO DISCOURAGE THE USE OF CLOTH FACE COVERINGS.

Masking remains an important way to help protect the wearer and others from exposure to SARS-CoV-2. While an individual may choose to wear a face covering voluntarily, well-fitting face coverings are required for cases and close contacts. As such, a definition of face covering that

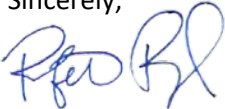
allows for a cloth face mask option should not be permitted at worksites for persons who were COVID-19 cases and end work exclusion prior to 10 days with a negative test, persons identified as close contacts, or in worksite outbreak settings.

All persons wearing masks should optimize mask fit and filtration, ideally through use of a [respirator](#) (N95, KN95, KF94) or surgical mask. Cloth face coverings are the least protective with certain materials and construction posing a risk of enhanced aerosol production. We believe the definition of “face covering” should be changed to discourage the use of fabric face coverings or align with CDPH in outlining what “good cloth masks have:” (<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Get-the-Most-out-of-Masking.aspx#cloth-masks>)

- Two layers of tightly woven cotton with a third layer of non-woven fabric. The third layer could be a mask filter insert, or a synthetic fabric such as polypropylene.
- Nose wires to reduce gaps from the nose.
- Adjustable ear loops or straps that go around the head to reduce gaps from the face.

Cloth masks should not be used if other options are available. Gaiters should be added to the exclusions list as they do not fit what makes a good cloth mask and are akin to the other excluded items (e.g., scarf, ski mask, balaclava, etc.).

Sincerely,



Robert Ragland, Chief Compliance Officer
County of Los Angeles Department of Public Health

RR/

cc: Joshua Bobrowsky

From: [Michael Miller](#)
To: Shupe_Christina@DIR.DIR.OSHSB
Cc: [Natalie Collins](mailto:Natalie_Collins); [Chris Lynch \(clynch@wvmgmt.com\)](mailto:Chris_Lynch_clynch@wvmgmt.com); [Jackson R. Gualco \(jackson_gualco@qualcogroup.com\)](mailto:Jackson_R_Gualco)
Subject: COVID-19 Regulation 15-day Change Notice
Date: Monday, October 31, 2022 4:56:06 PM
Attachments: [Aq Coalition Permanent COVID Regulation Comment Letter FINAL.pdf](#)

CAUTION: [External Email]

This email originated from outside of our DIR organization. Do not click links or open attachments unless you recognize the sender and know the content is expected and is safe. If in doubt reach out and check with the sender by phone.

Good Afternoon,

Please see the attached comment letter from the agricultural coalition in opposition to the proposed nonemergency COVID-19 regulation.

Please confirm receipt and feel free to reach out at any time if you have any questions or need additional information.

Thank you,

Michael

MICHAEL MILLER | California Association of Winegrape Growers | Director of Government Relations
1121 L Street, Suite 304 | Sacramento, CA 95814 | michael@cawg.org
Office (916) 379-8995 | Mobile (916) 204-0485 | www.cawg.org | www.cawgfoundation.org |
www.unifiedsymposium.org —*Begins January 24, 2023*

It is easiest to reach me at my mobile number or by e-mail.

CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.



Agricultural Council of California



PACIFIC COAST RENDERERS ASSOCIATION



California Seed Association

October 31, 2022



Almond Alliance

Occupational Safety and Health Standards Board
1017 L Street, PMB #254
Sacramento, CA 95814-3805

Attention: Executive Officer, Christina Shupe

By email: CShupe@dir.ca.gov and OSHSB@dir.ca.gov

Re: COVID-19 Regulation 15-day Change Notice

Dear Chair Thomas and Board Members:

The undersigned organizations represent a broad array of employers in California's agricultural industry. These employers include orchards, dairies, vineyards, ranches, food processing and packing facilities, and many more. We submit this letter to provide comment regarding the 15-day change notice on the proposed non-emergency COVID-19 Standard, as well as respond to comments made at the October 20th Occupational Safety and Health Standards Board meeting.

Our organizations also align ourselves with comments submitted by the California Chamber of Commerce and the Phylmar Regulatory Roundtable.

This regulation is unnecessary and contrary to Governor Newsom's endemic plan and his announcement to end the COVID-19 pandemic state of emergency on February 28, 2023. It also contradicts announcements from the White House, Centers for Disease Control and Prevention (CDC), California Department of Public Health (CDPH) and local health officials. Because the proposed regulation is out of step with widely accepted data and science it must be rejected.

We also disagree with the assertion of a board member at the October meeting that anecdotal testimony to the board during the last three years is "empirical evidence." This anecdotal testimony is in fact the opposite of empirical evidence. We are concerned that board members have repeatedly stated they disagree with decisions by CDC and CDPH and they reject actions by those agencies. Yet, the actions of those agencies are based on empirical science and data.

This board has a public duty to rely on CDC and CDPH in health and safety matters. Dr. Mark Ghaly, Dr. Tomás Aragón, Dr. Ashish Jha, Dr. Rochelle Walensky and their agencies have expertise on COVID-19 that this board does not. When this board pursues an agenda that is not in sync with those public health agencies, it creates public doubt in what actions are needed to protect the public from transmission of COVID-19. This is contrary to meaningful efforts to promote workplace health and safety.

We urge the board to rely on the experts and reject this regulation.

Nonetheless, if this proposed regulation is adopted, the board should at a minimum address the issues below and not add exclusion pay to this regulation.

Comments on Proposed Changes in 15-day Change Notice

Definition of Close Contact: This should be simple and straightforward. Additionally, CDPH continues to refine its definition of close contact. Therefore, this regulation should do no more than define close contact by reference to CDPH.

Outbreak: To our knowledge, no other state takes the approach offered by this regulation. Given the community spread of the virus, it makes no sense to have workplace outbreak requirements. In September, Eric Berg, Deputy Chief Health and Research and Standards at

Cal/OSHA testified before the board and stated, “**Another change since the early days of the pandemic, is that COVID is now widespread in the population.** And while outbreaks in workplace are still occurring, and still represent a serious risk to workers in many industries, **the widespread transmission of the disease makes it very difficult to identify the source of transmission.**” Therefore, we respectfully ask that outbreak provisions be stricken from this proposed regulation.

Comments on COVID-19 Exclusion Pay

During the October board meeting, there was extensive discussion of the fact that the current draft of the proposed regulation does not include exclusion pay requirements, and that the recent modifications did not add exclusion pay to the proposed regulation. At the end of the meeting, the board chair and other members formally directed Cal/OSHA staff to add exclusion pay to the proposed regulation and to bring it back to the board presumably in time to adopt this regulation at its December meeting so that it would take effect January 1, 2023.

Our concerns with potentially adding exclusion pay to this regulation are briefly discussed below:

In September, board member Laura Stock recognized the chief of Cal/OSHA and his staff and said, “And I consider that you know, **those are the experts.**” Please consider counsel from the experts at Cal/OSHA in why exclusion pay should not be added to this regulation.

Eric Berg testified at the board’s September meeting and stated, “**Workers who contract COVID-19 at the workplace and are unable to work because of their symptoms were always and are still eligible to apply for workers’ compensation benefits to cover the exclusion period.** The proposed nonemergency regulation which we are briefing you on today, requires employers to give employees who are excluded with information regarding COVID-19 related benefits to which the employee may be entitled under federal law, state law, or local laws. **This includes any benefits available under legally-mandated sick leave, workers compensation law, local government requirements, the employer’s own leave policies, and leave guaranteed by contract.**” In short, any employee who contracts COVID-19 at work already has several options available.

Additionally, Chair Thomas stated at the September board meeting, “I think the exclusion pay is necessary. I don’t know exactly how we do this. I don’t know if it is going to come from the Senate or the Assembly. **But there has to be some way to do this that the state funds partially or all.**”

We agree with Chair Thomas that if exclusion pay is added to this regulation, it should be funded by the state. This is because the board would be requiring employers to provide leave for issues that are unrelated to the workplace. While there is no doubt a valid public policy to pursue in making sure that Californian’s with COVID-19 stay isolated and not transmit COVID-19 to others (at work, school, church, a ball game, a concert or anywhere), the cost of that isolation should be borne by the state, not employers.

Keep in mind that when exclusion pay was first required in 2021, the federal government reimbursed employers for those costs. Additionally, in 2022, Governor Newsom signed into law financial relief for some small employers from the costs of paid supplemental COVID leave. Consequently, absent public funding of exclusion pay, we do not believe employers should be required to pay the public benefit cost of exclusion pay.

Additionally, board member statements have expressed concerns for employees who do not have leave available to them and therefore have no option but to go to work with COVID-19. However, we remind the board that every employee in California is already provided with three days of paid sick leave annually. While some labor leaders have recommended employees take sick leave for recreational purposes, we believe sick leave is intended to be used when employees are sick – Such as infected with COVID-19. Consequently, any exclusion pay requirement should apply only when no other leave is available to that employee and only if employers are reimbursed for all costs associated with exclusion pay.

We also remind the board that there has been no analysis of the cost of exclusion pay. Under Section 2002 (3)(h) of the California Code of Regulations, a Standardized Regulatory Impact Assessment (SRIA) must include “ **Identification of each regulatory alternative for addressing the stated need for the proposed major regulation, including each alternative that was provided by the public or another governmental agency and each alternative that the agency considered; all costs and all benefits of each regulatory alternative considered; and the reasons for rejecting each alternative.**”

The direct cost of exclusion pay as well as the employer’s cost in administering this leave would need to be included in the SRIA. Additionally, Cal/OSHA has already provided the board with a list of alternatives (see Eric Berg quote above). If the board pursues exclusion pay, the SRIA must include an analysis of each of the alternatives provided by Cal/OSHA and by the public.

Summary

1. We oppose adoption of this regulation which continues a pandemic response to what Governor Newsom has now declared an endemic.
2. If the regulation is adopted, the board should address issues suggested above and in the letters from the California Chamber of Commerce and the Phylmar Regulatory Roundtable.
3. We oppose adding exclusion pay to this regulation as it is unnecessary and makes employers bear the costs of the public benefit of isolation of COVID-19 cases.

Thank you for the opportunity to comment and for considering our concerns.

Sincerely,

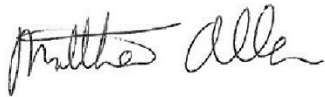
Signatures Attached



Michael Miller
Director of Government Affairs
California Association of Winegrape Growers



Tricia Geringer
Vice President of Government Affairs
Agricultural Council of California



Matthew Allen
Vice President, State Government Affairs
Western Growers Association



Tim Schmelzer
Vice President, California State Relations
Wine Institute



Pete Downs
President
Family Winemakers of California



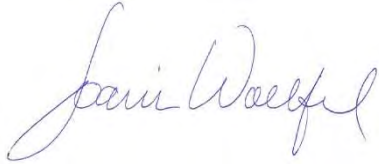
William Schiek
Executive Director
Dairy Institute of California



Dwayne Cardoza
Interim CEO
Raisin Bargaining Association



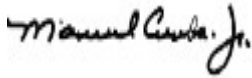
Rick Tomlinson
President
California Strawberry Commission



Joani Woelfel
President & CEO
Far West Equipment Dealers Association



Will Scott, Jr.
President
African American Farmers of California



Manuel Cunha, Jr.
President
Nisei Farmers League



C. Bryan Little
Director, Employment Policy
California Farm Bureau



Roger Isom
President/CEO
California Cotton Ginners and Growers Association
Western Agricultural Processors Association



Michelle M. Connelly
Executive Director & CEO
California Walnut Commission



Richard Matoian
President
American Pistachio Growers

Todd Sanders
Executive Director
California Apple Commission
California Blueberry Association
California Blueberry Commission
Olive Growers Council of California

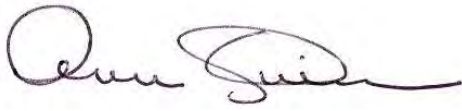
Casey Creamer
President
California Citrus Mutual

Debbie Murdock
Executive Director
Association of California Egg Farmers
California Pear Growers Association
Pacific Egg & Poultry Association

Jane Townsend
Executive Officer
California Association of Wheat Growers
California Bean Shippers Association

Chris Zanobini
Chief Executive Officer
California Grain and Feed Association
Pacific Coast Renderers Association

Ann Quinn
Executive Vice President
California State Floral Association
California Warehouse Association

A handwritten signature in black ink, appearing to read "Donna Boggs". The signature is fluid and cursive, with a large initial 'D' and a long, sweeping tail.

Donna Boggs
Associate Director
California Seed Association

A handwritten signature in blue ink, appearing to read "Aubrey Bettencourt". The signature is in a cursive, calligraphic style.

Aubrey Bettencourt
President/CEO
Almond Alliance of California

Occupational Safety and Health Standards Board

Business Meeting

Proposed Variance Decisions

**CONSENT CALENDAR—PROPOSED VARIANCE DECISIONS
DECEMBER 15, 2022, MONTHLY BUSINESS MEETING
OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD**

PROPOSED DECISIONS FOR BOARD CONSIDERATION, HEARD ON November 15, 2022

Docket Number	Applicant Name	Safety Order(s) at Issue	Proposed Decision Recommendation
1. 21-V-545	Linde Inc.	Pressure Vessel	GRANT

PROPOSED DECISIONS FOR BOARD CONSIDERATION, HEARD ON November 30, 2022

Docket Number	Applicant Name	Safety Order(s) at Issue	Proposed Decision Recommendation
2. 21-V-217M1	Mission Rock Parcel G Owner, LLC	Elevator	GRANT
3. 21-V-674	Amazon.com, Inc.	Elevator	GRANT
4. 21-V-676M1	Mission Rock Parcel B Owner, LLC	Elevator	GRANT
5. 22-V-118M1	KR Oyster Point II, LLC	Elevator	GRANT
6. 22-V-119M1	KR Oyster Point II, LLC	Elevator	GRANT
7. 22-V-120M1	KR Oyster Point II, LLC	Elevator	GRANT
8. 22-V-375	OSKI 360, LLC	Elevator	GRANT
9. 22-V-413	San Gabriel Storage Owner, LLC	Elevator	GRANT
10. 22-V-434	Canfield Living, LLC	Elevator	GRANT
11. 22-V-445	Aster Avenue Owner, LLC	Elevator	GRANT
12. 22-V-451	Gene Autry Self Storage LLC	Elevator	GRANT
13. 22-V-460	California State University San Francisco	Elevator	GRANT
14. 22-V-461	1090 East Duane Ave LLC	Elevator	GRANT
15. 22-V-462	1411 S. Flower QOZB, LLC	Elevator	GRANT
16. 22-V-463	1411 S. Flower QOZB, LLC	Elevator	GRANT

Docket Number	Applicant Name	Safety Order(s) at Issue	Proposed Decision Recommendation
17. 22-V-464	Akasa Soma Holdings LLC	Elevator	GRANT
18. 22-V-465	Linc-Wilmington Apts LP	Elevator	GRANT
19. 22-V-466	Saddleback College	Elevator	GRANT
20. 22-V-467	San Rafael Senior, L.P.	Elevator	GRANT
21. 22-V-468	San Rafael Senior, L.P.	Elevator	GRANT
22. 22-V-469	SOF-X Sunnyvale, LP	Elevator	GRANT
23. 22-V-470	Suncoast Hill Street LLC	Elevator	GRANT
24. 22-V-471	Suncoast Hill Street LLC	Elevator	GRANT
25. 22-V-472	Toll Brothers Apartment Living	Elevator	GRANT
26. 22-V-473	Toll Brothers Apartment Living	Elevator	GRANT
27. 22-V-474	Vintage at University Glen, LP	Elevator	GRANT
28. 22-V-475	Western & Franklin, LLC	Elevator	GRANT
29. 22-V-476	Octavia RSU Associates, L.P.	Elevator	GRANT
30. 22-V-477	Pasadena Studios, LP	Elevator	GRANT
31. 22-V-478	Albert Industries, LTD.	Elevator	GRANT
32. 22-V-479	Arden Gateway Owner, LLC	Elevator	GRANT
33. 22-V-480	Arden Gateway Owner, LLC	Elevator	GRANT
34. 22-V-481	Arden Gateway Owner, LLC	Elevator	GRANT
35. 22-V-482	Arden Gateway Owner, LLC	Elevator	GRANT
36. 22-V-483	The Scripps Research Institute	Elevator	GRANT
37. 22-V-484	San Bernardino Community College District	Elevator	GRANT
38. 22-V-485	NCRC Lake Forest, LP	Elevator	GRANT
39. 22-V-486	K & M 2000 University, LLC	Elevator	GRANT
40. 22-V-487	Fourth and G Partners, LLC	Elevator	GRANT

Docket Number	Applicant Name	Safety Order(s) at Issue	Proposed Decision Recommendation
41. 22-V-488	Apollo IV Development Group, LLC	Elevator	GRANT
42. 22-V-489	Fairfield Napa Phase II, LLC	Elevator	GRANT
43. 22-V-490	IQHQ-Spur PH I, LLC	Elevator	GRANT
44. 22-V-491	RCR Tasman I, LLC	Elevator	GRANT
45. 22-V-492	Tasman ASL Propco, LLC	Elevator	GRANT
46. 22-V-493	Arden Gateway Owner, LLC	Elevator	GRANT
47. 22-V-495	Oxnard School District	Elevator	GRANT
48. 22-V-496	San Dieguito Union High School District	Elevator	GRANT
49. 22-V-497	19 Bway Tower Development, LLC	Elevator	GRANT
50. 22-V-498	19 Bway Tower Development, LLC	Elevator	GRANT
51. 22-V-500	Berkeley Commons Owner, LLC	Elevator	GRANT
52. 22-V-502	Berkeley Commons Owner, LLC	Elevator	GRANT
53. 22-V-503	Calvary Chapel Costa Mesa	Elevator	GRANT
54. 22-V-504	Skyview Sunset, LLC	Elevator	GRANT
55. 22-V-505	La Mesa Bookshop LLC	Elevator	GRANT
56. 22-V-506	MSJC Meniffee Campus	Elevator	GRANT
57. 22-V-507	San Diego County Regional Airport Authority	Elevator	GRANT
58. 22-V-508	Santa Monica Malibu Unified School District	Elevator	GRANT
59. 22-V-509	CoreSite Real Estate SV9 LP	Elevator	GRANT
60. 22-V-510	475 South Lake Avenue, LLC	Elevator	GRANT
61. 22-V-511	Brooklyn Basin Associates IV, LP	Elevator	GRANT
62. 22-V-512	11701 Santa Monica LLC	Elevator	GRANT
63. 22-V-513	BTICS, L.P.	Elevator	GRANT
64. 22-V-514	BTICS, L.P.	Elevator	GRANT

Docket Number	Applicant Name	Safety Order(s) at Issue	Proposed Decision Recommendation
65. 22-V-515	CRP/VP Montclair Village Owner, LLC	Elevator	GRANT
66. 22-V-516	CRP/VP Montclair Village Owner, LLC	Elevator	GRANT

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
(916) 274-5721

In the Matter of Application to Modify
Permanent Variance by:

Mission Rock Parcel G Owner, LLC

OSHSB File No.: 21-V-217M1
Proposed Decision Dated: December 2, 2022

DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached
PROPOSED DECISION by Autumn Gonzalez, Hearing Officer.

DAVID THOMAS, Chairman

BARBARA BURGEL, Member

KATHLEEN CRAWFORD, Member

DAVID HARRISON, Member

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Date of Adoption: December 15, 2022

THE FOREGOING VARIANCE DECISION WAS
ADOPTED ON THE DATE INDICATED ABOVE.
IF YOU ARE DISSATISFIED WITH THE
DECISION, A PETITION FOR REHEARING
MAY BE FILED BY ANY PARTY WITH THE
STANDARDS BOARD WITHIN TWENTY (20)
DAYS AFTER SERVICE OF THE DECISION.
YOUR PETITION FOR REHEARING MUST
FULLY COMPLY WITH THE REQUIREMENTS
OF CALIFORNIA CODE OF REGULATIONS,
TITLE 8, SECTIONS 427, 427.1 AND 427.2.

Note: A copy of this Decision must be
posted for the Applicant's employees to
read, and/or a copy thereof must be
provided to the employees' Authorized
Representatives.

BEFORE THE
 OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
 DEPARTMENT OF INDUSTRIAL RELATIONS
 STATE OF CALIFORNIA

In the Matter of Application to Modify Permanent Variance by: Mission Rock Parcel G Owner, LLC	OSHSB File No.: 21-V-217M1 <u>PROPOSED DECISION</u> Hearing Date: November 30, 2022
--	---

A. The following person or entity (“Applicant”) has applied for a modification of permanent variance from provisions of the Elevator Safety Orders, found at title 8 of the California Code of Regulations, for each elevator having the specified preexisting variance location address of record:

Preexisting OSHSB File No.	Applicant Name	Preexisting Variance Address of Record
21-V-217	Mission Rock Parcel G Owner, LLC	1051 3rd Street - BLDG. G San Francisco, CA

B. This proceeding is conducted in accordance with Labor Code section 143, and California Code of Regulations, title 8, section 401, et. seq.

C. Procedural Matters:

1. This hearing was held on November 30, 2022, in Sacramento, California, via teleconference, by Occupational Safety and Health Standards Board (“Board”), with Hearing Officer Autumn Gonzalez, both presiding and hearing the matter on its merit, as a basis of proposed decision to be advanced to the Board for its consideration, in accordance with California Code of Regulations, title 8, section 426.
2. At the hearing, Matt Jaskiewicz, with Mitsubishi Elevator, appeared on behalf of the Applicant; Mark Wickens, David Morris, and Jose Ceja appeared on behalf of the Division of Occupational Safety and Health (“Division”); and Michael Nelmda appeared on behalf of Board staff, in a technical advisory role apart from the Board.

3. Documentary and oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence:

Exhibit Number	Description of Exhibit
PD-1	Application for modification of Permanent Variance
PD-2	OSHSB Notice of Hearing
PD-3	Board Staff Reviews of Variance Application
PD-4	Division Reviews of Variance Application
PD-5	Review Draft-1 Proposed Decision

Official notice is taken of the Board’s files, records, recordings and decisions concerning the Elevator Safety Order requirements from which variance shall issue. On November 30, 2022, the hearing and record closed, and the matter was taken under submission by the Hearing Officer.

D. Based on the record of this hearing, the Board makes the following findings of fact:

1. The Applicant requests modification of the address of the unchanging variance location specified within Board records for each elevator the subject of previously granted Permanent Variance 21-V-217.
2. Application section 3, declared to be wholly truthful under penalty of perjury by Application signatory, states facts upon which reasonably may be based a finding that the address, specified in the records of the Board, at which Permanent Variance 21-V-217 is in effect, in fact is more completely, and correctly the different combination of addresses specified in below subsection D.5.
3. The Division has evaluated the request for modification of variance location address, finds no issue with it, and recommends that the application for modification be granted subject to the same conditions of the Decision and Order in OSHSB Permanent Variance File No. 21-V-217.
4. The Board finds the above subpart D.2 referenced declaration to be credible, uncontroverted, and consistent with available, sufficient facts, and of no bearing as to the finding of equivalent occupational health and safety upon which Grant of preexisting Permanent Variance 21-V-217 was, in part, based.
5. The Board finds the correct address by which to designate the location of each elevator the subject of Permanent Variance No. 21-V-217, to be:

300 Toni Stone Crossing
San Francisco, CA

E. Decision and Order:

1. Permanent Variance Application No. 21-V-217M1 is conditionally GRANTED, thereby modifying Board records, such that, without change in variance location, each elevator being the subject of Permanent Variance Nos. 21-V-217, and 21-V-217M1, shall have the following address designation:

300 Toni Stone Crossing
San Francisco, CA

2. Permanent Variance No. 21-V-217, being only modified as to the subject location address specified in above Decision and Order section 1, is otherwise unchanged and remaining in full force and effect, as hereby incorporated by reference into this Decision and Order of Permanent Variance No. 21-V-217M1.

Pursuant to California Code of Regulations, title 8, section 426(b), the above, duly completed Proposed Decision, is hereby submitted to the Occupational Safety and Health Standards Board for consideration of adoption.

Dated: December 2, 2022



Autumn Gonzalez, Hearing Officer

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
(916) 274-5721

In the Matter of Application for
Permanent Variance by:

Linde Inc.

OSHSB File No.: 21-V-545

Proposed Decision Dated: December 2, 2022

DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached
PROPOSED DECISION by Autumn Gonzalez, Hearing Officer.

DAVID THOMAS, Chairman

BARBARA BURGEL, Member

KATHLEEN CRAWFORD, Member

DAVID HARRISON, Member

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Date of Adoption: December 15, 2022

THE FOREGOING VARIANCE DECISION WAS
ADOPTED ON THE DATE INDICATED ABOVE.
IF YOU ARE DISSATISFIED WITH THE
DECISION, A PETITION FOR REHEARING
MAY BE FILED BY ANY PARTY WITH THE
STANDARDS BOARD WITHIN TWENTY (20)
DAYS AFTER SERVICE OF THE DECISION.
YOUR PETITION FOR REHEARING MUST
FULLY COMPLY WITH THE REQUIREMENTS
OF CALIFORNIA CODE OF REGULATIONS,
TITLE 8, SECTIONS 427, 427.1 AND 427.2.

Note: A copy of this Decision must be
posted for the Applicant's employees to
read, and/or a copy thereof must be
provided to the employees' Authorized
Representatives.

BEFORE THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
DEPARTMENT OF INDUSTRIAL RELATIONS
STATE OF CALIFORNIA

In the Matter of Application for Permanent Variance Regarding: Linde, Inc.	OSHSB File No.: 21-V-545 <u>PROPOSED DECISION</u> Hearing Date: November 16, 2022
---	---

A. Jurisdictional and Procedural Matters

1. Linde, Inc. (Applicant) has applied for permanent variance from certain provisions of California Code of Regulations, title 8, section 460, subdivision (a) Design and Construction of Pressure Vessels for other than Compressed Air, LPG, NH(3) and Natural Gas.¹ Applicant would like to install one and possibly multiple non-ASME-Code Mega Electrolyzer Platforms (MEP) at their Ontario Hydrogen Production site located at 5705 E. Airport Drive Ontario, CA 91761.
2. This proceeding is conducted in accordance with Labor Code section 143, and section 401, et. seq.
3. The hearing was held via Zoom videoconference on November 16, 2022, in Sacramento, California, by delegation of the Occupational Safety and Health Standards Board (Board), with Hearing Officer Autumn Gonzalez presiding. Serving on the Hearing Panel were Board Members David Harrison and Kathleen Crawford. At the conclusion of the hearing on November 16, 2022, the record was closed and the matter taken under submission. The Hearing Officer and panel issues this proposed decision to the Board for its consideration, in accordance with section 426 of the Board's rules of procedure.
4. Appearing for the Applicant was Kang Xu, Ph.D. David Kernazitskas appeared on behalf of Board staff acting in a technical advisory role apart from the Board. Gary Teel represented the Division of Occupational Safety and Health (Division), Pressure Vessel Unit.
5. Oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence: subject Application for Permanent Variance as Exhibit PD-1; Notice of Hearing as Exhibit PD-2; Division Evaluation of Application as Exhibit PD-3; Board Staff Evaluation of Application as Exhibit PD-4, Division Circular Letter as PD-5, and a state of Arizona variance hearing application and decision as PD-6. By stipulation

¹ Unless otherwise noted, all references are to California Code of Regulations, title 8.

of the parties, official notice is taken of the Board's rulemaking records, and variance decisions concerning the safety order requirements from which variance is requested.

B. Findings of Fact

Based upon the record of this proceeding, the Board finds the following:

1. The Applicant requests a permanent variance from section 460 (a) Design and Construction of Pressure Vessels for other than Compressed Air, LPG, NH(3) and Natural Gas, which reads as follows:
 - (a) All new pressure vessels for pressures exceeding 15 psig used for the transportation, storage, or use of any poisonous, corrosive, or flammable substance, or other products at temperatures above their boiling points at atmospheric pressures, or in which the pressure is generated by means of a compressor, shall be constructed, inspected, and stamped in compliance with the ASME Code, unless the design, material and construction of the vessel are accepted by the Division as equivalent to the ASME Code.
2. The intent of the standard is to ensure that injury to persons and property from catastrophic failure (i.e. explosion) of the PV will not occur by requiring the vessels to be constructed, inspected and stamped in compliance with the ASME Code.
3. The Applicant intends to use a Mega Electrolyzer Platform (MEP) to separate water molecules (H₂O) into hydrogen and oxygen gas.
4. The applicant has indicated the MEP will be designed to ISO 22734-1 2008[1] and the pressure design and construction conforms to the European Pressure Equipment Directive (PED), which is a European Union Code that provides guidance for the design, manufacture and conformity assessment of pressure equipment. ISO 22734-1[2008] defines the construction, safety and performance requirements of packaged or factory matched hydrogen gas generation appliances, herein referred to as hydrogen generators, using electrochemical reactions to electrolyze water to produce hydrogen and oxygen gas.
5. Neither ISO 22734-1 2008 or PED is equivalent to the ASME Code.
6. The State of California has a written procedure that has been in effect since October 1, 2006 that allows non-ASME Code items to be installed in California. This procedure, known as Circular Letter PV-2006-4, is the document the Pressure Vessel Unit uses to determine if a non-ASME Code item is equivalent to the ASME Code.

7. The Applicant cannot meet the requirements of Circular Letter PV-2006-4 because the material forming the pressure boundary of the MEP does not meet the ASME Code. The MEP uses a dielectric material to contain the pressurized gas that is not recognized by the ASME Code and therefore cannot be stamped as Code compliant; the MEP is built of material (Titanium Bi-Polar Foil) that the ASME Code does not recognize as being suitable for pressures greater than 15psi. The design pressure of the MEP is 350 psi at 140° F.
8. The MEP is manufactured by ITM Power in the United Kingdom and designed to ISO 22734-1 2008 “Hydrogen generators using water electrolysis process – Part 1: Industrial and commercial applications.” The ISO standard states that it is intended to be used for certification purposes. The scope of the document states, in part, that the “document defines the construction, safety, and performance requirements of packaged or factory-matched hydrogen gas generation appliances.”
9. The MEP design and construction conform to PED requirements and bears the Conformité Européenne (CE) certification marking. The requirements of the PED are mandatory in the European Union (EU) and are similar to the ASME Code in that they provide requirements for the design, manufacture and conformity assessment of stationary pressure equipment with a maximum allowable pressure greater than 0.5 bar. To comply with the PED, pressure equipment and assemblies above specified pressure and/or volume thresholds must:
 - be safe;
 - meet essential safety requirements covering design, manufacture and testing;
 - satisfy appropriate conformity assessment procedures; and
 - carry the CE marking and other information^{2,3}.

The required CE marking represents a manufacturer’s declaration that products comply with the EU’s Approach Directives. The mark indicates that a product:

- Fulfills the requirements of relevant European product directives
- Meets all the requirements of the relevant recognized European harmonized performance and safety standards
- Is fit for its purpose and will not endanger lives or property⁴

The PED certification is used in the EU in the same way that the ASME Code is used in the United States of America (USA) and other countries. In order for non-PED vessels to

² https://ec.europa.eu/growth/sectors/pressure-equipment-and-gas-appliances/pressure-equipment-sector/pressure-equipment-directive_en. Pressure Equipment Directive. European Commission Official Website. Accessed 6/30/22.

³ <https://www.wermac.org/societies/ped.html>. About the Pressure Equipment Directive. Explore the World of Piping. Accessed 6/30/22.

⁴ <https://asq.org/quality-resources/ce-marking>. What Is CE Marking?. American Society for Quality. Accessed 6/30/22.

enter the EU, the manufacturer must demonstrate that the device can meet certain safety requirements. Vessels bearing the PED certification must similarly undergo testing to enter various jurisdictions in the USA.

10. The ASME Code contains a method for evaluating the materials of a PV that is not otherwise able to be evaluated by the Code. Section VIII, Division 1, *Rules for Construction of Pressure Vessels*, Paragraph UG-101, "Proof Tests to Establish Maximum Allowable Working Pressure" provides requirements for determining the maximum allowable working pressure of a PV.
11. The testing methodology is independent of whether or not the material is accepted by ASME. Although some of the MEP's materials are not ASME-accepted, the materials meet the requirements of the Code for ultimate tensile strength (fracture / burst) and yield strength (permanent deformation).

D. Conclusive Findings

Applicant has demonstrated "by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the standard." (Labor Code, section 143, subdivision (b).)

E. Decision And Order

The Application for Permanent Variance of Linde, Inc., OSHSB File No. 21-V-545, is **GRANTED**, subject to the following conditions:

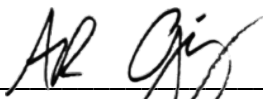
1. Applicant shall continue to comply with the requirements of ISO 22734-1 2008, the PED and CE certifications and maintain other specifications and conditions as stated in the October 7, 2021 application for permanent variance.
2. Any modification to the design of the MEP that could affect the integrity of the unit shall be approved by the Division before placing the unit in service.
3. A pressure relief valve shall be installed on the MEP in accordance with applicable ASME Code requirements.
4. The Applicant shall keep the Division's Pressure Vessel Unit informed of the status of its ASME Code Case.⁵ If the Applicant's Code Case is not approved by July 2024, the Board will reopen this permanent variance matter at the request of the Division.

⁵A code case is defined by ASME as follows, "In the event of an urgent need for alternative rules concerning materials, construction, or in-service inspection activities not covered by existing Boiler and Pressure Vessel Code (BPVC) rules, or need for early implementation of an approved code revision, ASME may issue a code case. Code cases are effective immediately upon ASME approval and do not expire." (<https://www.asme.org/codes-standards/publications-information/code-cases> [last accessed 11/18/22].)

5. The Division shall be notified when the MEP is ready for inspection, prior to startup.
6. The Applicant shall notify its employees or their authorized representative(s), or both, of this order in the same way and to the same extent that employees and authorized representatives are to be notified of docketed permanent variance applications pursuant to sections 411.2, and 411.3.
7. This Decision and Order shall remain in effect unless modified or revoked upon application by the Applicant, affected employee(s), the Division, or by the Board on its own motion, in the manner prescribed for its issuance.
8. Pursuant to condition 7, the Applicant shall keep the Division's Pressure Vessel Unit informed of the status of its ASME Code Case. If the Applicant's Code Case is not approved by July 1, 2024, the Board will reopen this permanent variance matter at the request of the Division's Pressure Vessel Unit.

I hereby certify that the above Proposed Decision is the decision of the Hearing Panel, and the Hearing Panel recommends its adoption by the Occupational Safety and Health Standards Board as the Board's decision in this preceding.

DATED: December 6, 2022



Autumn Gonzalez, Hearing Officer

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
(916) 274-5721

In the Matter of Application for
Permanent Variance By:

Amazon.com, Inc.

OSHSB File No.: see grid in Item A of
Proposed Decision Dated: December 2, 2022

DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached
PROPOSED DECISION by Autumn Gonzalez, Hearing Officer.

DAVID THOMAS, Chairman

BARBARA BURGEL, Member

KATHLEEN CRAWFORD, Member

DAVID HARRISON, Member

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Date of Adoption: December 15, 2022

THE FOREGOING VARIANCE DECISION WAS
ADOPTED ON THE DATE INDICATED ABOVE.
IF YOU ARE DISSATISFIED WITH THE
DECISION, A PETITION FOR REHEARING
MAY BE FILED BY ANY PARTY WITH THE
STANDARDS BOARD WITHIN TWENTY (20)
DAYS AFTER SERVICE OF THE DECISION.
YOUR PETITION FOR REHEARING MUST
FULLY COMPLY WITH THE REQUIREMENTS
OF CALIFORNIA CODE OF REGULATIONS,
TITLE 8, SECTIONS 427, 427.1 AND 427.2.

Note: A copy of this Decision must be
posted for the Applicant's employees to
read, and/or a copy thereof must be
provided to the employees' Authorized
Representatives.

BEFORE THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
DEPARTMENT OF INDUSTRIAL RELATIONS
STATE OF CALIFORNIA

In the Matter of Application for Permanent Variance regarding: Amazon.com, Inc.	OSHSB File No: 21-V-674 <u>PROPOSED DECISION</u> Hearing Date: November 23, 2022
--	--

Procedural Matters

1. On December 21, 2021, Dan Leacox, of Leacox & Associates, representing Amazon.com, Inc. (Applicant), applied for a permanent variance from the provisions of the California Code of Regulations, title 8, section 3087.6, subdivision (a) of the Elevator Safety Orders¹, with respect to the enclosure guard for three vertical reciprocating conveyors (VRCs), located at Space #D-1, 899 Americana Way, Glendale, California.
2. This hearing was held on November 23, 2022, in Sacramento, California, via teleconference, by delegation of the Occupational Safety and Health Standards Board (“Board”), with Hearing Officer Autumn Gonzalez, both presiding and hearing the matter on its merit, as a basis of proposed decision to be advanced to the Board for its consideration, in accordance with section 426 of the Board’s procedural rules.
3. At the hearing, Wolter Geesink with Otis Elevator Company, and Dan Leacox of Leacox & Associates, appeared on behalf of the Applicant; Mark Wickens and Jose Ceja appeared on behalf of the Division of Occupational Safety and Health (“Division”); and Michael Nelmidia appeared on behalf of Board staff in a technical advisory role apart from the Board.

Applicable Regulations

1. Section 3087.6, subdivision (a) states in part:
 - (a) Vertical or inclined reciprocating conveyors shall be guarded so as to prevent injury from inadvertent physical contact. The enclosure shall be not less than 8 ft (2.44 m) high and constructed of a metal mesh that will reject a ball 2 in. (51 mm) in diameter.[6.6.2]

The intent of these code requirements are to provide a barrier that provides protection to, and from, moving VRC components. The requirement for the use of metal mesh [at floors and landings] is to prevent injury from inadvertent physical contact with the VRC. The design and construction of the metal mesh material is to provide an enclosure system of adequate density and strength that also allows for direct visibility of the VRC.

¹ Unless otherwise noted, all references are to California Code of Regulations, title 8.

The Applicant proposes to provide 0.25 in. (6 mm) thick, clear, impact-resistant polycarbonate panels and/or 0.5 in. (12 mm) thick, heat-tempered glass panels as an enclosure around the VRCs at each floor level. The panels are supported by aluminum storefront-type framing. Unlike metal mesh, as required by the ESO, the polycarbonate and glass panels are void of any openings.

The Applicant contends the design and construction of the polycarbonate and glass enclosure is superior to an enclosure constructed of metal mesh. Where the ESO allows for openings in the metal mesh enclosure, less than 2 in. diameter, polycarbonate and glass panels are solid and prevent the intrusion of any objects. Additionally, clear polycarbonate and glass provides greater visibility than metal mesh.

The Applicant notes that the proposed guarding meets the requirements of a more recent model code, ASME B20.1-2018 Section 6.21.2 regarding the guarding of VRCs.

2. ASME B20.1-2021 Safety Standards for Conveyors and Related Equipment

6.21.2 Guarding

(a) The conveyor shall be guarded so as to prevent injury from inadvertent physical contact.

The Applicant asserts that guarding a VRC with a polycarbonate and glass enclosure, void of openings, with increased visibility provides safety that is equivalent to the ESO.

Findings of Fact

1. The Division and Board staff believe that the proposal to use polycarbonate and glass panels, in lieu of metal mesh, as enclosure guarding at the landings and floor levels of three VRCs as proposed by the Applicant, provides equivalent safety.

Conclusive Findings

1. The above stated procedural prerequisites, legal authority, and factual findings, as further supported by the documentary record and hearing testimony in this matter, provide a substantive and reasonable basis of conclusion that: (1) Applicant has complied with the statutory and regulatory requirements that must be met before an application for permanent variance may be conditionally granted; and (2) a preponderance of the evidence establishes that Applicant's proposal, subject to all conditions and limitations set forth in the below Decision and Order, will provide equivalent safety and health to that which would prevail upon full compliance with the requirements of the safety regulations from which variance is being sought.

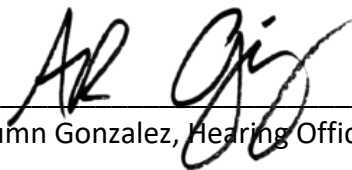
Decision and Order

The Applicant's request for variance from section 3087.6, subdivision (a), (Only to the extent necessary to permit the use of impact resistant polycarbonate and heat-tempered glass proposed by the Applicant, in lieu of metal mesh.), is hereby granted, subject to the following conditions:

1. The three (3) VRCs shall be guarded to prevent injury from inadvertent physical contact. The enclosure shall:
 - a. Be not less than 8 ft. (2.44 m) high at each landing or adjacent surface a person may occupy.
 - b. reject a ball 2 in. (51 mm) in diameter
 - c. withstand a minimum force of 200 lbf (890 N) applied laterally at any point without deflecting into the path of the moving carrier without permanent deformation.
 - d. Be enclosed with either:
 - i) 0.5 in. (12 mm) thick, clear, tempered safety glass meeting the requirements of ANSI Z97.1 or 16 CFR 1201, or
 - ii) 0.25 in (6 mm) thick, clear, impact resistant polycarbonate sheet.
2. A running clearance of not less than 0.5 inches shall be maintained between moving VRC equipment and the adjacent enclosure.
3. The Applicant shall provide the necessary personnel, and equipment to demonstrate compliance with this variance order.
4. Any Certified Qualified Conveyance Company (CQCC-elevator contractor) performing inspections, maintenance, servicing, or testing the elevator shall be provided a copy of this variance decision.
5. The Division shall be notified when the VRCs are ready for inspection and the Division shall inspect the elevator before a Permit to Operate is issued.
6. The Applicant shall notify its employees or their authorized representative(s), or both, of this order in the same way and to the same extent that employees and authorized representatives are to be notified of docketed permanent variance applications pursuant to sections 411.2, and 411.3.
7. This Decision and Order shall remain in effect unless modified or revoked upon application by the Applicant, affected employee(s), the Division, or by the Board on its own motion, in the manner prescribed for its issuance.

Pursuant to section 426, subdivision (b), the above, duly completed Proposed Decision, is hereby submitted to the Occupational Safety and Health Standards Board for consideration of adoption.

DATED: December 2, 2022



Autumn Gonzalez, Hearing Officer

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
(916) 274-5721

In the Matter of Application to Modify
Permanent Variance by:

Mission Rock Parcel B Owner, LLC

OSHSB File No.: 21-V-676M1
Proposed Decision Dated: December 2, 2022

DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached
PROPOSED DECISION by Autumn Gonzalez, Hearing Officer.

DAVID THOMAS, Chairman

BARBARA BURGEL, Member

KATHLEEN CRAWFORD, Member

DAVID HARRISON, Member

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Date of Adoption: December 15, 2022

THE FOREGOING VARIANCE DECISION WAS
ADOPTED ON THE DATE INDICATED ABOVE.
IF YOU ARE DISSATISFIED WITH THE
DECISION, A PETITION FOR REHEARING
MAY BE FILED BY ANY PARTY WITH THE
STANDARDS BOARD WITHIN TWENTY (20)
DAYS AFTER SERVICE OF THE DECISION.
YOUR PETITION FOR REHEARING MUST
FULLY COMPLY WITH THE REQUIREMENTS
OF CALIFORNIA CODE OF REGULATIONS,
TITLE 8, SECTIONS 427, 427.1 AND 427.2.

Note: A copy of this Decision must be
posted for the Applicant's employees to
read, and/or a copy thereof must be
provided to the employees' Authorized
Representatives.

BEFORE THE
 OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
 DEPARTMENT OF INDUSTRIAL RELATIONS
 STATE OF CALIFORNIA

In the Matter of Application to Modify Permanent Variance by: Mission Rock Parcel B Owner, LLC	OSHSB File No.: 21-V-676M1 <u>PROPOSED DECISION</u> Hearing Date: November 30, 2022
--	---

A. The following person or entity (“Applicant”) has applied for a modification of permanent variance from provisions of the Elevator Safety Orders, found at title 8 of the California Code of Regulations, for each elevator having the specified preexisting variance location address of record:

Preexisting OSHSB File No.	Applicant Name	Preexisting Variance Address of Record
21-V-676	Mission Rock Parcel B Owner, LLC	1051 3rd Street - BLDG B San Francisco, CA

B. This proceeding is conducted in accordance with Labor Code section 143, and California Code of Regulations, title 8, section 401, et. seq.

C. Procedural Matters:

1. This hearing was held on November 30, 2022, in Sacramento, California, via teleconference, by Occupational Safety and Health Standards Board (“Board”), with Hearing Officer Autumn Gonzalez, both presiding and hearing the matter on its merit, as a basis of proposed decision to be advanced to the Board for its consideration, in accordance with California Code of Regulations, title 8, section 426.
2. At the hearing, Matt Jaskiewicz, with Mitsubishi Elevator, appeared on behalf of the Applicant; Mark Wickens, David Morris, and Jose Ceja appeared on behalf of the Division of Occupational Safety and Health (“Division”); and Michael Nelmda appeared on behalf of Board staff, in a technical advisory role apart from the Board.

3. Documentary and oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence:

Exhibit Number	Description of Exhibit
PD-1	Application for modification of Permanent Variance
PD-2	OSHSB Notice of Hearing
PD-3	Board Staff Reviews of Variance Application
PD-4	Division Reviews of Variance Application
PD-5	Review Draft-1 Proposed Decision

Official notice is taken of the Board’s files, records, recordings and decisions concerning the Elevator Safety Order requirements from which variance shall issue. On November 30, 2022, the hearing and record closed, and the matter was taken under submission by the Hearing Officer.

D. Based on the record of this hearing, the Board makes the following findings of fact:

1. The Applicant requests modification of the address of the unchanging variance location specified within Board records for each elevator the subject of previously granted Permanent Variance 21-V-676.
2. Application section 3, declared to be wholly truthful under penalty of perjury by Application signatory, states facts upon which reasonably may be based a finding that the address, specified in the records of the Board, at which Permanent Variance 21-V-676 is in effect, in fact is more completely, and correctly the different combination of addresses specified in below subsection D.5.
3. The Division has evaluated the request for modification of variance location address, finds no issue with it, and recommends that the application for modification be granted subject to the same conditions of the Decision and Order in OSHSB Permanent Variance File No. 21-V-676.
4. The Board finds the above subpart D.2 referenced declaration to be credible, uncontroverted, and consistent with available, sufficient facts, and of no bearing as to the finding of equivalent occupational health and safety upon which Grant of preexisting Permanent Variance 21-V-676 was, in part, based.
5. The Board finds the correct address by which to designate the location of each elevator the subject of Permanent Variance No. 21-V-676, to be:

1090 Dr. Maya Angelou Lane
San Francisco, CA

E. Decision and Order:

1. Permanent Variance Application No. 21-V-676M1 is conditionally GRANTED, thereby modifying Board records, such that, without change in variance location, each elevator being the subject of Permanent Variance Nos. 21-V-676, and 21-V-676M1, shall have the following address designation:

1090 Dr. Maya Angelou Lane
San Francisco, CA

2. Permanent Variance No. 21-V-676, being only modified as to the subject location address specified in above Decision and Order section 1, is otherwise unchanged and remaining in full force and effect, as hereby incorporated by reference into this Decision and Order of Permanent Variance No. 21-V-676M1.

Pursuant to California Code of Regulations, title 8, section 426(b), the above, duly completed Proposed Decision, is hereby submitted to the Occupational Safety and Health Standards Board for consideration of adoption.

Dated: December 2, 2022



Autumn Gonzalez, Hearing Officer

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
(916) 274-5721

In the Matter of Application to Modify
Permanent Variance by:

KR Oyster Point II, LLC

OSHSB File No.: 22-V-118M1
Proposed Decision Dated: December 2, 2022

DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached
PROPOSED DECISION by Autumn Gonzalez, Hearing Officer.

DAVID THOMAS, Chairman

BARBARA BURGEL, Member

KATHLEEN CRAWFORD, Member

DAVID HARRISON, Member

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Date of Adoption: December 15, 2022

THE FOREGOING VARIANCE DECISION WAS
ADOPTED ON THE DATE INDICATED ABOVE.
IF YOU ARE DISSATISFIED WITH THE
DECISION, A PETITION FOR REHEARING
MAY BE FILED BY ANY PARTY WITH THE
STANDARDS BOARD WITHIN TWENTY (20)
DAYS AFTER SERVICE OF THE DECISION.
YOUR PETITION FOR REHEARING MUST
FULLY COMPLY WITH THE REQUIREMENTS
OF CALIFORNIA CODE OF REGULATIONS,
TITLE 8, SECTIONS 427, 427.1 AND 427.2.

Note: A copy of this Decision must be
posted for the Applicant's employees to
read, and/or a copy thereof must be
provided to the employees' Authorized
Representatives.

BEFORE THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
DEPARTMENT OF INDUSTRIAL RELATIONS
STATE OF CALIFORNIA

In the Matter of Application to Modify Permanent Variance by: KR Oyster Point II, LLC	OSHSB File No.: 22-V-118M1 <u>PROPOSED DECISION</u> Hearing Date: November 30, 2022
--	---

- A. The following person or entity (“Applicant”) has applied for a modification of permanent variance from provisions of the Elevator Safety Orders, found at title 8 of the California Code of Regulations, for each elevator having the specified preexisting variance location address of record:

Preexisting OSHSB File No.	Applicant Name	Preexisting Variance Address of Record
22-V-118	KR Oyster Point II, LLC	375 Oyster Point Blvd., Bldg. D South San Francisco, CA

- B. This proceeding is conducted in accordance with Labor Code section 143, and California Code of Regulations, title 8, section 401, et. seq.

C. Procedural Matters:

1. This hearing was held on November 30, 2022, in Sacramento, California, via teleconference, by Occupational Safety and Health Standards Board (“Board”), with Hearing Officer Autumn Gonzalez, both presiding and hearing the matter on its merit, as a basis of proposed decision to be advanced to the Board for its consideration, in accordance with California Code of Regulations, title 8, section 426.
2. At the hearing, Matt Jaskiewicz with Mitsubishi Elevator, appeared on behalf of the Applicant; Mark Wickens, David Morris, and Jose Ceja appeared on behalf of the Division of Occupational Safety and Health (“Division”); and Michael Nelmda appeared on behalf of Board staff, in a technical advisory role apart from the Board.

3. Documentary and oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence:

Exhibit Number	Description of Exhibit
PD-1	Application for modification of Permanent Variance
PD-2	OSHSB Notice of Hearing
PD-3	Board Staff Reviews of Variance Application
PD-4	Division Reviews of Variance Application
PD-5	Review Draft-1 Proposed Decision

Official notice is taken of the Board’s files, records, recordings and decisions concerning the Elevator Safety Order requirements from which variance shall issue. On November 30, 2022, the hearing and record closed, and the matter was taken under submission by the Hearing Officer.

D. Based on the record of this hearing, the Board makes the following findings of fact:

1. The Applicant requests modification of the address of the unchanging variance location specified within Board records for each elevator the subject of previously granted Permanent Variance 22-V-118.
2. Application section 3, declared to be wholly truthful under penalty of perjury by Application signatory, states facts upon which reasonably may be based a finding that the address, specified in the records of the Board, at which Permanent Variance 22-V-118 is in effect, in fact is more completely, and correctly the different combination of addresses specified in below subsection D.5.
3. The Division has evaluated the request for modification of variance location address, finds no issue with it, and recommends that the application for modification be granted subject to the same conditions of the Decision and Order in OSHSB Permanent Variance File No. 22-V-118.
4. The Board finds the above subpart D.2 referenced declaration to be credible, uncontroverted, and consistent with available, sufficient facts, and of no bearing as to the finding of equivalent occupational health and safety upon which Grant of preexisting Permanent Variance 22-V-118 was, in part, based.
5. The Board finds the correct address by which to designate the location of each elevator the subject of Permanent Variance No. 22-V-118, to be:

363 Oyster Point Blvd. Bldg D
South San Francisco, CA

E. Decision and Order:

1. Permanent Variance Application No. 22-V-118M1 is conditionally GRANTED, thereby modifying Board records, such that, without change in variance location, each elevator being the subject of Permanent Variance Nos. 22-V-118, and 22-V-118M1, shall have the following address designation:

363 Oyster Point Blvd. Bldg D
South San Francisco, CA

2. Permanent Variance No. 22-V-118, being only modified as to the subject location address specified in above Decision and Order section 1, is otherwise unchanged and remaining in full force and effect, as hereby incorporated by reference into this Decision and Order of Permanent Variance No. 22-V-118M1.

Pursuant to California Code of Regulations, title 8, section 426(b), the above, duly completed Proposed Decision, is hereby submitted to the Occupational Safety and Health Standards Board for consideration of adoption.

Dated: December 2, 2022



Autumn Gonzalez, Hearing Officer

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
(916) 274-5721

In the Matter of Application to Modify
Permanent Variance by:

KR Oyster Point II, LLC

OSHSB File No.: 22-V-119M1
Proposed Decision Dated: December 2, 2022

DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached
PROPOSED DECISION by Autumn Gonzalez, Hearing Officer.

DAVID THOMAS, Chairman

BARBARA BURGEL, Member

KATHLEEN CRAWFORD, Member

DAVID HARRISON, Member

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Date of Adoption: December 15, 2022

THE FOREGOING VARIANCE DECISION WAS
ADOPTED ON THE DATE INDICATED ABOVE.
IF YOU ARE DISSATISFIED WITH THE
DECISION, A PETITION FOR REHEARING
MAY BE FILED BY ANY PARTY WITH THE
STANDARDS BOARD WITHIN TWENTY (20)
DAYS AFTER SERVICE OF THE DECISION.
YOUR PETITION FOR REHEARING MUST
FULLY COMPLY WITH THE REQUIREMENTS
OF CALIFORNIA CODE OF REGULATIONS,
TITLE 8, SECTIONS 427, 427.1 AND 427.2.

Note: A copy of this Decision must be
posted for the Applicant's employees to
read, and/or a copy thereof must be
provided to the employees' Authorized
Representatives.

BEFORE THE
 OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
 DEPARTMENT OF INDUSTRIAL RELATIONS
 STATE OF CALIFORNIA

In the Matter of Application to Modify Permanent Variance by: KR Oyster Point II, LLC	OSHSB File No.: 22-V-119M1 <u>PROPOSED DECISION</u> Hearing Date: November 30, 2022
---	---

A. The following person or entity (“Applicant”) has applied for a modification of permanent variance from provisions of the Elevator Safety Orders, found at title 8 of the California Code of Regulations, for each elevator having the specified preexisting variance location address of record:

Preexisting OSHSB File No.	Applicant Name	Preexisting Variance Address of Record
22-V-119	KR Oyster Point II, LLC	377 Oyster Point Blvd., Bldg. E South San Francisco, CA

B. This proceeding is conducted in accordance with Labor Code section 143, and California Code of Regulations, title 8, section 401, et. seq.

C. Procedural Matters:

1. This hearing was held on November 30, 2022, in Sacramento, California, via teleconference, by Occupational Safety and Health Standards Board (“Board”), with Hearing Officer Autumn Gonzalez, both presiding and hearing the matter on its merit, as a basis of proposed decision to be advanced to the Board for its consideration, in accordance with California Code of Regulations, title 8, section 426.
2. At the hearing, Matt Jaskiewicz with Mitsubishi Elevator, appeared on behalf of the Applicant; Mark Wickens, David Morris, and Jose Ceja appeared on behalf of the Division of Occupational Safety and Health (“Division”); and Michael Nelmda appeared on behalf of Board staff, in a technical advisory role apart from the Board.

3. Documentary and oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence:

Exhibit Number	Description of Exhibit
PD-1	Application for modification of Permanent Variance
PD-2	OSHSB Notice of Hearing
PD-3	Board Staff Reviews of Variance Application
PD-4	Division Reviews of Variance Application
PD-5	Review Draft-1 Proposed Decision

Official notice is taken of the Board’s files, records, recordings and decisions concerning the Elevator Safety Order requirements from which variance shall issue. On November 30, 2022, the hearing and record closed, and the matter was taken under submission by the Hearing Officer.

D. Based on the record of this hearing, the Board makes the following findings of fact:

1. The Applicant requests modification of the address of the unchanging variance location specified within Board records for each elevator the subject of previously granted Permanent Variance 22-V-119.
2. Application section 3, declared to be wholly truthful under penalty of perjury by Application signatory, states facts upon which reasonably may be based a finding that the address, specified in the records of the Board, at which Permanent Variance 22-V-119 is in effect, in fact is more completely, and correctly the different combination of addresses specified in below subsection D.5.
3. The Division has evaluated the request for modification of variance location address, finds no issue with it, and recommends that the application for modification be granted subject to the same conditions of the Decision and Order in OSHSB Permanent Variance File No. 22-V-119.
4. The Board finds the above subpart D.2 referenced declaration to be credible, uncontroverted, and consistent with available, sufficient facts, and of no bearing as to the finding of equivalent occupational health and safety upon which Grant of preexisting Permanent Variance 22-V-119 was, in part, based.
5. The Board finds the correct address by which to designate the location of each elevator the subject of Permanent Variance No. 22-V-119, to be:

369 Oyster Point Blvd., Bldg E
South San Francisco, CA

E. Decision and Order:

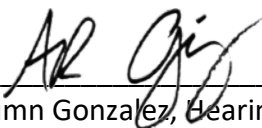
1. Permanent Variance Application No. 22-V-119M1 is conditionally GRANTED, thereby modifying Board records, such that, without change in variance location, each elevator being the subject of Permanent Variance Nos. 22-V-119, and 22-V-119M1, shall have the following address designation:

369 Oyster Point Blvd., Bldg E
South San Francisco, CA

2. Permanent Variance No. 22-V-119, being only modified as to the subject location address specified in above Decision and Order section 1, is otherwise unchanged and remaining in full force and effect, as hereby incorporated by reference into this Decision and Order of Permanent Variance No. 22-V-119M1.

Pursuant to California Code of Regulations, title 8, section 426(b), the above, duly completed Proposed Decision, is hereby submitted to the Occupational Safety and Health Standards Board for consideration of adoption.

Dated: December 2, 2022



Autumn Gonzalez, Hearing Officer

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
(916) 274-5721

In the Matter of Application to Modify
Permanent Variance by:

KR Oyster Point II, LLC

OSHSB File No.: 22-V-120M1
Proposed Decision Dated: December 2, 2022

DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached
PROPOSED DECISION by Autumn Gonzalez, Hearing Officer.

DAVID THOMAS, Chairman

BARBARA BURGEL, Member

KATHLEEN CRAWFORD, Member

DAVID HARRISON, Member

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Date of Adoption: December 15, 2022

THE FOREGOING VARIANCE DECISION WAS
ADOPTED ON THE DATE INDICATED ABOVE.
IF YOU ARE DISSATISFIED WITH THE
DECISION, A PETITION FOR REHEARING
MAY BE FILED BY ANY PARTY WITH THE
STANDARDS BOARD WITHIN TWENTY (20)
DAYS AFTER SERVICE OF THE DECISION.
YOUR PETITION FOR REHEARING MUST
FULLY COMPLY WITH THE REQUIREMENTS
OF CALIFORNIA CODE OF REGULATIONS,
TITLE 8, SECTIONS 427, 427.1 AND 427.2.

Note: A copy of this Decision must be
posted for the Applicant's employees to
read, and/or a copy thereof must be
provided to the employees' Authorized
Representatives.

BEFORE THE
 OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
 DEPARTMENT OF INDUSTRIAL RELATIONS
 STATE OF CALIFORNIA

In the Matter of Application to Modify Permanent Variance by: KR Oyster Point II, LLC	OSHSB File No.: 22-V-120M1 <u>PROPOSED DECISION</u> Hearing Date: November 30, 2022
---	---

A. The following person or entity (“Applicant”) has applied for a modification of permanent variance from provisions of the Elevator Safety Orders, found at title 8 of the California Code of Regulations, for each elevator having the specified preexisting variance location address of record:

Preexisting OSHSB File No.	Applicant Name	Preexisting Variance Address of Record
22-V-120	KR Oyster Point II, LLC	379 Oyster Point Blvd., Bldg. F South San Francisco, CA

B. This proceeding is conducted in accordance with Labor Code section 143, and California Code of Regulations, title 8, section 401, et. seq.

C. Procedural Matters:

1. This hearing was held on November 30, 2022, in Sacramento, California, via teleconference, by Occupational Safety and Health Standards Board (“Board”), with Hearing Officer Autumn Gonzalez, both presiding and hearing the matter on its merit, as a basis of proposed decision to be advanced to the Board for its consideration, in accordance with California Code of Regulations, title 8, section 426.
2. At the hearing, Matt Jaskiewicz with Mitsubishi Elevator, appeared on behalf of the Applicant; Mark Wickens, David Morris, and Jose Ceja appeared on behalf of the Division of Occupational Safety and Health (“Division”); and Michael Nelmda appeared on behalf of Board staff, in a technical advisory role apart from the Board.

3. Documentary and oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence:

Exhibit Number	Description of Exhibit
PD-1	Application for modification of Permanent Variance
PD-2	OSHSB Notice of Hearing
PD-3	Board Staff Reviews of Variance Application
PD-4	Division Reviews of Variance Application
PD-5	Review Draft-1 Proposed Decision

Official notice is taken of the Board’s files, records, recordings and decisions concerning the Elevator Safety Order requirements from which variance shall issue. On November 30, 2022, the hearing and record closed, and the matter was taken under submission by the Hearing Officer.

D. Based on the record of this hearing, the Board makes the following findings of fact:

1. The Applicant requests modification of the address of the unchanging variance location specified within Board records for each elevator the subject of previously granted Permanent Variance 22-V-120.
2. Application section 3, declared to be wholly truthful under penalty of perjury by Application signatory, states facts upon which reasonably may be based a finding that the address, specified in the records of the Board, at which Permanent Variance 22-V-120 is in effect, in fact is more completely, and correctly the different combination of addresses specified in below subsection D.5.
3. The Division has evaluated the request for modification of variance location address, finds no issue with it, and recommends that the application for modification be granted subject to the same conditions of the Decision and Order in OSHSB Permanent Variance File No. 22-V-120.
4. The Board finds the above subpart D.2 referenced declaration to be credible, uncontroverted, and consistent with available, sufficient facts, and of no bearing as to the finding of equivalent occupational health and safety upon which Grant of preexisting Permanent Variance 22-V-120 was, in part, based.
5. The Board finds the correct address by which to designate the location of each elevator the subject of Permanent Variance No. 22-V-120, to be:

365 Oyster Point Blvd., Bldg F
South San Francisco, CA

E. Decision and Order:

1. Permanent Variance Application No. 22-V-120M1 is conditionally GRANTED, thereby modifying Board records, such that, without change in variance location, each elevator being the subject of Permanent Variance Nos. 22-V-120, and 22-V-120M1, shall have the following address designation:

365 Oyster Point Blvd., Bldg F
South San Francisco, CA

2. Permanent Variance No. 22-V-120, being only modified as to the subject location address specified in above Decision and Order section 1, is otherwise unchanged and remaining in full force and effect, as hereby incorporated by reference into this Decision and Order of Permanent Variance No. 22-V-120M1.

Pursuant to California Code of Regulations, title 8, section 426(b), the above, duly completed Proposed Decision, is hereby submitted to the Occupational Safety and Health Standards Board for consideration of adoption.

Dated: December 2, 2022



Autumn Gonzalez, Hearing Officer

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
(916) 274-5721

In the Matter of Application for
Permanent Variance regarding:

Otis Gen20, and/or Gen3Peak with Variant
Governor Rope and Sheaves
(Group IV)

OSHSB File No.: see grid in Item A of
Proposed Decision Dated: December 2, 2022

DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached
PROPOSED DECISION by Autumn Gonzalez, Hearing Officer.

DAVID THOMAS, Chairman

BARBARA BURGEL, Member

KATHLEEN CRAWFORD, Member

DAVID HARRISON, Member

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Date of Adoption: December 15, 2022

THE FOREGOING VARIANCE DECISION WAS
ADOPTED ON THE DATE INDICATED ABOVE.
IF YOU ARE DISSATISFIED WITH THE
DECISION, A PETITION FOR REHEARING
MAY BE FILED BY ANY PARTY WITH THE
STANDARDS BOARD WITHIN TWENTY (20)
DAYS AFTER SERVICE OF THE DECISION.
YOUR PETITION FOR REHEARING MUST
FULLY COMPLY WITH THE REQUIREMENTS
OF CALIFORNIA CODE OF REGULATIONS,
TITLE 8, SECTIONS 427, 427.1 AND 427.2.

Note: A copy of this Decision must be
posted for the Applicant's employees to
read, and/or a copy thereof must be
provided to the employees' Authorized
Representatives.

BEFORE THE
 OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
 DEPARTMENT OF INDUSTRIAL RELATIONS
 STATE OF CALIFORNIA

<p>In the Matter of Application for Permanent Variance regarding:</p> <p>Otis Gen20, and/or Gen3Peak with Variant Governor Rope and Sheaves (Group IV)</p>	<p>OSHSB File No: Per Section A.1 Table</p> <p><u>PROPOSED DECISION</u></p> <p>Hearing Date: November 30, 2022</p>
--	--

A. Procedural & Jurisdictional Matters

- Each applicant (“Applicant”) listed in the table below has applied for permanent variances from provisions of the Elevator Safety Orders, found at title 8 of the California Code of Regulations, with respect to a conveyance, or conveyances, in the listed quantity, at the listed location:

Variance No.	Applicant Name	Variance Location Address	No. of Conveyances
22-V-375	OSKI 360, LLC	UC Berkeley Helen Diller Anchor House 1950 Oxford Street Berkeley, CA	6

- The subject safety order requirements are specified in B. Applicable Regulations below.
- These proceedings are conducted in accordance with Labor Code section 143 and section 401, et. seq. of the Board’s procedural regulations.
- This hearing was held on November 30, 2022, in Sacramento, California, and via teleconference, by Occupational Safety and Health Standards Board (“Board”) with Hearing Officer Autumn Gonzalez, both presiding and hearing the matter on its merit, as a basis of proposed decision to be advanced to the Board for its consideration, in accordance with California Code of Regulations, title 8, section 426.
- At the hearing, Dan Leacox of Leacox & Associates, and Wolter Geesink with Otis Elevator Company, appeared on behalf of each Applicant; Mark Wickens and Jose Ceja appeared on behalf of the Division of Occupational Safety and Health (“Division”); and Michael Nelmidia appeared on behalf of Board staff in a technical advisory role apart from the Board.
- Oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence:

Exhibit Number	Description of Exhibit
PD-1	Application(s) for Permanent Variance per section A.1 table
PD-2	OSHSB Notice of Hearing
PD-3	Board Staff Review of Variance Application
PD-4	Division Review of Variance Application
PD-5	Review Draft-1 Proposed Decision

7. Official notice is taken of the Board’s files, records, recordings and decisions concerning the Elevator Safety Order requirements from which variance shall issue. On November 30, 2022, the hearing and record closed, and the matter was taken under submission by the Hearing Officer.

B. Applicable Regulation

1. The Applicants request variance from some or all of the following sections of ASME A17.1-2004 that section 3141 makes applicable to the elevators the subject of those applications:
 - a. Suspension Means: 2.20.1, 2.20.2.1, 2.20.2.2(a), 2.20.2.2(f), 2.20.3, 2.20.4, 2.20.9.3.4, and 2.20.9.5.4 (Only to the extent necessary to permit the use of the Elastomeric Coated Steel Belts proposed by the Applicant in lieu of circular steel suspension ropes.);
 - b. Cartop Railing: 2.14.1.7.1 (Only to the extent necessary to permit the use of the car top railing system proposed by the Applicant, where the railing system is located inset from the elevator car top perimeter);
 - c. Inspection transfer switch: 2.26.1.4.4(a) (Only to the extent necessary to permit the inspection transfer switch to reside at a location other than the machine room);
 - d. Seismic reset switch: 8.4.10.1.1(a)(2)(b) (Only to the extent necessary to permit the seismic reset switch to reside at a location other than the machine room);
 - e. Governor Rope Diameter: 2.18.5.1 (Only to the extent necessary to permit the use of the governor rope proposed by the Applicant, where the rope has a diameter of 8 mm [0.315 in.]); Note: A variance from the section above is not required. However, the Board has included a variance from this code requirement in similar previous variances.
 - f. Pitch Diameter: 2.18.7.4 (Only to the extent necessary to permit the use of the speed governor system, proposed by the Applicant, where the rope sheave pitch diameter is less than what is required by the Elevator Safety Orders).

C. Findings of Fact

1. The Board incorporates by reference the findings stated in:

- a. Items 3 through 5.c, 5.e, and 5.f of the “Findings of Fact” section of the Proposed Decision adopted by the Board on February 19, 2009, in OSHSB File No. 08-V-247;
 - b. Item D.3 of the Proposed Decision adopted by the Board on July 16, 2009, in OSHSB File No. 09-V-042;
 - c. Item D.4 of the Proposed Decision adopted by the Board on September 16, 2010, in OSHSB File No. 10 V 029;
 - d. Items D.4, D.5, and D.7 of the Proposed Decision adopted by the Board on July 18, 2013, in OSHSB File No. 12-V-146; and
 - e. Items D.4 and D.5 of the Proposed Decision adopted by the Board on September 25, 2014, in OSHSB File No. 14-V-170.
2. Regarding requested variance in governor sheave diameter, and governor rope diameter, in variance from title 8, section 3141, incorporated ASME A17.1-2004, sections 2.18.7.4 and 2.18.5.1, respectively, the Board incorporates by reference the following previous findings of record: Items 8 through 12 of the Proposed Decision adopted by the Board on December 13, 2018, in OSHSB File No. 18-V-425, and further substantiating bases per therein cited Permanent Variance Decisions of the Board.
 3. The installation contracts for elevators, the subject of the permanent variance application, were signed on or after May 1, 2008, making the elevators subject to the Group IV Elevator Safety Orders (“ESO”).
 4. Both Board staff and Division safety engineers, by way of written submissions to the record (Exhibits PD-3 and PD-4 respectively), and positions stated at hearing, are of the well informed opinion that grant of requested permanent variance, as limited and conditioned per the below Decision and Order will provide employment, places of employment, and subject conveyances, as safe and healthful as would prevail given non-variant conformity with the Elevator Safety Order requirements from which variance has been requested.

D. Conclusive Findings

The above stated procedural prerequisites, legal authority, and factual findings, as further supported by the documentary record and hearing testimony in this matter, provide a substantive and reasonable basis of conclusion that:

1. Applicant has complied with the statutory and regulatory requirements that must be met before an application for permanent variance may be conditionally granted, and
2. a preponderance of the evidence establishes that Applicant’s proposal, subject to all conditions and limitations set forth in the below Decision and Order, will provide

equivalent safety and health to that which would prevail upon full compliance with the requirements of the Elevator Safety Orders from which variance is being sought.

E. Decision and Order

Each permanent variance application the subject of this proceeding is conditionally GRANTED as specified below, and to the extent, as of the date the Board adopts this Proposed Decision, Applicant shall have permanent variances from section 3141 and from the following sections of ASME A17.1-2004 that section 3141 makes applicable to the elevators the subject of those applications:

- Suspension Means: 2.20.1, 2.20.2.1, 2.20.2.2(a), 2.20.2.2(f), 2.20.3, 2.20.4, 2.20.9.3.4, and 2.20.9.5.4 (Only to the extent necessary to permit the use of the Elastomeric Coated Steel Belts proposed by the Applicant in lieu of circular steel suspension ropes.);
- Cartop Railing: 2.14.1.7.1 (Only to the extent necessary to permit the use of the car top railing system proposed by the Applicant, where the railing system is located inset from the elevator car top perimeter);
- Inspection transfer switch: 2.26.1.4.4(a) (Only to the extent necessary to permit the inspection transfer switch to reside at a location other than the machine room);
- Seismic reset switch: 8.4.10.1.1(a)(2)(b) (Only to the extent necessary to permit the seismic reset switch to reside at a location other than the machine room);
- Governor Rope Diameter: 2.18.5.1 (Only to the extent necessary to permit the use of the governor rope proposed by the Applicant, where the rope has a diameter of 8 mm [0.315 in.]); *Note: A variance from the section above is not required. However, the Board has included a variance from this code requirement in similar previous variances.*
- Pitch Diameter: 2.18.7.4 (Only to the extent necessary to permit the use of the speed governor system, proposed by the Applicant, where the rope sheave pitch diameter is less than what is required by the Elevator Safety Orders).

The variance shall be subject to, and limited by, the following additional conditions:

1. Each elevator subject to this variance shall comply with all applicable Group IV Elevator Safety Orders and with all ASME provisions made applicable by those Group IV Elevator Safety Orders, except those from which variances are granted, as set forth in the prefatory portion of this Decision and Order.
2. The suspension system shall comply with the following:
 - a. The coated steel belt shall have a factor of safety at least equal to the factor of safety that ASME A17.1-2004, section 2.20.3, would require for wire ropes if the elevator were suspended by wire ropes rather than the coated steel belt.

- b. Steel-coated belts that have been installed and used on another installation shall not be reused.
 - c. The coated steel belt shall be fitted with a monitoring device which has been accepted by the Division and which will automatically stop the car if the residual strength of any single belt drops below 60 percent. If the residual strength of any single belt drops below 60 percent, the device shall prevent the elevator from restarting after a normal stop at a landing.
 - d. Upon initial inspection, the readings from the monitoring device shall be documented and submitted to the Division.
 - e. A successful test of the monitoring device's functionality shall be conducted at least once a year (the record of the annual test of the monitoring device shall be a maintenance record subject to ASME A17.1-2004, section 8.6.1.4).
 - f. The coated steel belts used shall be accepted by the Division.
 - g. The installation of belts and connections shall be in conformance with the manufacturer's specifications, which shall be provided to the Division.
3. With respect to each elevator subject to this variance, the applicant shall comply with Division Circular Letter E-10-04, a copy of which is attached hereto as Addendum 1 and incorporated herein by this reference.
 4. The Applicant shall not utilize each elevator unless the manufacturer has written procedures for the installation, maintenance, inspection, and testing of the belts and monitoring device, and criteria for belt replacement, and shall make those procedures and criteria available to the Division upon request.
 5. The flat coated steel belts shall be provided with a metal data tag that is securely attached to one of those belts. This data tag shall bear the following flat steel coated belt data:
 - a. The width and thickness in millimeters or inches;
 - b. The manufacturer's rated breaking strength in (kN) or (lbf);
 - c. The name of the person who, or organization that, installed the flat coated steel belts;
 - d. The month and year the flat coated steel belts were installed;
 - e. The month and year the flat coated steel belts were first shortened;
 - f. The name or trademark of the manufacturer of the flat coated steel belts;
 - g. Lubrication information.

6. There shall be a crosshead data plate of the sort required by section 2.20.2.1, and that plate shall bear the following flat steel coated belt data:
 - a. The number of belts,
 - b. The belt width and thickness in millimeters or inches, and
 - c. The manufacturer's rated breaking strength per belt in (kN) or (lbf).
7. If the seismic reset switch does not reside in a machine room, that switch shall not reside in the elevator hoistway. The switch shall reside in the inspection and test control panel located in one upper floor hoistway door jamb or in the control space (outside the hoistway) used by the motion controller.
8. If the inspection transfer switch required by ASME A17.1, rule 2.26.1.4.4(a), does not reside in a machine room, that switch shall not reside in the elevator hoistway. The switch shall reside in the inspection and test control panel located in one upper floor hoistway door jamb or in the control space (outside the hoistway) used by the motion controller.
9. When the inspection and test control panel is located in the hoistway door jamb, the inspection and test control panel shall be openable only by use of a Security Group I restricted key.
10. The opening to the hoistway shall be effectively barricaded when car top inspection, maintenance, servicing, or testing of elevator equipment in the hoistway is required. If service personnel must leave the area for any reason, the hoistway and control room doors shall be closed.
11. If there is an inset car top railing:
 - a. Serviceable equipment shall be positioned so that mechanics and inspectors do not have to climb on railings to perform adjustment, maintenance, repairs, or inspections. The Applicant shall not permit anyone to stand on or climb over the car top railing.
 - b. The distance that the car top railing may be inset from the car top perimeter shall be limited to no more than 6 inches.
 - c. All exposed areas of the car top outside the car top railing shall preclude standing or placing objects or persons which may fall and shall be beveled from the mid- or top rail to the outside of the car top.
 - d. The top of the beveled area and/or the car top outside the railing, shall be clearly marked. The markings shall consist of alternating four-inch diagonal red and white stripes.

- e. The Applicant shall provide, on each inset railing, durable signs with lettering not less than ½ inch on a contrasting background. Each sign shall state:

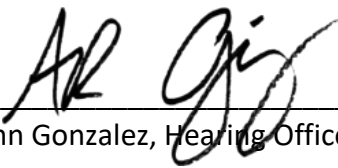
CAUTION

DO NOT STAND ON OR CLIMB OVER RAILING

- f. The Group IV requirements for car top clearances shall be maintained (car top clearances outside the railing shall be measured from the car top, and not from the required bevel).
12. The speed governor rope and sheaves shall comply with the following:
- a. The governor shall be used in conjunction with a 8 mm (0.315 in.) diameter steel governor rope with 8-strand, regular lay construction.
 - b. The governor rope shall have a factor of safety of 8 or greater as related to the strength necessary to activate the safety.
 - c. The governor sheaves shall have a pitch diameter of not less than 240 mm (9.45 in.).
13. Each elevator shall be serviced, maintained, adjusted, tested, and inspected only by Certified Competent Conveyance Mechanics who have been trained to, and are competent to, perform those tasks on the Gen2(O) and/or Gen3 Peak elevator system the Applicant proposes to use, in accordance with the written procedures and criteria required by Condition No. 4 and the terms of this permanent variance.
14. Any Certified Qualified Conveyance Company performing inspections, maintenance, servicing, or testing of the elevators shall be provided a copy of this variance decision.
15. The Division shall be notified when each elevator is ready for inspection. Each elevator shall be inspected by the Division, and a Permit to Operate shall be issued before each elevator is placed in service.
16. The Applicant shall be subject to the suspension means replacement reporting condition stated in Addendum 2; that condition is incorporated herein by this reference.
17. The Applicant shall notify its employees or their authorized representative(s), or both, of this order in the same way that the Applicant was required to notify them of the application for permanent variance, per California Code of Regulations, title 8, sections 411.2 and 411.3.
18. This Decision and Order shall remain in effect unless modified or revoked upon application by the Applicant, affected employee(s), the Division of Occupational Safety and Health, or by the Board on its own motion, in accordance with procedures per title 8, division 1, chapter 3.5.

Pursuant to Section 426, subdivision (b) of the Board's procedural regulations, the above Proposed Decision, is hereby submitted to the Occupational Safety and Health Standards Board for consideration of adoption.

DATED: December 2, 2022



Autumn Gonzalez, Hearing Officer

ADDENDUM 1

October 6, 2010

CIRCULAR LETTER E-10-04

TO: Installers, Manufacturers of Conveyances and Related Equipment and, Other Interested Parties

SUBJECT: Coated Steel Belt Monitoring

The Elevator Safety Orders require routine inspection of the suspension means of an elevator to assure its safe operation.

The California Labor Code Section 7318 allows the Division to promulgate special safety orders in the absence of regulation.

As it is not possible to see the steel cable suspension means of a Coated Steel Belt, a monitoring device which has been accepted by the Division is required on all Coated Steel Belts which will automatically stop the car if the residual strength of any belt drops below 60%. The Device shall prevent the elevator from restarting after a normal stop at a landing.

The monitoring device must be properly installed and functional. A functioning device may be removed only after a determination has been made that the residual strength of each belt exceeds 60%. These findings and the date of removal are to be conspicuously documented in the elevator machine room. The removed device must be replaced or returned to proper service within 30 days.

If upon routine inspection, the monitoring device is found to be in a non-functional state, the date and findings are to be conspicuously documented in the elevator machine room.

If upon inspection by the Division, the monitoring device is found to be non-functional or removed, and the required documentation is not in place, the elevator will be removed from service.

If the device is removed to facilitate belt replacement, it must be properly installed and functional before the elevator is returned to service.

A successful test of the device's functionality shall be conducted once a year.

This circular does not preempt the Division from adopting regulations in the future, which may address the monitoring of Coated Steel Belts or any other suspension means.

This circular does not create an obligation on the part of the Division to permit new conveyances utilizing Coated Steel Belts.

Debra Tudor
Principal Engineer
DOSH-Elevator Unit HQS

ADDENDUM 2

Suspension Means – Replacement Reporting Condition

Beginning on the date the Board adopts this Proposed Decision and continuing for a period of two years, the Applicant shall report to the Division within 30 days any and all replacement activity performed on the elevator(s) pursuant to the requirements of ASME A17.1-2004, Section 8.6.3 involving the suspension means or suspension means fastenings.

Further:

1. A separate report for each elevator shall be submitted, in a manner acceptable to the Division, to the following address (or to such other address as the Division might specify in the future): DOSH Elevator Unit, 2 MacArthur Place, Suite 700, Santa Ana, CA 92707, Attn: Engineering Section.
2. Each such report shall contain, but not necessarily be limited to, the following information:
 - a. The State-issued conveyance number, complete address, and OSHSB file number that identifies the permanent variance.
 - b. The business name, complete address, telephone number, and contact person of the elevator responsible party (presumably the Applicant or the subsequent holder of this variance).
 - c. The business name, complete address, telephone number, and Certified Qualified Conveyance Company (CQCC) certification number of the firm performing the replacement work.
 - d. The name (as listed on certification), Certified Competent Conveyance Mechanic (CCCM) certification number, certification expiration date, and signature of each CCCM performing the replacement work.
 - e. The date and time the elevator was removed from normal service for suspension replacement, the date and time the replacement work commenced, the date and time the replacement work was completed, and the date and time the elevator was returned to normal service.
 - f. A detailed description of, and clear color photographs depicting, (1) all the conditions that existed in the suspension components requiring their replacement and

(2) any conditions that existed to cause damage or distress to the suspension components being replaced.

g. A detailed list of all elevator components adjusted, repaired, or replaced in conjunction with the suspension component replacement.

h. All information provided on the crosshead data plate per ASME A17.1-2004, Section 2.20.2.1, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.

i. For the suspension means being replaced, all information provided on the data tag required per ASME A17.1-2004, Section 2.20.2.2, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.

j. For the replacement suspension means, all information provided on the data tag required by ASME A17.1-2004, Section 2.20.2.2, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.

k. Any other information requested by the Division regarding the replacement of the suspension means or fastenings.

3. In addition to the submission of the report to the Division, the findings of any testing, failure analysis, or other engineering evaluations performed on any portion of the replaced suspension components, or other elevator components replaced in conjunction therewith, shall be submitted to the Division referencing the information contained in item 2a above.

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
(916) 274-5721

In the Matter of Application for
Permanent Variance by:

San Gabriel Storage Owner, LLC

OSHSB File No.: 22-V-413

Proposed Decision Dated: December 2, 2022

DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached
PROPOSED DECISION by Autumn Gonzalez, Hearing Officer.

DAVID THOMAS, Chairman

BARBARA BURGEL, Member

KATHLEEN CRAWFORD, Member

DAVID HARRISON, Member

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Date of Adoption: December 15, 2022

THE FOREGOING VARIANCE DECISION WAS
ADOPTED ON THE DATE INDICATED ABOVE.
IF YOU ARE DISSATISFIED WITH THE
DECISION, A PETITION FOR REHEARING
MAY BE FILED BY ANY PARTY WITH THE
STANDARDS BOARD WITHIN TWENTY (20)
DAYS AFTER SERVICE OF THE DECISION.
YOUR PETITION FOR REHEARING MUST
FULLY COMPLY WITH THE REQUIREMENTS
OF CALIFORNIA CODE OF REGULATIONS,
TITLE 8, SECTIONS 427, 427.1 AND 427.2.

Note: A copy of this Decision must be
posted for the Applicant's employees to
read, and/or a copy thereof must be
provided to the employees' Authorized
Representatives.

BEFORE THE
 OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
 DEPARTMENT OF INDUSTRIAL RELATIONS
 STATE OF CALIFORNIA

<p>In the Matter of Application for Permanent Variance by:</p> <p>San Gabriel Storage Owner, LLC</p>	<p>OSHSB File No.: 22-V-413</p> <p><u>PROPOSED DECISION</u></p> <p>Hearing Date: November 30, 2022</p>
--	--

Jurisdictional and Procedural Matters

- Each below listed applicant (“Applicant”) has applied for permanent variance from certain provisions of the Elevator Safety Orders, found at title 8, of the California Code of Regulations¹, with respect to a conveyance, or conveyances, in the listed quantity, at the listed location:

Variance No.	Applicant Name	Variance Location Address	No. of Elevators
22-V-413	San Gabriel Storage Owner, LLC	414 S. San Gabriel Blvd., San Gabriel, CA	4

- This proceeding is conducted in accordance with Labor Code section 143, and section 401, et. seq. of the Board’s procedural regulations.
- This hearing was held on November 30, 2022, in Sacramento, California, via teleconference, by Occupational Safety and Health Standards Board (“Board”), with Hearing Officer Autumn Gonzalez, both presiding and hearing the matter on its merit, as a basis of proposed decision to be advanced to the Board for its consideration, in accordance with section 426.
- At the hearing, Jennifer Linares, with the Schindler Elevator Company, appeared on behalf of each Applicant; Mark Wickens, Jose Ceja and David Morris appeared on behalf of the Division of Occupational Safety and Health (“Division”), and Michael Nelmidia appeared on behalf of Board staff, in a technical advisory role apart from the Board.
- Oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence:

¹ Unless otherwise noted, all references are to California Code of Regulations, title 8.

Exhibit Number	Description of Exhibit
PD-1	Application(s) for Permanent Variance
PD-2	OSHSB Notice of Hearing
PD-3	Board Staff Review of Variance Application
PD-4	Division Review of Variance Application
PD-5	Review Draft-1 Proposed Decision

6. Official notice taken of the Board’s rulemaking records, and variance decisions concerning the safety order requirements from which variance is requested. At close of hearing on November 30, 2022, the record was closed, and the matter taken under submission by the Hearing Officer.

Relevant Safety Order Provisions

Applicant seeks a permanent variance from section 3141 [ASME A17.1-2004, sections 2.20.1, 2.20.2.1, 2.20.2.2(a), 2.20.2.2(f), 2.20.3, 2.20.4, 2.20.9.3.4, 2.20.9.5.4, 2.26.1.4.4(a), 8.4.10.1.1(a)(2)(b), 2.14.1.7.1, 2.18.7.4, and 2.26.9.6.1] of the Elevator Safety Orders, with respect to the suspension ropes and connections, inspection transfer switch relocation, seismic reset switch relocation, the location and construction of car-top railings, governor-sheave diameter, and means of removing power from the driving machine motor for one (1) Schindler model 3300 MRL elevator.

The relevant language of those sections are below.

1. Suspension Means

Section 3141 [ASME A17.1-2004, section 2.20.1, Suspension Means] states in part:

Elevator cars shall be suspended by steel wire ropes attached to the car frame or passing around sheaves attached to the car frame specified in 2.15.1. Ropes that have previously been installed and used on another installation shall not be reused. Only iron (low-carbon steel) or steel wire ropes, having the commercial classification “Elevator Wire Rope,” or wire rope specifically constructed for elevator use, shall be used for the suspension of elevator cars and for the suspension of counterweights. The wire material for ropes shall be manufactured by the open-hearth or electric furnace process, or their equivalent.

Section 3141 [ASME A17.1-2004, section 2.20.2.1(b), On Crosshead Data Plate] states in part:

The crosshead data plate required by 2.16.3 shall bear the following wire-rope data:

(b) the diameter in millimeters (mm) or inches (in.)

Section 3141 [ASME A17.1-2004, section 2.20.2.2(a) and (f) On Rope Data Tag] states in part:

A metal data tag shall be securely attached to one of the wire-rope fastenings. This data tag shall bear the following wire-rope data:

(a) the diameter in millimeters (mm) or inches (in.)

[...]

(f) whether the ropes were non preformed or preformed

Section 3141 [ASME A17.1-2004, section 2.20.3, Factor of Safety] states:

The factor of safety of the suspension wire ropes shall be not less than shown in Table 2.20.3. Figure 8.2.7 gives the minimum factor of safety for intermediate rope speeds. The factor of safety shall be based on the actual rope speed corresponding to the rated speed of the car.

The factor of safety shall be calculated by the following formula:

$$f = \frac{S \times N}{W}$$

where:

N= number of runs of rope under load. For 2:1 roping, N shall be two times the number of ropes used, etc.

S= manufacturer's rated breaking strength of one rope

W= maximum static load imposed on all car ropes with the car and its rated load at any position in the hoistway

Section 3141 [ASME A17.1-2004, section 2.20.4, Minimum Number and Diameter of Suspension Ropes] states:

The minimum number of hoisting ropes used shall be three for traction elevators and two for drum-type elevators.

Where a car counterweight is used, the number of counterweight ropes used shall be not less than two.

The term “diameter,” where used in reference to ropes, shall refer to the nominal diameter as given by the rope manufacturer.

The minimum diameter of hoisting and counterweight ropes shall be 9.5 mm (0.375 in.). Outer wires of the ropes shall be not less than 0.56 mm (0.024 in.) in diameter.

Section 3141 [ASME A17.1-2004, section 2.20.9.3.4] states:

Cast or forged steel rope sockets, shackle rods, and their connections shall be made of unwelded steel, having an elongation of not less than 20% in a gauge length of 50 mm (2 in.), when measured in accordance with ASTM E 8, and conforming to ASTM A 668, Class B for forged steel, and ASTM A 27, Grade 60/30 for cast steel, and shall be stress relieved. Steels of greater strength shall be permitted, provided they have an elongation of not less than 20% in a length of 50 mm (2 in.).

Section 3141 [ASME A17.1-2004, section 2.20.9.5.4] states:

When the rope has been seated in the wedge socket by the load on the rope, the wedge shall be visible, and at least two wire-rope retaining clips shall be provided to attach the termination side to the load-carrying side of the rope (see Fig. 2.20.9.5). The first clip shall be placed a maximum of 4 times the rope diameter above the socket, and the second clip shall be located within 8 times the rope diameter above the first clip. The purpose of the two clips is to retain the wedge and prevent the rope from slipping in the socket should the load on the rope be removed for any reason. The clips shall be designed and installed so that they do not distort or damage the rope in any manner.

2. Requested Transfer Switch Placement Variance

As it pertains to installation of the requisite transfer switch within a “machine room” location incompatible with machine-room-less design of the Schindler Model 3300 elevator, the Applicant presently seeks permanent variance from the following Elevator Safety Order incorporated ASME Code A17.1-2004, subsection:

Subsection 2.26.1.4.4(a)--Transfer Switch Placement in Machine Room

Section 3141[ASME A17.1-2004, section 2.26.1.4.4(a), Machine Room Inspection Operation] states:

When machine room inspection operation is provided, it shall conform to 2.26.1.4.1, and the transfer switch shall be

(a) located in the machine room[.]

3. Requested Seismic Reset Switch Placement Variance

As it pertains to installation of the requisite seismic reset switch within a “machine room” location incompatible with machine-room-less design of the Schindler Model 3300 elevator, the Applicant presently seeks permanent variance from the following Elevator Safety Order incorporated ASME Code subsection:

Subsection 8.4.10.1.1(a)(2)(b)--Seismic Reset Switch Placement in Machine Room

Section 3141[ASME A17.1-2004, section 8.4.10.1.1(a)(2)(b), Earthquake Equipment] states:

(a) All traction elevators operating at a rated speed of 0.75 m/s (150 ft/min) or more and having counterweights located in the same hoistway shall be provided with the following:

(1) seismic zone 3 or greater: a minimum of one seismic switch per building

(2) seismic zone 2 or greater:

(a) a displacement switch for each elevator

(b) an identified momentary reset button or switch for each elevator, located in the control panel in the elevator machine room

4. Requested Car Top Railing Inset Variance

As it pertains to top of car railing placement requiring space occupied by upper hoistway mounted elevator machinery characteristic of the Schindler Model 3300 elevator, the Applicant presently seeks permanent variance from the following Elevator Safety Order incorporated ASME Code A17.1-2004, section:

Section 2.14.1.7.1—Top of Car Perimeter Railing Placement

Section 3141[ASME A17.1-2004, section 2.14.1.7.1] states:

A standard railing conforming to 2.10.2 shall be provided on the outside perimeter of the car top on all sides where the perpendicular distance between the edges of the car top and the adjacent hoistway enclosure exceeds 300 mm (12 in.) horizontal clearance.

5. Pitch Diameter of Governor Sheaves

Section 3141 [ASME A17.1-2004, Section 2.18.7.4] states:

“The pitch diameter of governor sheaves and governor tension sheaves shall be not less than the product of the diameter of the rope and the applicable

multiplier listed in Table 2.18.7.4, based on the rated speed and the number of strands in the rope.”

Table 2.18.7.4 Multiplier for Determining Governor Sheave Pitch Diameter
[from ASME A17.1-2004]

Rated Speed m/s (ft./min)	Number of Strands	Multiplier
1.00 or less (200 or less)	6	42
1.00 or less (200 or less)	8	30
Over 1.0 (over 200)	6	46
Over 1.0 (over 200)	8	32

6. SIL-Rated System to Inhibit Current Flow to AC Drive Motor

Section 3141[ASME A17.1-2004, section 2.26.9.6.1] states:

Two separate means shall be provided to independently inhibit the flow of alternating current through the solid state devices that connect the direct current power source to the alternating-current driving motor. At least one of the means shall be an electromechanical relay.

Findings of Fact

Based on the record of this proceeding, the Board finds the following:

1. Applicant intends to utilize Schindler model 3300 MRL elevator cars at the locations listed in Jurisdictional and Procedural Matters, section 1.
2. The installation contract for these elevator was or will be signed on or after May 1, 2008, thus making the elevator subject to the Group IV Elevator Safety Orders.
3. The Schindler model 3300 MRL elevator cars are not supported by circular steel wire ropes, as required by the Elevator Safety Orders. They utilize non-circular elastomeric-coated steel belts and specialized suspension means fastenings.
4. No machine room is provided, preventing the inspection transfer switch from being located in the elevator machine room. The lack of machine room also prevents the seismic reset switch from being located in the elevator machine room.
5. Applicant proposes to relocate the inspection transfer switch and seismic reset switch in an alternative enclosure.
6. Due to the use of a 6 mm (0.25 in.) governor rope with 6-strand construction, the provided governor sheave pitch diameter is less than that required by the Elevator Safety Orders.

7. The driving machine and governor are positioned in the hoistway and restrict the required overhead clearance to the elevator car top.
8. Applicant proposes to insert the car-top railings at the perimeter of the car top.
9. Applicant intends to use an elevator control system, model CO NX100NA or CO NX300NA, with a standalone, solid-state motor control drive system that includes devices and circuits having a Safety Integrity Level (SIL) rating to execute specific elevator safety functions.

Conclusive Findings:

The above-stated procedural prerequisites, legal authority, and factual findings, as further supported by the documentary record and hearing testimony in this matter, provide a substantive and reasonable basis of conclusion that: (1) Applicant has complied with the statutory and regulatory requirements that must be met before an application for permanent variance may be conditionally granted; and (2) a preponderance of the evidence establishes that Applicant's proposal, subject to all conditions and limitations set forth in the below Decision and Order, will provide equivalent safety and health to that which would prevail upon full compliance with the requirements of the Elevator Safety Orders from which variance is being sought.

Decision and Order:

The Application being the subject of this proceeding, per the table in Jurisdictional and Procedural Matters, section 1 above, is conditionally GRANTED, to the extent that the Applicant shall be issued permanent variance from section 3141 subject to the following conditions and limitations:

Elevator Safety Orders:

- Suspension Means: 2.20.1, 2.20.2.1, 2.20.2.2(a), 2.20.2.2(f), 2.20.3, 2.20.4, 2.20.9.3.4, and 2.20.9.5.4 (Only to the extent necessary to permit the use of the Elastomeric-coated Steel Belts proposed by the Applicant, in lieu of circular steel suspension ropes.);
- Inspection transfer switch: 2.26.1.4.4(a) (Only to the extent necessary to permit the inspection transfer switch to reside at a location other than the machine room);
- Seismic reset switch: 8.4.10.1.1(a)(2)(b) (Only to the extent necessary to permit the seismic reset switch to reside at a location other than the machine room. room);
- Car-Top Railing: 2.14.1.7.1 (Only to the extent necessary to permit the use of the car-top railing system proposed by the Applicant, where the railing system is located inset from the elevator car top perimeter);
- Governor Rope and Sheave: The Applicant shall conditionally hold permanent variance from certain requirements of the following Title 8, Section 3141, incorporated section of

ASME A17.1-2004, to the limited extent variance is necessary to allow for the below specified governor rope and governor sheave parameters: Section 2.18.7.4.

- Means of Removing Power: 2.26.9.6.1 (Only to the extent necessary to permit the use of SIL-rated devices and circuits as a means to remove power from the AC driving motor, where the redundant monitoring of electrical protective devices is required by the Elevator Safety Orders).

Conditions:

1. The elevator suspension system shall comply to the following:
 - a. The suspension traction media (STM) members and their associated fastenings shall conform to the applicable requirements of ASME A17.1-2013, sections:

2.20.4.3 – Minimum Number of Suspension Members

2.20.3 – Factor of Safety

2.20.9 – Suspension Member Fastening

- b. The Applicant shall not utilize the elevator unless the manufacturer has written procedures for the installation, maintenance, inspection and testing of the STM members, fastenings, related monitoring and detection systems, and criteria for STM replacement. The Applicant shall make those procedures and criteria available to the Certified Competent Conveyance Mechanic (CCCM) at the location of the elevator, and to the Division upon request.

STM member mandatory replacement criteria shall include:

- i. Any exposed wire, strand or cord;
 - ii. Any wire, strand or cord breaks through the elastomeric coating;
 - iii. Any evidence of rouging (steel tension element corrosion) on any part of the elastomeric-coated steel suspension member;
 - iv. Any deformation in the elastomeric suspension member such as, but not limited to, kinks or bends;
- c. Traction drive sheaves must have a minimum diameter of 72 mm. The maximum speed of STM members running on 72 mm, 87 mm and 125 mm drive sheaves shall be no greater than 2.5 m/s, 6.0 m/s and 8.0 m/s respectively.
 - d. If any one STM member needs replacement, the complete set of suspension members on the elevator shall be replaced. Exception: if a new suspension member is damaged during installation, and prior to any contemporaneously installed STM having been placed into service, it is permissible to replace the individual damaged suspension member. STM members that have been installed on another installation shall not be re-used.

- e. A traction loss detection means shall be provided that conforms to the requirements of ASME A17.1-2013, section 2.20.8.1. The means shall be tested for correct function annually in accordance with ASME A17.1-2013, section 8.6.4.19.12.
 - f. A broken suspension member detection means shall be provided that conforms to the requirements of ASME A17.1-2013, section 2.20.8.2. The means shall be tested for correct function annually in accordance with ASME A17.1-2013, section 8.6.4.19.13(a).
 - g. An elevator controller integrated bend cycle monitoring system shall monitor actual STM bend cycles, by means of continuously counting, and storing in nonvolatile memory, the number of trips that the STM makes traveling, and thereby being bent, over the elevator sheaves. The bend cycle limit monitoring means shall automatically stop the car normally at the next available landing before the bend cycle correlated residual strength of any single STM member drops below 80 percent of full rated strength. The monitoring means shall prevent the car from restarting. The bend cycle monitoring system shall be tested annually in accordance with the procedures required by condition 1b above.
 - h. The elevator shall be provided with a device to monitor the remaining residual strength of each STM member. The device shall conform to the requirements of Division Circular Letter E-10-04, a copy of which is attached hereto as Exhibit 1 and incorporated herein by reference.
 - i. The elevator crosshead data plate shall comply with the requirements of ASME A17.1-2013, section 2.20.2.1.
 - j. A suspension means data tag shall be provided that complies with the requirements of ASME A17.1-2013, section 2.20.2.2.
 - k. Comprehensive visual inspections of the entire length of each and all installed suspension members, to the criteria developed in condition 1b, shall be conducted and documented every six months by a CCCM.
 - l. The Applicant shall be subject to the requirements set out in Exhibit 2 of this Decision and Order, "Suspension Means Replacement Reporting Condition," Incorporated herein by this reference.
 - m. Records of all tests and inspections shall be maintenance records subject to ASME A17.1-2004, sections 8.6.1.2 and 8.6.1.4, respectively.
2. If the inspection transfer switch required by ASME A17.1-2004, section 2.26.1.4.4 does not reside in a machine room, that switch shall not reside in the elevator hoistway. The switch shall reside in the control/machinery room/space containing the elevator's control equipment in an enclosure secured by a lock openable by a Group 1 security key. The enclosure is to remain locked at all times when not in use.

3. If the seismic reset switch does not reside in the machine room, that switch shall not reside in the elevator hoistway. The switch shall reside in the control/machinery room/space containing the elevator's control equipment in an enclosure secured by a lock openable by a Group 1 security key. The enclosure is to remain locked at all times when not in use.
4. If there is an inset car-top railing:
 - a. Serviceable equipment shall be positioned so that mechanics and inspectors do not have to climb on the railings to perform adjustments, maintenance, repairs or inspections. The Applicant shall not permit anyone to stand or climb over the car-top railing.
 - b. The distance that the railing can be inset shall be limited to not more than 6 inches.
 - c. All exposed areas of the car top outside the car-top railing where the distance from the railing to the edge of the car top exceeds 2 inches, shall be beveled with metal, at an angle of not less than 75 degrees with the horizontal, from the mid or top rail to the outside of the car top, such that no person or object can stand, sit, kneel, rest, or be placed in the exposed areas.
 - d. The top of the beveled area and/or car top outside the railing shall be clearly marked. The markings shall consist of alternating 4-inch diagonal red and white stripes.
 - e. The applicant shall provide durable signs with lettering not less than 1/2 inch on a contrasting background on each inset railing. Each sign shall state:

**CAUTION
STAY INSIDE RAILING
NO LEANING BEYOND RAILING
NO STEPPING ON, OR BEYOND, RAILING**

- f. The Group IV requirements for car-top clearances shall be maintained (car-top clearances outside the railing will be measured from the car top and not from the required bevel).
5. The speed governor rope and sheaves shall comply with the following:
 - a. The governor shall be used in conjunction with a steel 6 mm (0.25 in.) diameter governor rope with 6 strand, regular lay construction.
 - b. The governor rope shall have a factor of safety of 8 or greater as related to the strength necessary to activate the safety.
 - c. The governor sheaves shall have a pitch diameter of not less than 200 mm (7.87 in.).

6. The SIL-rated devices and circuits used to inhibit electrical current flow in accordance with ASME A17.1-2004, section 2.26.9.6.1 shall comply with the following:
- a. The SIL-rated devices and circuits shall consist of a Variodyn SIL3 rated Regenerative, Variable Voltage Variable Frequency (VVVF) motor drive unit, model VAF013, VAF023, or VAF043 labeled or marked with the SIL rating (not less than SIL 3), the name or mark of the certifying organization, and the SIL certification number (968/FSP 1556.00), and followed by the applicable revision number (as in 968/FSP 1556.00/19).
 - b. The devices and circuits shall be certified for compliance with the applicable requirements of ASME A17.1-2013, section 2.26.4.3.2.
 - c. The access door or cover of the enclosures containing the SIL-rated components shall be clearly labeled or tagged on their exterior with the statement:

**Assembly contains SIL-rated devices.
Refer to Maintenance Control Program and
wiring diagrams prior to performing work.**

- d. Unique maintenance procedures or methods required for the inspection, testing, or replacement of the SIL-rated circuits shall be developed and a copy maintained in the elevator machine/control room/space. The procedures or methods shall include clear color photographs of each SIL-rated component, with notations identifying parts and locations.
- e. Wiring diagrams that include part identification, SIL, and certification information shall be maintained in the elevator machine/control room/space.
- f. A successful test of the SIL-rated devices and circuits shall be conducted initially and not less than annually in accordance with the testing procedure. The test shall demonstrate that SIL-rated devices, safety functions, and related circuits operate as intended.
- g. Any alterations to the SIL-rated devices and circuits shall be made in compliance with the Elevator Safety Orders. If the Elevator Safety Orders do not contain specific provisions for the alteration of SIL-rated devices, the alterations shall be made in conformance with ASME A17.1-2013, section 8.7.1.9.
- h. Any replacement of the SIL-rated devices and circuits shall be made in compliance with the Elevator Safety Orders. If the Elevator Safety Orders do not contain specific provisions for the replacement of SIL-rated devices, the replacement shall be made in conformance with ASME A17.1-2013, section 8.6.3.14.
- i. Any repairs to the SIL-rated devices and circuits shall be made in compliance with the Elevator Safety Orders. If the Elevator Safety Orders do not contain specific

provisions for the repair of SIL-rated devices, the repairs shall be made in conformance with ASME A17.1-2013, section 8.6.2.6.

- j. Any space containing SIL-rated devices and circuits shall be maintained within the temperature and humidity range specified by Schindler Elevator Corporation. The temperature and humidity range shall be posted on each enclosure containing SIL-rated devices and circuits.
 - k. Field changes to the SIL-rated system are not permitted. Any changes to the SIL-rated system's devices and circuitry will require recertification and all necessary updates to the documentation and diagrams required by conditions d. and e. above.
7. The Division shall be notified when the elevator is ready for inspection. The elevator shall be inspected by the Division, and all applicable requirements met, including conditions of this permanent variance, prior to a Permit to Operate the elevator being issued. The elevator shall not be placed in service prior to the Permit to Operate being issued by Division.
 8. The Applicant shall notify its employees or their authorized representative(s), or both, of this order in the same way that the Applicant was required to notify them of the docketed application for permanent variance per sections 411.2 and 411.3.
 9. This Decision and Order shall remain in effect unless modified or revoked upon application by the Applicant, affected employee(s), the Division of Occupational Safety and Health, or by the Board on its own motion, in the procedural manner prescribed per the Board's procedural regulations.

Pursuant to section 426, subdivision (b), the above, duly completed Proposed Decision, is hereby submitted to the Occupational Safety and Health Standards Board for consideration of adoption.

DATED: December 2, 2022



Autumn Gonzalez, Hearing Officer

EXHIBIT 1

October 6, 2010

CIRCULAR LETTER E-10-04

TO: Installers, Manufacturers of Conveyances and Related Equipment and Other Interested Parties

SUBJECT: Coated Steel Belt Monitoring

The Elevator Safety Orders require routine inspection of the suspension means of an elevator to assure its safe operation.

The California Labor Code Section 7318 allows the Division to promulgate special safety orders in the absence of regulation.

As it is not possible to see the steel cable suspension means of a Coated Steel Belt, a monitoring device which has been accepted by the Division is required on all Coated Steel Belts which will automatically stop the car if the residual strength of any belt drops below 60%. The Device shall prevent the elevator from restarting after a normal stop at a landing.

The monitoring device must be properly installed and functional. A functioning device may be removed only after a determination has been made that the residual strength of each belt exceeds 60%. These findings and the date of removal are to be conspicuously documented in the elevator machine room. The removed device must be replaced or returned to proper service within 30 days.

If upon routine inspection, the monitoring device is found to be in a non-functional state, the date and findings are to be conspicuously documented in the elevator machine room.

If upon inspection by the Division, the monitoring device is found to be non-functional or removed, and the required documentation is not in place, the elevator will be removed from service.

If the device is removed to facilitate belt replacement, it must be properly installed and functional before the elevator is returned to service.

A successful test of the device's functionality shall be conducted once a year.

This circular does not preempt the Division from adopting regulations in the future, which may address the monitoring of Coated Steel Belts or any other suspension means.

This circular does not create an obligation on the part of the Division to permit new conveyances utilizing Coated Steel Belts.

Debra Tudor
Principal Engineer
DOSH-Elevator Unit HQS

EXHIBIT 2

Suspension Means – Replacement Reporting Condition

Beginning on the date the Board adopts this Proposed Decision and continuing for a period of two years, the Applicant shall report to the Division within 30 days any and all replacement activity performed on the elevator(s) pursuant to the requirements of ASME A17.1-2004, Section 8.6.3 involving the suspension means or suspension means fastenings. Further:

1. A separate report for each elevator shall be submitted, in a manner acceptable to the Division, to the following address (or to such other address as the Division might specify in the future): DOSH Elevator Unit, 2 MacArthur Pl., Suite 700, Santa Ana, CA 92707, Attn: Engineering Section.
2. Each such report shall contain, but not necessarily be limited to, the following information:
 - a. The State-issued conveyance number, complete address, and OSHSB file number that identifies the permanent variance.
 - b. The business name, complete address, telephone number, and contact person of the elevator responsible party (presumably the Applicant or the subsequent holder of this variance).
 - c. The business name, complete address, telephone number, and Certified Qualified Conveyance Company (CQCC) certification number of the firm performing the replacement work.
 - d. The name (as listed on certification), Certified Competent Conveyance Mechanic (CCCM) certification number, certification expiration date, and signature of each CCCM performing the replacement work.
 - e. The date and time the elevator was removed from normal service for suspension replacement, the date and time the replacement work commenced, the date and time the replacement work was completed, and the date and time the elevator was returned to normal service.
 - f. A detailed description of, and clear color photographs depicting, (1) all the conditions that existed in the suspension components requiring their replacement and (2) any conditions that existed to cause damage or distress to the suspension components being replaced.
 - g. A detailed list of all elevator components adjusted, repaired, or replaced in conjunction with the suspension component replacement.
 - h. All information provided on the crosshead data plate per ASME A17.1-2004, Section 2.20.2.1, unless that ASME requirement is modified by the conditions of a variance that

pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.

- i. For the suspension means being replaced, all information provided on the data tag required per ASME A17.1-2004, Section 2.20.2.2, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.
 - j. For the replacement suspension means, all information provided on the data tag required by ASME A17.1-2004, Section 2.20.2.2, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.
 - k. Any other information requested by the Division regarding the replacement of the suspension means or fastenings.
3. In addition to the submission of the report to the Division, the findings of any testing, failure analysis, or other engineering evaluations performed on any portion of the replaced suspension components, or other elevator components replaced in conjunction therewith, shall be submitted to the Division referencing the information contained in item 2a above.

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
(916) 274-5721

In the Matter of Application for
Permanent Variance regarding:

Otis Gen2S/Gen3Edge Elevator & Medical
Emergency Elevator Car Dimensions
(Group IV)

OSHSB File No.: see grid in Item A of
Proposed Decision Dated: December 2, 2022

DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached
PROPOSED DECISION by Autumn Gonzalez, Hearing Officer.

DAVID THOMAS, Chairman

BARBARA BURGEL, Member

KATHLEEN CRAWFORD, Member

DAVID HARRISON, Member

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Date of Adoption: December 15, 2022

THE FOREGOING VARIANCE DECISION WAS
ADOPTED ON THE DATE INDICATED ABOVE.
IF YOU ARE DISSATISFIED WITH THE
DECISION, A PETITION FOR REHEARING
MAY BE FILED BY ANY PARTY WITH THE
STANDARDS BOARD WITHIN TWENTY (20)
DAYS AFTER SERVICE OF THE DECISION.
YOUR PETITION FOR REHEARING MUST
FULLY COMPLY WITH THE REQUIREMENTS
OF CALIFORNIA CODE OF REGULATIONS,
TITLE 8, SECTIONS 427, 427.1 AND 427.2.

Note: A copy of this Decision must be
posted for the Applicant's employees to
read, and/or a copy thereof must be
provided to the employees' Authorized
Representatives.

BEFORE THE
 OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
 DEPARTMENT OF INDUSTRIAL RELATIONS
 STATE OF CALIFORNIA

<p>In the Matter of Application for Permanent Variance Regarding:</p> <p>Otis Gen2S/Gen3Edge Elevator & Medical Emergency Elevator Car Dimensions (Group IV)</p>	<p>OSHSB File Nos.: See section A table below</p> <p><u>PROPOSED DECISION</u></p> <p>Hearing Date: November 30, 2022</p>
--	--

A. Subject Matter

- Each below listed applicant (“Applicant”) has applied for permanent variances from provisions of the Elevator Safety Orders, found at title 8 of the California Code of Regulations¹, with respect to the listed conveyance or conveyances, in the specified quantity, at the specified location:

Variance No.	Applicant Name	Variance Location Address	No. of Elevators
22-V-434	Canfield Living, LLC	3301 S. Canfield Ave. Los Angeles, CA	1
22-V-445	Aster Avenue Owner, LLC	401 Willow Ave. Sunnyvale, CA	5
22-V-476	Octavia RSU Associates, L.P.	78 Haight St. San Francisco, CA	1
22-V-478	Albert Industries, LTD.	9901 Bell Ranch Dr. Santa Fe Springs, CA	1
22-V-500	Berkeley Commons Owner, LLC	600 Addison St. Berkeley, CA	4
22-V-502	Berkeley Commons Owner, LLC	601 Bancroft Way Berkeley, CA	4
22-V-504	Skyview Sunset, LLC	1511 N. Fairfax Ave. Los Angeles, CA	1
22-V-511	Brooklyn Basin Associates IV, LP	389 9th Ave. Oakland, CA	2
22-V-512	11701 Santa Monica LLC	11701 W Santa Monica Blvd. Los Angeles, CA	2

¹ Unless otherwise noted, all references are to title 8, California Code of Regulations.

2. The safety orders from which variance may issue, are enumerated in the portion of the below Decision and Order preceding the variance conditions.

B. Procedural

1. This proceeding is conducted in accordance with Labor Code section 143.
2. This hearing was held on November 30, 2022, in Sacramento, California, and via teleconference, by Occupational Safety and Health Standards Board (“Board”), with Hearing Officer Autumn Gonzalez, both presiding and hearing the matter on its merit, as a basis of proposed decision to be advanced to the Board for its consideration.
3. At the hearing, Dan Leacox of Leacox & Associates, and Wolter Geesink with Otis Elevator, appeared on behalf of each Applicant; Mark Wickens and Jose Ceja appeared on behalf of the Division of Occupational Safety and Health (“Division”), and Michael Nelmidia appeared on behalf of the Board.
4. Oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence:

Exhibit Number	Description of Exhibit
PD-1	Permanent variance applications per Section A.1 table
PD-2	OSHSB Notice of Hearing
PD-3	Board Staff Reviews of Variance Application
PD-4	Division Reviews of Variance Application
PD-5	Review Draft-1 Proposed Decision

5. Official notice is taken of the Board’s rulemaking records, and variance files and decisions, concerning the Elevator Safety Order standards at issue. At close of hearing on November 30, 2022, the record was closed, and the matter taken under submission by the Hearing Officer.

C. Findings and Basis:

Based on the record of this hearing, the Board makes the following findings of fact:

1. Each Applicant intends to utilize Otis Gen3 Edge/Gen2S elevators at the locations and in the numbers stated in the above section A table.
2. The installation contracts for these elevators were or will be signed on or after May 1, 2008, making the elevators subject to the Group IV Elevator Safety Orders.
3. The Board incorporates by reference the relevant findings in previous Board decisions:
 - a. Items D.3 through D.9 of the Proposed Decision adopted by the Board on July 18, 2013 for OSHSB File No. 12-V-093;

- b. Item D.4 of the Proposed Decision adopted by the Board on September 25, 2014 for OSHSB File No. 14-V-206; and
 - c. Item B of the Proposed Decision adopted by the Board on September 15, 2022 for OSHSB File No. 22-V-302 regarding medical emergency elevator car dimensions.
4. Both Board staff and Division, by way of written submissions to the record (Exhibits PD-3 and PD-4 respectively), and positions stated at hearing, are of the well informed opinion that grant of requested permanent variance, as limited and conditioned per the below Decision and Order will provide employment, places of employment, and subject conveyances, as safe and healthful as would prevail given non-variant conformity with the Elevator Safety Order requirements from which variance has been requested.

D. Conclusive Findings:

The above stated procedural prerequisites, legal authority, and factual findings, as further supported by the documentary record and hearing testimony in this matter, provide a substantive and reasonable basis of conclusion that:

1. Each Applicant has complied with the statutory and regulatory requirements that must be met before an application for permanent variance may be conditionally granted; and
2. a preponderance of the evidence establishes that each Applicants proposal, subject to all conditions and limitations set forth in the below Decision and Order, will provide equivalent safety and health to that which would prevail upon full compliance with the requirements of Elevator Safety Orders from which variance is being sought.

E. Decision and Order:

Each permanent variance application the subject of this proceeding is conditionally GRANTED as specified below, and to the extent, as of the date the Board adopts this Proposed Decision, each Applicant listed in the above section A table shall have permanent variances from the following sections of ASME A17.1-2004 that section 3141 makes applicable to the elevators the subject of those applications:

- Car top railing: sections 2.14.1.7.1 (only to the extent necessary to permit an inset car top railing, if, in fact, the car top railing is inset);
- Speed governor over-speed switch: 2.18.4.2.5(a) (only insofar as is necessary to permit the use of the speed reducing system proposed by the Applicants, where the speed reducing switch resides in the controller algorithms, rather than on the governor, with the necessary speed input supplied by the main encoder signal from the motor);

- Governor rope diameter: 2.18.5.1 (only to the extent necessary to allow the use of reduced diameter governor rope);
- Pitch diameter: 2.18.7.4 (to the extent necessary to use the pitch diameter specified in Condition No. 13.c);
- Suspension means: 2.20.1, 2.20.2.1, 2.20.2.2(a), 2.20.2.2(f), 2.20.3, 2.20.4, 2.20.9.3.4 and 2.20.9.5.4—the variances from these “suspension means” provisions are only to the extent necessary to permit the use of Otis Gen2 flat coated steel suspension belts in lieu of conventional steel suspension ropes;
- Inspection transfer switch: 2.26.1.4.4(a) (only to the extent necessary to allow the inspection transfer switch to reside at a location other than a machine room, if, in fact, it does not reside in the machine room); and
- Seismic reset switch: 8.4.10.1.1(a)(2)(b) (only to the extent necessary to allow the seismic reset switch to reside at a location other than a machine room, if, in fact, it does not reside in the machine room).
- Minimum Inside Car Platform Dimensions: 3041(e)(1)(C) and 3141.7(b) (Only to the extent necessary to comply with the performance-based requirements of the 2019 California Building Code Section 3002.4.1a)

These variances apply to the locations and numbers of elevators stated in the section A table (so long as the elevators are Gen3 Edge/Gen2S Group IV devices that are designed, equipped, and installed in accordance with, and are otherwise consistent with, the representations made in the Otis Master File [referred to in previous proposed decisions as the “Gen2 Master File”) maintained by the Board, as that file was constituted at the time of this hearing) and are subject to the following conditions:

1. The suspension system shall comply with the following:
 - a. The coated steel belt and connections shall have factors of safety equal to those permitted for use by section 3141 [ASME A17.1-2004, section 2.20.3] on wire rope suspended elevators.
 - b. Steel coated belts that have been installed and used on another installation shall not be reused.
 - c. The coated steel belt shall be fitted with a monitoring device which has been accepted by the Division and which will automatically stop the car if the residual strength of any single belt drops below 60 percent. If the residual strength of any single belt drops below 60 percent, the device shall prevent the elevator from restarting after a normal stop at a landing.

- d. Upon initial inspection, the readings from the monitoring device shall be documented and submitted to the Division.
 - e. A successful test of the monitoring device's functionality shall be conducted at least once a year (the record of the annual test of the monitoring device shall be a maintenance record subject to ASME A17.1-2004, section 8.6.1.4).
 - f. The coated steel belts used shall be accepted by the Division.
2. With respect to each elevator subject to this variance, the applicant shall comply with Division Circular Letter E-10-04, the substance of which is attached hereto as Addendum 1 and incorporated herein by this reference.
 3. The Applicant shall not utilize the elevator unless the manufacturer has written procedures for the installation, maintenance, inspection, and testing of the belts and monitoring device and criteria for belt replacement, and the applicant shall make those procedures and criteria available to the Division upon request.
 4. The flat coated steel belts shall be provided with a metal data tag that is securely attached to one of those belts. This data tag shall bear the following flat steel coated belt data:
 - a. The width and thickness in millimeters or inches;
 - b. The manufacturer's rated breaking strength in (kN) or (lbf);
 - c. The name of the person or organization that installed the flat coated steel belts;
 - d. The month and year the flat coated steel belts were installed;
 - e. The month and year the flat coated steel belts were first shortened;
 - f. The name or trademark of the manufacturer of the flat coated steel belts; and
 - g. Lubrication information.
 5. There shall be a crosshead data plate of the sort required by section 2.20.2.1, and that plate shall bear the following flat steel coated belt data:
 - a. The number of belts;
 - b. The belt width and thickness in millimeters or inches; and
 - c. The manufacturer's rated breaking strength per belt in (kN) or (lbf).
 6. The opening to the hoistway shall be effectively barricaded when car top inspection, maintenance, servicing, or testing of elevator equipment in the hoistway is required. If service

personnel must leave the area for any reason, the hoistway and control room doors shall be closed.

7. If there is an inset car top railing:
 - a. Serviceable equipment shall be positioned so that mechanics and inspectors do not have to climb on railings to perform adjustment, maintenance, repairs or inspections. The applicant shall not permit anyone to stand on or climb over the car top railing.
 - b. The distance that the car top railing may be inset shall be limited to no more than 6 inches.
 - c. All exposed areas outside the car top railing shall preclude standing or placing objects or persons which may fall and shall be beveled from the mid- or top rail to the outside of the car top.
 - d. The top of the beveled area and/or car top outside the railing, shall be clearly marked. The markings shall consist of alternating 4 inch diagonal red and white stripes.
 - e. The applicant shall provide durable signs with lettering not less than ½ inch on a contrasting background on each inset railing; each sign shall state:

CAUTION

DO NOT STAND ON OR CLIMB OVER RAILING

- f. The Group IV requirements for car top clearances shall be maintained (car top clearances outside the railing shall be measured from the car top and not from the required bevel).
8. If the seismic reset switch does not reside in a machine room, that switch shall not reside in the elevator hoistway. The switch shall reside in the inspection and test control panel located in one upper floor hoistway door jamb or in the control space (outside the hoistway) used by the motion controller.
9. If the inspection transfer switch required by ASME A17.1, rule 2.26.1.4.4(a) does not reside in a machine room, that switch shall not reside in the elevator hoistway. The switch shall reside in the inspection and test control panel located in one upper floor hoistway door jamb or in the control space (outside the hoistway) used by the motion controller.
10. When the inspection and testing panel is located in the hoistway door jamb, the inspection and test control panel shall be openable only by use of a Security Group I restricted key.
11. The elevator shall be serviced, maintained, adjusted, tested, and inspected only by Certified Competent Conveyance Mechanics who have been trained to, and are competent to, perform those tasks on the Gen3 Edge/Gen2S elevator system in accordance with the written

procedures and criteria required by Condition No. 3 and in accordance with the terms of this permanent variance.

12. The governor speed-reducing switch function shall comply with the following:

- a. It shall be used only with direct drive machines; i.e., no gear reduction is permitted between the drive motor and the suspension means.
- b. The velocity encoder shall be coupled to the driving machine motor shaft. The "C" channel of the encoder shall be utilized for velocity measurements required by the speed reducing system. The signal from "C" channel of the encoder shall be verified with the "A" and "B" channels for failure. If a failure is detected then an emergency stop shall be initiated.
- c. Control system parameters utilized in the speed-reducing system shall be held in non-volatile memory.
- d. It shall be used in conjunction with approved car-mounted speed governors only.
- e. It shall be used in conjunction with an effective traction monitoring system that detects a loss of traction between the driving sheave and the suspension means. If a loss of traction is detected, then an emergency stop shall be initiated.
- f. A successful test of the speed-reducing switch system's functionality shall be conducted at least once a year (the record of the annual test of the speed-reducing switch system shall be a maintenance record subject to ASME A17.1-2004, section 8.6.1.4).
- g. A successful test of the traction monitoring system's functionality shall be conducted at least once a year (the record of the annual test of the traction monitoring system shall be a maintenance record subject to ASME A17.1-2004, section 8.6.1.4).
- h. The Applicant shall not utilize the elevator unless the manufacturer has written procedures for the maintenance, inspection, and testing of the speed-reducing switch and traction monitoring systems. The Applicant shall make the procedures available to the Division upon request.

13. The speed governor rope and sheaves shall comply with the following:


- a. The governor shall be used in conjunction with a 6 mm (0.25 in.) diameter steel governor rope with 6-strand, regular lay construction.
- b. The governor rope shall have a factor of safety of 8 or greater as related to the strength necessary to activate the safety.
- c. The governor sheaves shall have a pitch diameter of not less than 180 mm (7.1 in.).

14. All medical emergency service elevators shall comply with the following:
 - a. The requirements of the 2019 California Building Code (CBC), Section 3002.4.1a:

The medical emergency service elevator shall accommodate the loading and transport of two emergency personnel, each requiring a minimum clear 21-inch (533 mm) diameter circular area and an ambulance gurney or stretcher [minimum size 24 inches by 84 inches (610 mm by 2134 mm) with not less than 5-inch (127 mm) radius corners] in the horizontal, open position.
 - b. All medical emergency service elevators shall be identified in the building construction documents in accordance with the 2019 CBC, Section 3002.4a.
 - c. Dimensional drawings and other information necessary to demonstrate compliance with these conditions shall be provided to the Division, at the time of inspection, for all medical emergency service elevator(s).
15. Any Certified Qualified Conveyance Company performing inspections, maintenance, servicing, or testing of the elevators shall be provided a copy of this variance decision.
16. The Division shall be notified when the elevator is ready for inspection. The elevator shall be inspected by the Division, and a Permit to Operate shall be issued before the elevator is placed in service.
17. The Applicant shall be subject to the Suspension Means – Replacement Reporting Condition stated in Addendum 2, as hereby incorporated by this reference.
18. The Applicant shall notify its employees or their authorized representative(s), or both, of this order in the same way and to the same extent that employees and authorized representatives are to be notified of docketed permanent variance applications.
19. This Decision and Order shall remain in effect unless modified or revoked upon application by the Applicant, affected employee(s), the Division of Occupational Safety and Health, or by the Board on its own motion, in accordance with the Board’s procedural regulations at section 426, subdivision (b).

Pursuant to section 426 (b) of the Board's procedural regulations, the above Proposed Decision, is hereby submitted to the Occupational Safety and Health Standards Board for consideration of adoption.

Dated: December 2, 2022



Autumn Gonzalez, Hearing Officer

ADDENDUM 1

October 6, 2010

CIRCULAR LETTER E-10-04

TO: Installers, Manufacturers of Conveyances and Related Equipment and, Other Interested Parties

SUBJECT: Coated Steel Belt Monitoring

The Elevator Safety Orders require routine inspection of the suspension means of an elevator to assure its safe operation.

The California Labor Code section 7318 allows the Division to promulgate special safety orders in the absence of regulation.

As it is not possible to see the steel cable suspension means of a Coated Steel Belt, a monitoring device which has been accepted by the Division is required on all Coated Steel Belts which will automatically stop the car if the residual strength of any belt drops below 60%. The Device shall prevent the elevator from restarting after a normal stop at a landing.

The monitoring device must be properly installed and functional. A functioning device may be removed only after a determination has been made that the residual strength of each belt exceeds 60%. These findings and the date of removal are to be conspicuously documented in the elevator machine room. The removed device must be replaced or returned to proper service within 30 days.

If upon routine inspection, the monitoring device is found to be in a non-functional state, the date and findings are to be conspicuously documented in the elevator machine room.

If upon inspection by the Division, the monitoring device is found to be non-functional or removed, and the required documentation is not in place, the elevator will be removed from service.

If the device is removed to facilitate belt replacement, it must be properly installed and functional before the elevator is returned to service.

A successful test of the device's functionality shall be conducted once a year.

This circular does not preempt the Division from adopting regulations in the future, which may address the monitoring of Coated Steel Belts or any other suspension means.

This circular does not create an obligation on the part of the Division to permit new conveyances utilizing Coated Steel Belts.

Debra Tudor
Principal Engineer
DOSH-Elevator Unit HQS

ADDENDUM 2

Suspension Means – Replacement Reporting Condition

Beginning on the date the Board adopts this Proposed Decision and continuing for a period of two years, the Applicant shall report to the Division within 30 days any and all replacement activity performed on the elevator(s) pursuant to the requirements of ASME A17.1-2004, section 8.6.3 involving the suspension means or suspension means fastenings.

Further:

1. A separate report for each elevator shall be submitted, in a manner acceptable to the Division, to the following address (or to such other address as the Division might specify in the future): DOSH Elevator Unit, 2 MacArthur Place, Suite 700, Santa Ana, CA 92707, Attn: Engineering Section.
2. Each such report shall contain, but not necessarily be limited to, the following information:
 - a. The State-issued conveyance number, complete address, and OSHSB file number that identifies the permanent variance.
 - b. The business name, complete address, telephone number, and contact person of the elevator responsible party (presumably the Applicant or the subsequent holder of this variance).
 - c. The business name, complete address, telephone number, and Certified Qualified Conveyance Company (CQCC) certification number of the firm performing the replacement work.
 - d. The name (as listed on certification), Certified Competent Conveyance Mechanic (CCCM) certification number, certification expiration date, and signature of each CCCM performing the replacement work.
 - e. The date and time the elevator was removed from normal service for suspension replacement, the date and time the replacement work commenced, the date and time the replacement work was completed, and the date and time the elevator was returned to normal service.
 - f. A detailed description of, and clear color photographs depicting, (1) all the conditions that existed in the suspension components requiring their replacement and (2) any conditions that existed to cause damage or distress to the suspension components being replaced.
 - g. A detailed list of all elevator components adjusted, repaired, or replaced in conjunction with the suspension component replacement.

- h. All information provided on the crosshead data plate per ASME A17.1-2004, section 2.20.2.1, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.
 - i. For the suspension means being replaced, all information provided on the data tag required per ASME A17.1-2004, section 2.20.2.2, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.
 - j. For the replacement suspension means, all information provided on the data tag required by ASME A17.1-2004, section 2.20.2.2, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.
 - k. Any other information requested by the Division regarding the replacement of the suspension means or fastenings.
3. In addition to the submission of the report to the Division, the findings of any testing, failure analysis, or other engineering evaluations performed on any portion of the replaced suspension components, or other elevator components replaced in conjunction therewith, shall be submitted to the Division referencing the information contained in item 2a above.

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
(916) 274-5721

In the Matter of Application for
Permanent Variance By:

Gene Autry Self Storage LLC

OSHSB File No.: see grid in Item A of
Proposed Decision Dated: December 2, 2022

DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached
PROPOSED DECISION by Autumn Gonzalez, Hearing Officer.

DAVID THOMAS, Chairman

BARBARA BURGEL, Member

KATHLEEN CRAWFORD, Member

DAVID HARRISON, Member

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Date of Adoption: December 15, 2022

THE FOREGOING VARIANCE DECISION WAS
ADOPTED ON THE DATE INDICATED ABOVE.
IF YOU ARE DISSATISFIED WITH THE
DECISION, A PETITION FOR REHEARING
MAY BE FILED BY ANY PARTY WITH THE
STANDARDS BOARD WITHIN TWENTY (20)
DAYS AFTER SERVICE OF THE DECISION.
YOUR PETITION FOR REHEARING MUST
FULLY COMPLY WITH THE REQUIREMENTS
OF CALIFORNIA CODE OF REGULATIONS,
TITLE 8, SECTIONS 427, 427.1 AND 427.2.

Note: A copy of this Decision must be
posted for the Applicant's employees to
read, and/or a copy thereof must be
provided to the employees' Authorized
Representatives.

BEFORE THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
DEPARTMENT OF INDUSTRIAL RELATIONS
STATE OF CALIFORNIA

In the Matter of Application for Permanent Variance Regarding: Gene Autry Self Storage LLC	OSHSB File Nos.: 22-V-451 <u>PROPOSED DECISION</u> Hearing Date: October 26, 2022, November 30, 2022
---	---

A. Subject Matter

1. Each below listed applicant (“Applicant”) has applied for permanent variances from provisions of the Elevator Safety Orders, found at title 8 of the California Code of Regulations, with respect to the listed conveyance or conveyances, in the specified quantity, at the specified location:

Variance No.	Applicant Name	Variance Location Address	No. of Elevators
22-V-451	Gene Autry Self Storage LLC	1066 North Gene Autry Trail Palm Springs, CA	1

2. The safety orders from which variance may issue, are enumerated in the portion of the below Decision and Order preceding the variance conditions.

B. Procedural

1. This proceeding is conducted in accordance with Labor Code section 143, and California Code of Regulations, title 8, section 401, et. seq.
2. This hearing was held on October 26, 2022, in Sacramento, California, and via teleconference, by Occupational Safety and Health Standards Board (“Board”), with Hearing Officer Autumn Gonzalez, both presiding and hearing the matter on its merit, as a basis of proposed decision to be advanced to the Board for its consideration, in accordance with California Code of Regulations, title 8, section 426. The hearing was continued and held on November 30, 2022.
3. At the hearing, Dan Leacox of Leacox & Associates, and Wolter Geesink with Otis Elevator, appeared on behalf of each Applicant; Mark Wickens and Jose Ceja appeared on behalf of the Division of Occupational Safety and Health (“Division”), and Michael Nelmidia appeared on behalf of Board staff, in a technical advisory role apart from the Board.
4. Oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence:

Exhibit Number	Description of Exhibit
PD-1	Permanent variance applications per Section A.1 table
PD-2	OSHSB Notice of Hearing
PD-3	Board Staff Reviews of Variance Application
PD-4	Division Reviews of Variance Application
PD-5	Review Draft-1 Proposed Decision
PD-6	PARTY CIRCULATED DRAFT Proposed Decision

5. Official notice is taken of the Board’s rulemaking records, and variance files and decisions, concerning the Elevator Safety Order standards at issue. At close of hearing on November 30, 2022, the record was closed, and the matter taken under submission by the Hearing Officer.

C. Findings and Basis:

Based on the record of this hearing, the Board makes the following findings of fact:

1. Each Applicant intends to utilize Otis Gen3 Edge/Gen2S elevators at the locations and in the numbers stated in the above section A table.
2. The installation contracts for these elevators were or will be signed on or after May 1, 2008, making the elevators subject to the Group IV Elevator Safety Orders.
3. The Board incorporates by reference the relevant findings in previous Board decisions:
 - a. Items D.3 through D.9 of the Proposed Decision adopted by the Board on July 18, 2013 for OSHSB File No. 12-V-093;
 - b. Item D.4 of the Proposed Decision adopted by the Board on September 25, 2014 for OSHSB File No. 14-V-206; and
 - c. Item B of the Proposed Decision adopted by the Board on September 15, 2022 for OSHSB File No. 22-V-302 regarding medical emergency elevator car dimensions.
4. Both Board staff and Division, by way of written submissions to the record (Exhibits PD-3 and PD-4 respectively), and positions stated at hearing, are of the well informed opinion that grant of requested permanent variance, as limited and conditioned per the below Decision and Order will provide employment, places of employment, and subject conveyances, as safe and healthful as would prevail given non-variant conformity with the Elevator Safety Order requirements from which variance has been requested.

D. Conclusive Findings:

The above stated procedural prerequisites, legal authority, and factual findings, as further supported by the documentary record and hearing testimony in this matter, provide a substantive and reasonable basis of conclusion that:

1. Each Applicant has complied with the statutory and regulatory requirements that must be met before an application for permanent variance may be conditionally granted; and
2. a preponderance of the evidence establishes that each Applicants proposal, subject to all conditions and limitations set forth in the below Decision and Order, will provide equivalent safety and health to that which would prevail upon full compliance with the requirements of California Code of Regulation, title 8, Elevator Safety Orders from which variance is being sought.

E. Decision and Order:

Each permanent variance application the subject of this proceeding is conditionally GRANTED as specified below, and to the extent, as of the date the Board adopts this Proposed Decision, each Applicant listed in the above section A table shall have permanent variances from California Code of Regulations, title 8, section 3141 and from the following sections of ASME A17.1-2004 that section 3141 makes applicable to the elevators the subject of those applications:

- Car top railing: sections 2.14.1.7.1 (only to the extent necessary to permit an inset car top railing, if, in fact, the car top railing is inset);
- Speed governor over-speed switch: 2.18.4.2.5(a) (only insofar as is necessary to permit the use of the speed reducing system proposed by the Applicants, where the speed reducing switch resides in the controller algorithms, rather than on the governor, with the necessary speed input supplied by the main encoder signal from the motor);
- Governor rope diameter: 2.18.5.1 (only to the extent necessary to allow the use of reduced diameter governor rope);
- Pitch diameter: 2.18.7.4 (to the extent necessary to use the pitch diameter specified in Condition No. 13.c);
- Suspension means: 2.20.1, 2.20.2.1, 2.20.2.2(a), 2.20.2.2(f), 2.20.3, 2.20.4, 2.20.9.3.4 and 2.20.9.5.4—the variances from these “suspension means” provisions are only to the extent necessary to permit the use of Otis Gen2 flat coated steel suspension belts in lieu of conventional steel suspension ropes;

- Inspection transfer switch: 2.26.1.4.4(a) (only to the extent necessary to allow the inspection transfer switch to reside at a location other than a machine room, if, in fact, it does not reside in the machine room); and
- Seismic reset switch: 8.4.10.1.1(a)(2)(b) (only to the extent necessary to allow the seismic reset switch to reside at a location other than a machine room, if, in fact, it does not reside in the machine room).
- Minimum Inside Car Platform Dimensions: 3041(e)(1)(C) and 3141.7(b) (Only to the extent necessary to comply with the performance-based requirements of the 2019 California Building Code Section 3002.4.1a)

These variances apply to the locations and numbers of elevators stated in the section A table (so long as the elevators are Gen3 Edge/Gen2S Group IV devices that are designed, equipped, and installed in accordance with, and are otherwise consistent with, the representations made in the Otis Master File [referred to in previous proposed decisions as the “Gen2 Master File”] maintained by the Board, as that file was constituted at the time of this hearing) and are subject to the following conditions:

1. The suspension system shall comply with the following:
 - a. The coated steel belt and connections shall have factors of safety equal to those permitted for use by section 3141 [ASME A17.1-2004, section 2.20.3] on wire rope suspended elevators.
 - b. Steel coated belts that have been installed and used on another installation shall not be reused.
 - c. The coated steel belt shall be fitted with a monitoring device which has been accepted by the Division and which will automatically stop the car if the residual strength of any single belt drops below 60 percent. If the residual strength of any single belt drops below 60 percent, the device shall prevent the elevator from restarting after a normal stop at a landing.
 - d. Upon initial inspection, the readings from the monitoring device shall be documented and submitted to the Division.
 - e. A successful test of the monitoring device’s functionality shall be conducted at least once a year (the record of the annual test of the monitoring device shall be a maintenance record subject to ASME A17.1-2004, section 8.6.1.4).
 - f. The coated steel belts used shall be accepted by the Division.

2. With respect to each elevator subject to this variance, the applicant shall comply with Division Circular Letter E-10-04, the substance of which is attached hereto as Addendum 1 and incorporated herein by this reference.
3. The Applicant shall not utilize the elevator unless the manufacturer has written procedures for the installation, maintenance, inspection, and testing of the belts and monitoring device and criteria for belt replacement, and the applicant shall make those procedures and criteria available to the Division upon request.
4. The flat coated steel belts shall be provided with a metal data tag that is securely attached to one of those belts. This data tag shall bear the following flat steel coated belt data:
 - a. The width and thickness in millimeters or inches;
 - b. The manufacturer's rated breaking strength in (kN) or (lbf);
 - c. The name of the person or organization that installed the flat coated steel belts;
 - d. The month and year the flat coated steel belts were installed;
 - e. The month and year the flat coated steel belts were first shortened;
 - f. The name or trademark of the manufacturer of the flat coated steel belts; and
 - g. Lubrication information.
5. There shall be a crosshead data plate of the sort required by section 2.20.2.1, and that plate shall bear the following flat steel coated belt data:
 - a. The number of belts;
 - b. The belt width and thickness in millimeters or inches; and
 - c. The manufacturer's rated breaking strength per belt in (kN) or (lbf).
6. The opening to the hoistway shall be effectively barricaded when car top inspection, maintenance, servicing, or testing of elevator equipment in the hoistway is required. If service personnel must leave the area for any reason, the hoistway and control room doors shall be closed.
7. If there is an inset car top railing:
 - a. Serviceable equipment shall be positioned so that mechanics and inspectors do not have to climb on railings to perform adjustment, maintenance, repairs or inspections. The applicant shall not permit anyone to stand on or climb over the car top railing.

- b. The distance that the car top railing may be inset shall be limited to no more than 6 inches.
- c. All exposed areas outside the car top railing shall preclude standing or placing objects or persons which may fall and shall be beveled from the mid- or top rail to the outside of the car top.
- d. The top of the beveled area and/or car top outside the railing, shall be clearly marked. The markings shall consist of alternating 4 inch diagonal red and white stripes.
- e. The applicant shall provide durable signs with lettering not less than ½ inch on a contrasting background on each inset railing; each sign shall state:

CAUTION

DO NOT STAND ON OR CLIMB OVER RAILING

- f. The Group IV requirements for car top clearances shall be maintained (car top clearances outside the railing shall be measured from the car top and not from the required bevel).
8. If the seismic reset switch does not reside in a machine room, that switch shall not reside in the elevator hoistway. The switch shall reside in the inspection and test control panel located in one upper floor hoistway door jamb or in the control space (outside the hoistway) used by the motion controller.
 9. If the inspection transfer switch required by ASME A17.1, rule 2.26.1.4.4(a) does not reside in a machine room, that switch shall not reside in the elevator hoistway. The switch shall reside in the inspection and test control panel located in one upper floor hoistway door jamb or in the control space (outside the hoistway) used by the motion controller.
 10. When the inspection and testing panel is located in the hoistway door jamb, the inspection and test control panel shall be openable only by use of a Security Group I restricted key.
 11. The elevator shall be serviced, maintained, adjusted, tested, and inspected only by Certified Competent Conveyance Mechanics who have been trained to, and are competent to, perform those tasks on the Gen3 Edge/Gen2S elevator system in accordance with the written procedures and criteria required by Condition No. 3 and in accordance with the terms of this permanent variance.
 12. The governor speed-reducing switch function shall comply with the following:
 - a. It shall be used only with direct drive machines; i.e., no gear reduction is permitted between the drive motor and the suspension means.
 - b. The velocity encoder shall be coupled to the driving machine motor shaft. The “C” channel of the encoder shall be utilized for velocity measurements required by the speed reducing

system. The signal from “C” channel of the encoder shall be verified with the “A” and “B” channels for failure. If a failure is detected then an emergency stop shall be initiated.

- c. Control system parameters utilized in the speed-reducing system shall be held in non-volatile memory.
- d. It shall be used in conjunction with approved car-mounted speed governors only.
- e. It shall be used in conjunction with an effective traction monitoring system that detects a loss of traction between the driving sheave and the suspension means. If a loss of traction is detected, then an emergency stop shall be initiated.
- f. A successful test of the speed-reducing switch system’s functionality shall be conducted at least once a year (the record of the annual test of the speed-reducing switch system shall be a maintenance record subject to ASME A17.1-2004, section 8.6.1.4).
- g. A successful test of the traction monitoring system’s functionality shall be conducted at least once a year (the record of the annual test of the traction monitoring system shall be a maintenance record subject to ASME A17.1-2004, section 8.6.1.4).
- h. The Applicant shall not utilize the elevator unless the manufacturer has written procedures for the maintenance, inspection, and testing of the speed-reducing switch and traction monitoring systems. The Applicant shall make the procedures available to the Division upon request.

13. The speed governor rope and sheaves shall comply with the following:

- a. The governor shall be used in conjunction with a 6 mm (0.25 in.) diameter steel governor rope with 6-strand, regular lay construction.
- b. The governor rope shall have a factor of safety of 8 or greater as related to the strength necessary to activate the safety.
- c. The governor sheaves shall have a pitch diameter of not less than 180 mm (7.1 in.).

14. All medical emergency service elevators shall comply with the following:

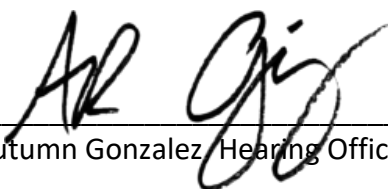
- a. The requirements of the 2019 California Building Code (CBC), Section 3002.4.1a:

The medical emergency service elevator shall accommodate the loading and transport of two emergency personnel, each requiring a minimum clear 21-inch (533 mm) diameter circular area and an ambulance gurney or stretcher [minimum size 24 inches by 84 inches (610 mm by 2134 mm) with not less than 5-inch (127 mm) radius corners] in the horizontal, open position.

- b. All medical emergency service elevators shall be identified in the building construction documents in accordance with the 2019 CBC, Section 3002.4a.
 - c. Dimensional drawings and other information necessary to demonstrate compliance with these conditions shall be provided to the Division, at the time of inspection, for all medical emergency service elevator(s).
15. Any Certified Qualified Conveyance Company performing inspections, maintenance, servicing, or testing of the elevators shall be provided a copy of this variance decision.
 16. The Division shall be notified when the elevator is ready for inspection. The elevator shall be inspected by the Division, and a Permit to Operate shall be issued before the elevator is placed in service.
 17. The Applicant shall be subject to the Suspension Means – Replacement Reporting Condition stated in Addendum 2, as hereby incorporated by this reference.
 18. The Applicant shall notify its employees or their authorized representative(s), or both, of this order in the same way and to the same extent that employees and authorized representatives are to be notified of docketed permanent variance applications pursuant to California Code of Regulations, title 8, sections 411.2 and 411.3.
 19. This Decision and Order shall remain in effect unless modified or revoked upon application by the Applicant, affected employee(s), the Division of Occupational Safety and Health, or by the Board on its own motion, in accordance with procedures per title 8, Division 1, Chapter 3.5.

Pursuant to section 426 (b) of the Board's procedural regulations, the above Proposed Decision, is hereby submitted to the Occupational Safety and Health Standards Board for consideration of adoption.

Dated: December 2, 2022



Autumn Gonzalez, Hearing Officer

ADDENDUM 1

October 6, 2010

CIRCULAR LETTER E-10-04

TO: Installers, Manufacturers of Conveyances and Related Equipment and, Other Interested Parties

SUBJECT: Coated Steel Belt Monitoring

The Elevator Safety Orders require routine inspection of the suspension means of an elevator to assure its safe operation.

The California Labor Code section 7318 allows the Division to promulgate special safety orders in the absence of regulation.

As it is not possible to see the steel cable suspension means of a Coated Steel Belt, a monitoring device which has been accepted by the Division is required on all Coated Steel Belts which will automatically stop the car if the residual strength of any belt drops below 60%. The Device shall prevent the elevator from restarting after a normal stop at a landing.

The monitoring device must be properly installed and functional. A functioning device may be removed only after a determination has been made that the residual strength of each belt exceeds 60%. These findings and the date of removal are to be conspicuously documented in the elevator machine room. The removed device must be replaced or returned to proper service within 30 days.

If upon routine inspection, the monitoring device is found to be in a non-functional state, the date and findings are to be conspicuously documented in the elevator machine room.

If upon inspection by the Division, the monitoring device is found to be non-functional or removed, and the required documentation is not in place, the elevator will be removed from service.

If the device is removed to facilitate belt replacement, it must be properly installed and functional before the elevator is returned to service.

A successful test of the device's functionality shall be conducted once a year.

This circular does not preempt the Division from adopting regulations in the future, which may address the monitoring of Coated Steel Belts or any other suspension means.

This circular does not create an obligation on the part of the Division to permit new conveyances utilizing Coated Steel Belts.

Debra Tudor
Principal Engineer
DOSH-Elevator Unit HQS

ADDENDUM 2

Suspension Means – Replacement Reporting Condition

Beginning on the date the Board adopts this Proposed Decision and continuing for a period of two years, the Applicant shall report to the Division within 30 days any and all replacement activity performed on the elevator(s) pursuant to the requirements of ASME A17.1-2004, section 8.6.3 involving the suspension means or suspension means fastenings.

Further:

1. A separate report for each elevator shall be submitted, in a manner acceptable to the Division, to the following address (or to such other address as the Division might specify in the future): DOSH Elevator Unit, 2 MacArthur Place, Suite 700, Santa Ana, CA 92707, Attn: Engineering Section.
2. Each such report shall contain, but not necessarily be limited to, the following information:
 - a. The State-issued conveyance number, complete address, and OSHSB file number that identifies the permanent variance.
 - b. The business name, complete address, telephone number, and contact person of the elevator responsible party (presumably the Applicant or the subsequent holder of this variance).
 - c. The business name, complete address, telephone number, and Certified Qualified Conveyance Company (CQCC) certification number of the firm performing the replacement work.
 - d. The name (as listed on certification), Certified Competent Conveyance Mechanic (CCCM) certification number, certification expiration date, and signature of each CCCM performing the replacement work.
 - e. The date and time the elevator was removed from normal service for suspension replacement, the date and time the replacement work commenced, the date and time the replacement work was completed, and the date and time the elevator was returned to normal service.
 - f. A detailed description of, and clear color photographs depicting, (1) all the conditions that existed in the suspension components requiring their replacement and (2) any conditions that existed to cause damage or distress to the suspension components being replaced.
 - g. A detailed list of all elevator components adjusted, repaired, or replaced in conjunction with the suspension component replacement.

- h. All information provided on the crosshead data plate per ASME A17.1-2004, section 2.20.2.1, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.
 - i. For the suspension means being replaced, all information provided on the data tag required per ASME A17.1-2004, section 2.20.2.2, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.
 - j. For the replacement suspension means, all information provided on the data tag required by ASME A17.1-2004, section 2.20.2.2, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.
 - k. Any other information requested by the Division regarding the replacement of the suspension means or fastenings.
3. In addition to the submission of the report to the Division, the findings of any testing, failure analysis, or other engineering evaluations performed on any portion of the replaced suspension components, or other elevator components replaced in conjunction therewith, shall be submitted to the Division referencing the information contained in item 2a above.

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
(916) 274-5721

In the Matter of Application for
Permanent Variance regarding:

TK Elevator Evolution (Group IV)

OSHSB File No.: Per Section A.1 table
Proposed Decision Dated: December 2, 2022

DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached
PROPOSED DECISION by Autumn Gonzalez, Hearing Officer.

DAVID THOMAS, Chairman

BARBARA BURGEL, Member

KATHLEEN CRAWFORD, Member

DAVID HARRISON, Member

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Date of Adoption: December 15, 2022

THE FOREGOING VARIANCE DECISION WAS
ADOPTED ON THE DATE INDICATED ABOVE.
IF YOU ARE DISSATISFIED WITH THE
DECISION, A PETITION FOR REHEARING
MAY BE FILED BY ANY PARTY WITH THE
STANDARDS BOARD WITHIN TWENTY (20)
DAYS AFTER SERVICE OF THE DECISION.
YOUR PETITION FOR REHEARING MUST
FULLY COMPLY WITH THE REQUIREMENTS
OF CALIFORNIA CODE OF REGULATIONS,
TITLE 8, SECTIONS 427, 427.1 AND 427.2.

Note: A copy of this Decision must be
posted for the Applicant's employees to
read, and/or a copy thereof must be
provided to the employees' Authorized
Representatives.

BEFORE THE
 OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
 DEPARTMENT OF INDUSTRIAL RELATIONS
 STATE OF CALIFORNIA

In the Matter of Application for Permanent Variance Regarding: TK Elevator Evolution (Group IV)	OSHSB File Nos.: Per Section A.1 table <u>PROPOSED DECISION</u> Hearing Date: November 30, 2022
--	---

A. Procedural Matters

1. The below listed Applicants (“Applicant”) have applied for permanent variance from certain provisions of the Elevator Safety Orders, found at title 8 of the California Code of Regulations¹, with respect to a conveyance, or conveyances, in the listed quantity, at the listed location:

Variance No.	Applicant Name	Variance Location Address	No. of Elevators
22-V-460	California State University San Francisco	1600 Holloway Ave., CY202 San Francisco, CA	3
22-V-486	K & M 2000 University, LLC	2001 Milvia Street Berkeley, CA	1
22-V-488	Apollo IV Development Group, LLC	21644 Dracaea St. Moreno Valley, CA	1
22-V-489	Fairfield Napa Phase II, LLC	791 Vista Tulocay Lane Napa, CA	3
22-V-506	MSJC Menifee Campus	28237 La Piedra Road Menifee, CA	1

2. These proceedings are conducted in accordance with Labor Code section 143, and section 401, et. seq.
3. This hearing was held on November 30, 2022, in Sacramento, California via teleconference, by delegation of the Occupational Safety and Health Standards Board (“Board”), with Hearing Officer Autumn Gonzalez, both presiding and hearing the matter on its merit, as a basis of proposed decision to be advanced to the Board for its consideration, in accordance with section 426.
4. At the hearing, Justin Zoetewey with Tk Elevator appeared on behalf of the Applicant, Jose Ceja, Mark Wickens and David Morris appeared on behalf of the

¹ Unless otherwise noted, references are to the California Code of Regulations, title 8.

Division of Occupational Safety and Health (“Division”), and Michael Nelmidia appeared on behalf of Board staff acting in a technical advisory role apart from the Board.

5. Documentary and oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence:

Exhibit Number	Description of Exhibit
PD-1	Application(s) for Permanent Variance per section A.1 table
PD-2	OSHSB Notice of Hearing
PD-3	Board Staff Review of Variance Application
PD-4	Division Review of Variance Application
PD-5	Review Draft-1 Proposed Decision

6. Official notice is taken of the Board’s files, records, recordings and decisions concerning the Elevator Safety Order requirements from which variance shall issue. On November 30, 2022, the hearing and record closed, and the matter was taken under submission by the Hearing Officer.

B. Relevant Safety Orders

Variance Request No. 1 (ASME A17.1-2004, Section 2.14.1.7.1)

2.14.1.7.1 A standard railing conforming to 2.10.2 shall be provided on the outside perimeter of the car top on all sides where the perpendicular distance between the edges of the car top and the adjacent hoistway enclosure exceeds 300 mm (12 in.) horizontal clearance.

Variance Request No. 2A (ASME A17.1-2004, section 2.20.1)

2.20.1 Suspension Means

Elevator cars shall be suspended by steel wire ropes attached to the car frame or passing around sheaves attached to the car frame specified in 2.15.1. Ropes that have previously been installed and used on another installation shall not be reused.

Only iron (low-carbon steel) or steel wire ropes, having the commercial classification "Elevator Wire Rope," or wire rope specifically constructed for elevator use, shall be used for the suspension of elevator cars and for the suspension of counterweights. The wire material for ropes shall be manufactured by the open-hearth or electric furnace process or their equivalent.

Variance Request No. 2B (ASME A17.1-2004, section 2.20.2[.1])

2.20.2.1 On Crosshead Data Plate.

The crosshead data plate required by 2.16.3 shall bear the following wire-rope

data:

(a) the number of ropes

(b) the diameter in millimeters (mm) or inches (in.)

(c) the manufacturer's rated breaking strength per rope in kilo Newton (kN) or pounds (lb)

Variance Request No. 2C (ASME A17.1-2004, section 2.20.2.2)

2.20.2.2 On Rope Data Tag.

A metal data tag shall be securely attached to one of the wire-rope fastenings. This data tag shall bear the following wire-rope data:

(a) the diameter in millimeters (mm) or inches (in.)

[...]

(f) whether the ropes were nonpreformed or preformed

[...]

Variance Request No. 2D. (ASME A17.1-2004, section 2.20.3)

2.20.3 Factor of Safety

The factor of safety of the suspension wire ropes shall be not less than shown in Table 2.20.3. Figure 8.2.7 gives the minimum factor of safety for intermediate rope speeds. The factor of safety shall be based on the actual rope speed corresponding to the rated speed of the car.

The factor of safety shall be calculated by the following formula:

$$f = \frac{S \times N}{W}$$

where

N = number of runs of rope under load. For 2:1 roping, N shall be two times the number of ropes used, etc.

S = manufacturer's rated breaking strength of one rope

W = maximum static load imposed on all car ropes with the car and its rated load at any position in the hoistway

Variance Request No. 2E (ASME A17.1-2004, section 2.20.4)

2.20.4 Minimum Number and Diameter of Suspension Ropes

The minimum number of hoisting ropes used shall be three for traction elevators and two for drum-type elevators.

Where a car counterweight is used, the number of counterweight ropes used shall be not less than two.

The term "diameter," where used in reference to ropes, shall refer to the nominal diameter as given by the rope manufacturer.

The minimum diameter of hoisting and counterweight ropes shall be 9.5 mm (0.375 in.). Outer wires of the ropes shall be not less than 0.56 mm (0.024 in.) in diameter.

Variance Request No. 2F (ASME A17.1-2004, section 2.20.9[.1])

2.20.9 Suspension-Rope Fastening

2.20.9.1 Type of Rope Fastenings. The car and counterweight ends of suspension wire ropes, or the stationary hitch-ends where multiple roping is used, shall be fastened in such a manner that all portions of the rope, except the portion inside the rope sockets, shall be readily visible.

Fastening shall be

(a) by individual tapered rope sockets (see 2.20.9.4) or other types of rope fastenings that have undergone adequate tensile engineering tests, provided that

(1) such fastenings conform to 2.20.9.2 and 2.20.9.3;

(2) the rope socketing is such as to develop at least 80% of the ultimate breaking strength of the strongest rope to be used in such fastenings; or

(b) by individual wedge rope sockets (see 2.20.9.5); and

(c) U-bolt-type rope clamps or similar devices shall not be used for suspension rope fastenings.

Variance Request No. 3 (ASME A17.1-2004, section 2.26.9.4)

2.26.9.4 Redundant devices used to satisfy 2.26.9.3 in the determination of the occurrence of a single ground, or the failure of any single magnetically operated switch, contactor or relay, or of any single solid state device, or any single device that limits the leveling or truck zone, or a software system failure, shall be checked prior to each start of the elevator from a landing, when on automatic operation. When a single ground or failure, as specified in 2.26.9.3, occurs, the

car shall not be permitted to restart. Implementation of redundancy by a software system is permitted, provided that the removal of power from the driving-machine motor and brake shall not be solely dependent on software-controlled means.

Variance Request No. 4 (ASME A17.1-2004, section 2.26.9.6.1)

2.26.9.6.1 Two separate means shall be provided to independently inhibit the flow of alternating-current through the solid state devices that connect the direct-current power source to the alternating-current driving motor. At least one of the means shall be an electromechanical relay.

Variance Request No. 5 (ASME A17.1-2004, section 2.26.1.4[.1](a))

2.26.1.4.1 General Requirements

(a) Operating devices for inspection operation shall be provided on the top of the car and shall also be permitted in the car and in the machine room.

Variance Request No. 6 (ASME A17.1-2004, section 8.4.10.1.1(a)(2)(b))

8.4.10.1.1 Earthquake Equipment (See Also Fig. 8.4.10.1.1)

(a) All traction elevators operating at a rated speed of 0.75 m/s (150 ft/min) or more and having counterweights located in the same hoistway shall be provided with the following:

(1) seismic zone 3 or greater: a minimum of one seismic switch per building

(2) seismic zone 2 or greater:

(a) a displacement switch for each elevator

(b) an identified momentary reset button or switch for each elevator, located in the control panel in the elevator machine room [see 8.4.10.1.3(i)]

C. Findings

1. Applicant proposes to utilize inset car top railings and guards in compliance with ASME 17.1-2013, section 2.14.1.7.1 and the *Vivante Westside, LLC* File No. 18-V-364 (Nov. 20, 2020) decision (*Vivante*). Applicant further claims that the request is consistent with the *Vivante*, the *Mack Urban, LLC*, File No. 15-V-349 (Nov. 17, 2016), and the *Patton Equities, LLC* File No. 20-V-128 (Nov. 12, 2020) decisions (*Patton Equities*).
2. Applicant proposes to utilize noncircular elastomeric-coated steel belts (“ECSBs”) rather than steel ropes in a machine room-less (“MRL”) elevator installation, with updated data plates, data tags, and wedge sockets designed for use with ECSBs, as well as the appropriate factor of safety criteria conforming to

ASME 17.1-2013, with a continuous residual strength detection device (“RSDD”) compliant with the *San Francisco Public Works (File No. 21-V-061, et al.)* decisions.

3. The installation shall utilize the TK Elevator Model 104DP001 RSDD, accepted by the Division on May 4, 2021.
4. Applicant proposes to comply with ASME A17.1-2013 sections 2.26.9.3, “Protection Against Failures”, rather than the requirements of 2.26.9.3 and 2.26.9.4 in the ASME 2004 code.
5. Applicant proposes to use TKE’s control systems, using the TKE TAC32T Controller with SIL3 rated elements, to provide equivalent safety to ASME A17.1-2004, section 2.26.9.4 as a means to inhibit flow of Alternating Current to the Driving Motor in compliance with ASME A17.1-2013, section 2.26.9.6.
6. Applicant proposes to locate the Inspection Transfer Switch within the machinery/control room/space in the MRL installation, in compliance with ASME 17.1-2013, section 2.26.1.4.
7. Applicant proposes to locate the Seismic-Operation Reset Switch in the machinery/control room/space in the MRL installation.

D. Decision and Order

Applicant is hereby conditionally GRANTED Permanent Variance as specified below, and to the limited extent, as of the date the Board adopts this Proposed Decision, with respect to the section A specified number of TKE EVO 200 elevator(s), at the specified location, each shall conditionally hold permanent variance from the following subparts of ASME A17.1-2004, currently incorporated by reference into section 3141 of the Elevator Safety Orders:

- Car-Top Railing: 2.14.1.7.1 (Limited to the extent necessary to permit the use of an inset car-top railing)
- Suspension Means: 2.20.1, 2.20.2.1, 2.20.2.2(a), 2.20.2.2(f), 2.20.3, 2.20.4, and 2.20.9.1 (Limited to the extent necessary to permit the use of the elastomeric-coated steel belts in lieu of circular steel suspension ropes)
- Inspection transfer switch: 2.26.1.4.4(a) (Limited to the extent necessary to permit the inspection transfer switch to reside at a location other than the machine room)
- Software Reliant Means to Remove Power: 2.26.9.4 (Limited to the extent necessary to permit the exclusive use of SIL-rated software systems as a means to remove power from the driving machine motor and brake)
- SIL-Rated Circuitry to Inhibit Current Flow: 2.26.9.6.1 (Limited to the extent

necessary to permit the use of SIL-rated circuitry in place of an electromechanical relay to inhibit current flow to the drive motor)

- Seismic reset switch: 8.4.10.1.1(a)(2)(b) (Limited to the extent necessary to permit the seismic reset switch to reside at a location other than the machine room)

Inset Car Top Railing (Variance Request No. 1):

- 1.0 Any and all inset car top railings shall comply with the following:
 - 1.1 Serviceable equipment shall be positioned so that mechanics and inspectors do not have to stand on or climb over the railings to perform adjustments, maintenance, repairs or inspections. The Applicant shall not permit trained elevator mechanics or elevator service personnel to stand or climb over the car top railing.
 - 1.2 The distance that the railing can be inset shall be limited to not more than six inches (6").
 - 1.3 All exposed areas of the car top outside the car top railing where the distance from the railing to the edge of the car top exceeds two inches (2"), shall be beveled with metal, at an angle of not less than 75 degrees with the horizontal, from the mid or top rail to the outside of the car top, such that no person or object can stand, sit, kneel, rest, or be placed in the exposed areas.
 - 1.4 The top surface of the beveled area and/or car top outside the railing, shall be clearly marked. The markings shall consist of alternating 4" diagonal red and white stripes.
 - 1.5 The Applicant shall provide durable signs with lettering not less than 1/2 inch on a contrasting background on each inset railing; each sign shall state:

**CAUTION
STAY INSIDE RAILING
NO LEANING BEYOND RAILING
NO STEPPING ON, OR BEYOND, RAILING**

- 1.6 The Group IV requirements for car top clearances shall be maintained (car top clearances outside the railing will be measured from the car top and not from the required bevel).

Suspension Means (Variance Request No. 2):

- 2.0 The elevator suspension system shall comply with the following:
 - 2.1 The elastomeric coated steel belts (ECSBs) and their associated fastenings shall conform to the applicable requirements of ASME A17.1-2013, sections:

2.20.4.3 – Minimum Number of Suspension Members

2.20.3 – Factor of Safety

2.20.9 – Suspension Member Fastening

- 2.2 Additionally, ECSBs shall meet or exceed all requirements of ASME A17.6 2010, Standard for Elevator Suspension, Compensation, and Governor Systems, Part 3 Noncircular Elastomeric Coated Steel Suspension Members for Elevators.
- 2.3 The Applicant shall not utilize the elevator unless the manufacturer has written procedures for the installation, maintenance, inspection and testing of the ECSBs and fastenings and related monitoring and detection systems and criteria for ECSB replacement, and the Applicant shall make those procedures and criteria available to the Certified Competent Conveyance Mechanic (CCCM) at the location of the elevator, and to the Division of Occupational Safety and Health (Division) upon request.
- 2.4 ECSB mandatory replacement criteria shall include:
- 2.4.1. Any exposed wire, strand or cord;
 - 2.4.2. Any wire, strand or cord breaks through the elastomeric coating;
 - 2.4.3. Any evidence of rouging (steel tension element corrosion) on any part of the elastomeric coated steel suspension member;
 - 2.4.4. Any deformation in the elastomeric suspension member such as, but not limited to, kinks or bends.
- 2.5 Traction drive sheaves must have a minimum diameter of 112 mm. The maximum speed of ECSBs running on 112 mm drive sheaves shall be no greater than 6.1 m/s.
- 2.6 If any one (1) ECSB needs replacement, the complete set of suspension members on the elevator shall be replaced. Exception: If a new suspension member is damaged during installation, and prior to any contemporaneously installed ECSB having been placed into service, it is permissible to replace the individual damaged suspension member. ECSBs that have been installed on another installation shall not be re used.
- 2.7 A traction loss detection means shall be provided that conforms to the requirements of ASME A17.1-2013, section 2.20.8.1. The means shall be tested for correct function annually in accordance with ASME A17.1-2013, section 8.6.4.19.12.
- 2.8 A broken suspension member detection means shall be provided that conforms to the requirements of ASME A17.1-2013, section 2.20.8.2. The means shall be tested for correct function annually in accordance with ASME A17.1-2013, section 8.6.4.19.13(a).
- 2.9 An elevator controller integrated bend cycle monitoring system shall monitor actual ECSB bend cycles, by means of continuously counting, and storing in nonvolatile memory, the number of trips that the ECSB makes traveling, and thereby being bent,

over the elevator sheaves. The bend cycle limit monitoring means shall automatically stop the car normally at the next available landing before the bend cycle correlated residual strength of any single ECSB member drops below (60%) sixty percent of full rated strength. The monitoring means shall prevent the car from restarting. Notwithstanding any less frequent periodic testing requirement per Addendum 2 (Division Circular Letter), the bend cycle monitoring system shall be tested semiannually in accordance with the procedures required per above Conditions 2.3 and 2.4.

- 2.10 The elevator crosshead data plate shall comply with the requirements of ASME A17.1-2013, section 2.20.2.1.
- 2.11 A suspension means data tag shall be provided that complies with the requirements of ASME A17.1-2013, section 2.20.2.2.
- 2.12 Comprehensive visual inspections of the entire length of each and all installed suspension members, in conformity with above Conditions 2.3 and 2.4 specified criteria, shall be conducted and documented every six (6) months by a CCCM.
- 2.13 The Applicant shall be subject to the requirements per hereto attached, and inhere incorporated, Addendum 1, "Suspension Means Replacement Reporting Condition."
- 2.14 Records of all tests and inspections shall be maintenance records subject to ASME A17.1-2004, sections 8.6.1.2, and 8.6.1.4, respectively.
- 2.15 The subject elevators(s) shall be equipped with a TK Elevator Model 104DP001 Residual Strength Detection Device accepted by the Division on May 4, 2021 or Division accepted equivalent device.

Control and Operating Circuits

Combined Software Redundant Devices with Software Removal of Power from Driving Motor and Brake (Variance Request No. 3)

Removal of Power from Driving Motor Without Electro-mechanical Switches (Variance Request No. 4)

- 3.0 The SIL rated circuitry used to provide device/circuit redundancy and to inhibit electrical current flow in accordance with ASME A17.1-2004, sections 2.26.9.4 and 2.26.9.6.1 shall comply with the following:
 - 3.1 The SIL rated systems and related circuits shall consist of:
 - 3.1.1. ELGO LIMAX33 RED, (aka LIMAX3R-03-050-0500-CNXTG-RJU), Safe Magnetic Absolute Shaft Information System, labeled or marked with the SIL rating (not less than SIL 3), the name or mark of the certifying organization, and the SIL certification number (968/A 163), followed by the applicable revision number (as in 968/A 163.07/19).
 - 3.1.2 Printed circuit board assembly SSOA (6300 AHE001), labeled or marked with

the SIL rating (not less than SIL 3), the name or mark of the certifying organization, and the SIL certification number (968/FSP 1347), followed by the applicable revision number (as in 968/FSP 1347.00/16).

- 3.1.3 Two circuit board components (Serializer S3I and S3O), each labeled or marked with the SIL rating (not less than SIL 3), the name or mark of the certifying organization and the SIL certification number (968/A 162), followed by the applicable revision number (as in 968/A 162.04/18)
- 3.2 The software system and related circuits shall be certified for compliance with the applicable requirements of ASME A17.1-2013, section 2.26.4.3.2.
- 3.3 The access door or cover of the enclosures containing the SIL rated components shall be clearly labeled or tagged on their exterior with the statement:

**Assembly contains SIL rated devices.
Refer to maintenance Control Program and wiring diagrams
prior to performing work.**
- 3.4 Unique maintenance procedures or methods required for the inspection, testing, or replacement of the SIL rated circuits shall be developed and a copy maintained in the elevator machine/control room/space. The procedures or methods shall include clear color photographs of each SIL rated component, with notations identifying parts and locations.
- 3.5 Wiring diagrams that include part identification, SIL, and certification information shall be maintained in the elevator machine/control room/space.
- 3.6 A successful test of the SIL rated circuits shall be conducted initially and not less than annually in accordance with the testing procedure. The test shall demonstrate that SIL rated devices, safety functions, and related circuits operate as intended.
- 3.7 Any alterations to the SIL rated circuits shall be made in compliance with the Elevator Safety Orders. If the Elevator Safety Orders do not contain specific provisions for the alteration of SIL rated devices, the alterations shall be made in conformance with ASME A17.1-2013, section 8.7.1.9.
- 3.8 Any replacement of the SIL rated circuits shall be made in compliance with the Elevator Safety Orders. If the Elevator Safety Orders do not contain specific provisions for the replacement of SIL rated devices, the replacement shall be made in conformance with ASME A17.1-2013, section 8.6.3.14.
- 3.9 Any repairs to the SIL rated circuits shall be made in compliance with the Elevator Safety Orders. If the Elevator Safety Orders do not contain specific provisions for the repair of SIL rated devices, the repairs shall be made in conformance with ASME A17.1-2013, section 8.6.2.6.
- 3.10 Any space containing SIL rated circuits shall be maintained within the temperature

and humidity range specified by TKE. The temperature and humidity range shall be posted on each enclosure containing SIL rated software or circuits.

- 3.11 Field software changes to the SIL rated system are not permitted. Any changes to the SIL rated system's circuitry will require recertification and all necessary updates to the documentation and diagrams required by Conditions 3.4 and 3.5 above.

Inspection Transfer Switch and Seismic Reset Switch (Variance Request Nos. 5 and 6):

- 4.0 Inspection Transfer switch and Seismic Reset switch placement and enclosure shall comply with the following:
 - 4.1 If the inspection transfer switch required by ASME A17.1-2004, section 2.26.1.4.4, does not reside in a machine room, that switch shall not reside in the elevator hoistway. The switch shall reside in the control/machinery room/space containing the elevator's control equipment in an enclosure secured by a lock openable by a Group 1 security key. The enclosure is to remain locked at all times when not in use.
 - 4.2 If the seismic reset switch does not reside in the machine room, that switch shall not reside in the elevator hoistway. The switch shall reside in the control/machinery room/space containing the elevator's control equipment in an enclosure secured by a lock openable by a Group 1 security key. The enclosure is to remain locked at all times when not in use.
- 5.0 The elevator shall be serviced, maintained, adjusted, tested, and inspected only by CCCM having been trained, and competent, to perform those tasks on the TKE EVO 200 elevator system in accordance with written procedures and criteria, including as required per above Conditions 2.3, and 2.4.
- 6.0 The Division shall be notified when the elevator is ready for inspection. The elevator shall be inspected by the Division, and all applicable requirements met, including conditions of this permanent variance, prior to a Permit to Operate the elevator being issued. The elevator shall not be placed in full service prior to the Permit to Operate being issued by Division.
- 7.0 The Applicant shall notify its employees or their authorized representative(s), or both, of this order in the same way and to the same extent that employees and authorized representatives are to be notified of docketed permanent variance applications pursuant to sections 411.2 and 411.3.
- 8.0 This Decision and Order shall remain in effect unless modified or revoked upon application by the Applicant, affected employee(s), the Division, or by the Board on its own motion, in the manner prescribed for its issuance.

Pursuant to section 426, subdivision (b), the above Proposed Decision, is hereby submitted to the Occupational Safety and Health Standards Board for consideration of adoption.

DATED: December 2, 2022



Autumn Gonzalez Hearing Officer

ADDENDUM 1

SUSPENSION MEANS REPLACEMENT REPORTING REQUIREMENTS

Beginning on the date the Board adopts this Proposed Decision and continuing for a period of two years, the Applicant shall report to the Division within 30 days any and all replacement activity performed on the elevator(s) pursuant to the requirements of ASME A17.1-2004, Section 8.6.3 involving the suspension means or suspension means fastenings.

Further:

- (1) A separate report for each elevator shall be submitted, in a manner acceptable to the Division, to the following address (or to such other address as the Division might specify in the future): DOSH Elevator Unit, Attn: Engineering Section, 2 MacArthur Place Suite 700, Santa Ana, CA 92707.
- (2) Each such report shall contain, but not necessarily be limited to, the following information:
 - (a) The State-issued conveyance number, complete address, and OSHSB file number that identifies the permanent variance.
 - (b) The business name, complete address, telephone number, and contact person of the elevator responsible party (presumably the Applicant or the subsequent holder of this variance).
 - (c) The business name, complete address, telephone number, and Certified Qualified Conveyance Company (CQCC) certification number of the firm performing the replacement work.
 - (d) The name (as listed on certification), Certified Competent Conveyance Mechanic (CCCM) certification number, and certification expiration date of each CCCM performing the replacement work.
 - (e) The date and time the elevator was removed from normal service for suspension replacement, the date and time the replacement work commenced, the date and time the replacement work was completed, and the date and time the elevator was returned to normal service.
 - (f) A detailed description of, and clear color photographs depicting, (1) all the conditions that existed in the suspension components requiring their replacement and (2) any conditions that existed to cause damage or distress to the suspension components being replaced.
 - (g) A detailed list of all elevator components adjusted, repaired, or replaced in conjunction with the suspension component replacement.
 - (h) All information provided on the crosshead data plate per ASME A17.1-2004, Section

2.20.2.1, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.

- (i) For the suspension means being replaced, all information provided on the data tag required per ASME A17.1-2004, Section 2.20.2.2, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.
- (j) For the replacement suspension means, all information provided on the data tag required by ASME A17.1-2004, Section 2.20.2.2, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.
- (k) Any other information requested by the Division regarding the replacement of the suspension means or fastenings.

In addition to the submission of the report to the Division, the findings of any testing, failure analysis, or other engineering evaluations performed on any portion of the replaced suspension components, or other elevator components replaced in conjunction therewith, shall be submitted to the Division referencing the information contained in item 2(a) above.

ADDENDUM 2

CIRCULAR LETTER E-10-04, October 6, 2010

TO: Installers, Manufacturers of Conveyances and Related Equipment and, Other Interested Parties

SUBJECT: Coated Steel Belt Monitoring

The Elevator Safety Orders require routine inspection of the suspension means of an elevator to assure its safe operation.

The California Labor Code Section 7318 allows the Division to promulgate special safety orders in the absence of regulation.

As it is not possible to see the steel cable suspension means of a Coated Steel Belt, a monitoring device which has been accepted by the Division is required on all Coated Steel Belts which will automatically stop the car if the residual strength of any belt drops below 60%. The Device shall prevent the elevator from restarting after a normal stop at a landing.

The monitoring device must be properly installed and functional. A functioning device may be removed only after a determination has been made that the residual strength of each belt exceeds 60%. These findings and the date of removal are to be conspicuously documented in the elevator machine room. The removed device must be replaced or returned to proper service within 30 days.

If upon routine inspection, the monitoring device is found to be in a non-functional state, the date and findings are to be conspicuously documented in the elevator machine room.

If upon inspection by the Division, the monitoring device is found to be non-functional or removed, and the required documentation is not in place, the elevator will be removed from service.

If the device is removed to facilitate belt replacement, it must be properly installed and functional before the elevator is returned to service.

A successful test of the device's functionality shall be conducted once a year.

This circular does not preempt the Division from adopting regulations in the future, which may address the monitoring of Coated Steel Belts or any other suspension means.

This circular does not create an obligation on the part of the Division to permit new conveyances utilizing Coated Steel Belts.

Debra Tudor
Principal Engineer
DOSH-Elevator Unit HQ

ADDENDUM 3

(A) A Residual Strength Detection Device (RSDD) shall continuously monitor all Elastomeric Coated Steel Belt suspension members (ECSB), automatically stopping the car if the residual strength of any belt drops below 60%. The RSDD shall prevent the elevator from restarting after a normal stop at a landing. The RSDD shall device shall apply a form of electrical current and/or signal through the entire length of the steel tension elements of the ECSB and measure the current and/or signal on its return. The values measured shall be continuously compared to values that have been correlated to the remaining residual strength of the ECSB through testing. The required RSDD shall not rely upon giant magnetoresistance technology, or other magnetic measurement means, for residual strength detection or monitoring.

The RSDD must be properly installed and functional. A functioning device may be removed only after a determination has been made that the residual strength of each belt exceeds 60%. These findings and the date of removal are to be conspicuously documented in the elevator machine room or controller location. The removed RSDD must be replaced or returned to proper service within 30 days. If upon routine inspection, the RSDD device is found to be in a non-functional state, the date and findings are to be conspicuously documented in the elevator machine room or controller location.

If upon inspection by the Division, the RSDD is found to be non-functional or removed, and the required documentation is not in place, the elevator will be removed from service. If the device is removed to facilitate belt replacement, it must be properly installed and functional before the elevator is returned to service.

(B) On or before November 21 2021, and thereafter, the above specified and documented RSDD shall be installed and operational on the subject elevator.

(C) A successful functionality test of each RSDD shall be conducted once a year, and a copy of completed testing documentation conspicuously located in the machine room or within proximity of the controller.

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
(916) 274-5721

In the Matter of Application for
Permanent Variance regarding:

Otis Gen2S/Gen3Edge Elevator (Group IV)

OSHSB File No.: see grid in Item A of
Proposed Decision Dated: December 2, 2022

DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached
PROPOSED DECISION by Autumn Gonzalez, Hearing Officer.

DAVID THOMAS, Chairman

BARBARA BURGEL, Member

KATHLEEN CRAWFORD, Member

DAVID HARRISON, Member

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Date of Adoption: December 15, 2022

THE FOREGOING VARIANCE DECISION WAS
ADOPTED ON THE DATE INDICATED ABOVE.
IF YOU ARE DISSATISFIED WITH THE
DECISION, A PETITION FOR REHEARING
MAY BE FILED BY ANY PARTY WITH THE
STANDARDS BOARD WITHIN TWENTY (20)
DAYS AFTER SERVICE OF THE DECISION.
YOUR PETITION FOR REHEARING MUST
FULLY COMPLY WITH THE REQUIREMENTS
OF CALIFORNIA CODE OF REGULATIONS,
TITLE 8, SECTIONS 427, 427.1 AND 427.2.

Note: A copy of this Decision must be
posted for the Applicant's employees to
read, and/or a copy thereof must be
provided to the employees' Authorized
Representatives.

BEFORE THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
DEPARTMENT OF INDUSTRIAL RELATIONS
STATE OF CALIFORNIA

<p>In the Matter of Application for Permanent Variance Regarding:</p> <p>Otis Gen2S/Gen3Edge Elevator (Group IV)</p>	<p>OSHSB File Nos.: See section A table below</p> <p><u>PROPOSED DECISION</u></p> <p>Hearing Date: November 30, 2022</p>
--	--

A. Subject Matter

- Each below listed applicant (“Applicant”) has applied for permanent variances from provisions of the Elevator Safety Orders, found at title 8 of the California Code of Regulations¹, with respect to the listed conveyance or conveyances, in the specified quantity, at the specified location:

Variance No.	Applicant Name	Variance Location Address	No. of Elevators
22-V-461	1090 East Duane Ave LLC	1025 Stewart Dr. Sunnyvale, CA	2
22-V-462	1411 S. Flower QOZB, LLC	1411 S. Flower St. Los Angeles, CA	2
22-V-464	Akasa Soma Holdings LLC	531 Bryant St. San Francisco, CA	2
22-V-466	Saddleback College	28000 Marguerite Parkway Mission Viejo, CA	2
22-V-468	San Rafael Senior, L.P.	999 3rd St. San Rafael, CA	2
22-V-470	Suncoast Hill Street LLC	1340 S. Hill St. Los Angeles, CA	3
22-V-472	Toll Brothers Apartment Living	401 N. Main St. Santa Ana, CA	2
22-V-473	Toll Brothers Apartment Living	500 N. Bush St. Santa Ana, CA	1
22-V-497	19 Bway Tower Development, LLC	1920 Broadway Oakland, CA	2

¹ Unless otherwise noted, all references are to title 8, California Code of Regulations.

22-V-503	Calvary Chapel Costa Mesa	26491 Hwy. 189 Twin Peaks, CA	1
22-V-513	BTICS, L.P.	1919 W. Court St. Los Angeles, CA	1
22-V-515	CRP/VP Montclair Village Owner, LLC	Apartment 5050 Arrow Hwy. Montclair, CA	4
22-V-516	CRP/VP Montclair Village Owner, LLC	Parking Structure 5050 Arrow Hwy. Montclair, CA	1

2. The safety orders from which variance may issue, are enumerated in the portion of the below Decision and Order preceding the variance conditions.

B. Procedural

1. This proceeding is conducted in accordance with Labor Code section 143.
2. This hearing was held on November 30, 2022, in Sacramento, California, and via teleconference, by Occupational Safety and Health Standards Board (“Board”), with Hearing Officer Autumn Gonzalez, both presiding and hearing the matter on its merit, as a basis of proposed decision to be advanced to the Board for its consideration.
3. At the hearing, Dan Leacox of Leacox & Associates, and Wolter Geesink with Otis Elevator, appeared on behalf of each Applicant; Mark Wickens and Jose Ceja appeared on behalf of the Division of Occupational Safety and Health (“Division”), and Michael Nelmidia appeared on behalf of the Board.
4. Oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence:

Exhibit Number	Description of Exhibit
PD-1	Permanent variance applications per Section A.1 table
PD-2	OSHSB Notice of Hearing
PD-3	Board Staff Reviews of Variance Application
PD-4	Division Reviews of Variance Application
PD-5	Review Draft-1 Proposed Decision

Official notice is taken of the Board's rulemaking records, and variance files and decisions, concerning the Elevator Safety Order standards at issue. At close of hearing on November 30, 2022, the record was closed, and the matter taken under submission by the Hearing Officer.

C. Findings and Basis:

Based on the record of this hearing, the Board makes the following findings of fact:

1. Each Applicant intends to utilize Otis Gen3 Edge/Gen2S elevators at the locations and in the numbers stated in the above section A table.
2. The installation contracts for these elevators were or will be signed on or after May 1, 2008, making the elevators subject to the Group IV Elevator Safety Orders.
3. The Board incorporates by reference Items (i.e. sections) D.3 through D.9 of the Proposed Decision adopted by the Board on July 18, 2013 regarding OSHSB File No. 12-V-093 and Item D.4 of the Proposed Decision adopted by the Board on September 25, 2014 in OSHSB File No. 14-V-206.
4. Both Board staff and Division, by way of written submissions to the record (Exhibits PD-3 and PD-4 respectively), and positions stated at hearing, are of the well informed opinion that grant of requested permanent variance, as limited and conditioned per the below Decision and Order will provide employment, places of employment, and subject conveyances, as safe and healthful as would prevail given non-variant conformity with the Elevator Safety Order requirements from which variance has been requested.

D. Conclusive Findings:

The above stated procedural prerequisites, legal authority, and factual findings, as further supported by the documentary record and hearing testimony in this matter, provide a substantive and reasonable basis of conclusion that: (1) Each Applicant has complied with the statutory and regulatory requirements that must be met before an application for permanent variance may be conditionally granted; and (2) a preponderance of the evidence establishes that each Applicants proposal, subject to all conditions and limitations set forth in the below Decision and Order, will provide equivalent safety and health to that which would prevail upon full compliance with the requirements from which variance is being sought.

E. Decision and Order:

Each permanent variance application the subject of this proceeding is conditionally GRANTED as specified below, and to the extent, as of the date the Board adopts this Proposed Decision, each Applicant listed in the above section A table shall have permanent variances from the following

sections of ASME A17.1-2004 that section 3141 makes applicable to the elevators the subject of those applications:

- Car top railing: sections 2.14.1.7.1 (only to the extent necessary to permit an inset car top railing, if, in fact, the car top railing is inset);
- Speed governor over-speed switch: 2.18.4.2.5(a) (only insofar as is necessary to permit the use of the speed reducing system proposed by the Applicants, where the speed reducing switch resides in the controller algorithms, rather than on the governor, with the necessary speed input supplied by the main encoder signal from the motor);
- Governor rope diameter: 2.18.5.1 (only to the extent necessary to allow the use of reduced diameter governor rope);
- Pitch diameter: 2.18.7.4 (to the extent necessary to use the pitch diameter specified in Condition No. 13.c);
- Suspension means: 2.20.1, 2.20.2.1, 2.20.2.2(a), 2.20.2.2(f), 2.20.3, 2.20.4, 2.20.9.3.4 and 2.20.9.5.4—the variances from these “suspension means” provisions are only to the extent necessary to permit the use of Otis Gen2 flat coated steel suspension belts in lieu of conventional steel suspension ropes;
- Inspection transfer switch: 2.26.1.4.4(a) (only to the extent necessary to allow the inspection transfer switch to reside at a location other than a machine room, if, in fact, it does not reside in the machine room); and
- Seismic reset switch: 8.4.10.1.1(a)(2)(b) (only to the extent necessary to allow the seismic reset switch to reside at a location other than a machine room, if, in fact, it does not reside in the machine room).

These variances apply to the locations and numbers of elevators stated in the section A table (so long as the elevators are Gen3 Edge/Gen2S Group IV devices that are designed, equipped, and installed in accordance with, and are otherwise consistent with, the representations made in the Otis Master File [referred to in previous proposed decisions as the “Gen2 Master File”) maintained by the Board, as that file was constituted at the time of this hearing) and are subject to the following conditions:

1. The suspension system shall comply with the following:
 - a. The coated steel belt and connections shall have factors of safety equal to those permitted for use by section 3141 [ASME A17.1-2004, section 2.20.3] on wire rope suspended elevators.

- b. Steel coated belts that have been installed and used on another installation shall not be reused.
 - c. The coated steel belt shall be fitted with a monitoring device which has been accepted by the Division and which will automatically stop the car if the residual strength of any single belt drops below 60 percent. If the residual strength of any single belt drops below 60 percent, the device shall prevent the elevator from restarting after a normal stop at a landing.
 - d. Upon initial inspection, the readings from the monitoring device shall be documented and submitted to the Division.
 - e. A successful test of the monitoring device's functionality shall be conducted at least once a year (the record of the annual test of the monitoring device shall be a maintenance record subject to ASME A17.1-2004, section 8.6.1.4).
 - f. The coated steel belts used shall be accepted by the Division.
2. With respect to each elevator subject to this variance, the applicant shall comply with Division Circular Letter E-10-04, the substance of which is attached hereto as Addendum 1 and incorporated herein by this reference.
3. The Applicant shall not utilize the elevator unless the manufacturer has written procedures for the installation, maintenance, inspection, and testing of the belts and monitoring device and criteria for belt replacement, and the applicant shall make those procedures and criteria available to the Division upon request.
4. The flat coated steel belts shall be provided with a metal data tag that is securely attached to one of those belts. This data tag shall bear the following flat steel coated belt data:
- a. The width and thickness in millimeters or inches;
 - b. The manufacturer's rated breaking strength in (kN) or (lbf);
 - c. The name of the person or organization that installed the flat coated steel belts;
 - d. The month and year the flat coated steel belts were installed;
 - e. The month and year the flat coated steel belts were first shortened;
 - f. The name or trademark of the manufacturer of the flat coated steel belts; and
 - g. Lubrication information.

5. There shall be a crosshead data plate of the sort required by section 2.20.2.1, and that plate shall bear the following flat steel coated belt data:
 - a. The number of belts;
 - b. The belt width and thickness in millimeters or inches; and
 - c. The manufacturer's rated breaking strength per belt in (kN) or (lbf).
6. The opening to the hoistway shall be effectively barricaded when car top inspection, maintenance, servicing, or testing of elevator equipment in the hoistway is required. If service personnel must leave the area for any reason, the hoistway and control room doors shall be closed.
7. If there is an inset car top railing:
 - a. Serviceable equipment shall be positioned so that mechanics and inspectors do not have to climb on railings to perform adjustment, maintenance, repairs or inspections. The applicant shall not permit anyone to stand on or climb over the car top railing.
 - b. The distance that the car top railing may be inset shall be limited to no more than 6 inches.
 - c. All exposed areas outside the car top railing shall preclude standing or placing objects or persons which may fall and shall be beveled from the mid- or top rail to the outside of the car top.
 - d. The top of the beveled area and/or car top outside the railing, shall be clearly marked. The markings shall consist of alternating 4 inch diagonal red and white stripes.
 - e. The applicant shall provide durable signs with lettering not less than ½ inch on a contrasting background on each inset railing; each sign shall state:

CAUTION

DO NOT STAND ON OR CLIMB OVER RAILING

- f. The Group IV requirements for car top clearances shall be maintained (car top clearances outside the railing shall be measured from the car top and not from the required bevel).
8. If the seismic reset switch does not reside in a machine room, that switch shall not reside in the elevator hoistway. The switch shall reside in the inspection and test control panel located in one upper floor hoistway door jamb or in the control space (outside the hoistway) used by the motion controller.

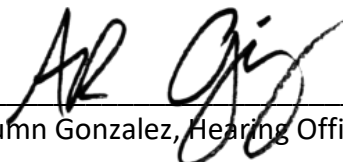
9. If the inspection transfer switch required by ASME A17.1, rule 2.26.1.4.4(a) does not reside in a machine room, that switch shall not reside in the elevator hoistway. The switch shall reside in the inspection and test control panel located in one upper floor hoistway door jamb or in the control space (outside the hoistway) used by the motion controller.
10. When the inspection and testing panel is located in the hoistway door jamb, the inspection and test control panel shall be openable only by use of a Security Group I restricted key.
11. The elevator shall be serviced, maintained, adjusted, tested, and inspected only by Certified Competent Conveyance Mechanics who have been trained to, and are competent to, perform those tasks on the Gen3 Edge/Gen2S elevator system in accordance with the written procedures and criteria required by Condition No. 3 and in accordance with the terms of this permanent variance.
12. The governor speed-reducing switch function shall comply with the following:
 - a. It shall be used only with direct drive machines; i.e., no gear reduction is permitted between the drive motor and the suspension means.
 - b. The velocity encoder shall be coupled to the driving machine motor shaft. The "C" channel of the encoder shall be utilized for velocity measurements required by the speed reducing system. The signal from "C" channel of the encoder shall be verified with the "A" and "B" channels for failure. If a failure is detected then an emergency stop shall be initiated.
 - c. Control system parameters utilized in the speed-reducing system shall be held in non-volatile memory.
 - d. It shall be used in conjunction with approved car-mounted speed governors only.
 - e. It shall be used in conjunction with an effective traction monitoring system that detects a loss of traction between the driving sheave and the suspension means. If a loss of traction is detected, then an emergency stop shall be initiated.
 - f. A successful test of the speed-reducing switch system's functionality shall be conducted at least once a year (the record of the annual test of the speed-reducing switch system shall be a maintenance record subject to ASME A17.1-2004, section 8.6.1.4).
 - g. A successful test of the traction monitoring system's functionality shall be conducted at least once a year (the record of the annual test of the traction monitoring system shall be a maintenance record subject to ASME A17.1-2004, section 8.6.1.4).
 - h. The Applicant shall not utilize the elevator unless the manufacturer has written procedures for the maintenance, inspection, and testing of the speed-reducing switch and traction

monitoring systems. The Applicant shall make the procedures available to the Division upon request.

13. The speed governor rope and sheaves shall comply with the following:
 - a. The governor shall be used in conjunction with a 6 mm (0.25 in.) diameter steel governor rope with 6-strand, regular lay construction.
 - b. The governor rope shall have a factor of safety of 8 or greater as related to the strength necessary to activate the safety.
 - c. The governor sheaves shall have a pitch diameter of not less than 180 mm (7.1 in.).
14. Any Certified Qualified Conveyance Company performing inspections, maintenance, servicing, or testing of the elevators shall be provided a copy of this variance decision.
15. The Division shall be notified when the elevator is ready for inspection. The elevator shall be inspected by the Division, and a Permit to Operate shall be issued before the elevator is placed in service.
16. The Applicant shall be subject to the Suspension Means – Replacement Reporting Condition stated in Addendum 2, as hereby incorporated by this reference.
17. The Applicant shall notify its employees or their authorized representative(s), or both, of this order in the same way and to the same extent that employees and authorized representatives are to be notified of docketed permanent variance applications pursuant to California Code of Regulations, title 8, sections 411.2 and 411.3.
18. This Decision and Order shall remain in effect unless modified or revoked upon application by the Applicant, affected employee(s), the Division of Occupational Safety and Health, or by the Board on its own motion, in accordance with procedures per title 8, Division 1, Chapter 3.5.

Pursuant to section 426 (b) of the Board's procedural regulations, the above Proposed Decision, is hereby submitted to the Occupational Safety and Health Standards Board for consideration of adoption.

Dated: December 2, 2022



Autumn Gonzalez, Hearing Officer

ADDENDUM 1

October 6, 2010

CIRCULAR LETTER E-10-04

TO: Installers, Manufacturers of Conveyances and Related Equipment and, Other Interested Parties

SUBJECT: Coated Steel Belt Monitoring

The Elevator Safety Orders require routine inspection of the suspension means of an elevator to assure its safe operation.

The California Labor Code section 7318 allows the Division to promulgate special safety orders in the absence of regulation.

As it is not possible to see the steel cable suspension means of a Coated Steel Belt, a monitoring device which has been accepted by the Division is required on all Coated Steel Belts which will automatically stop the car if the residual strength of any belt drops below 60%. The Device shall prevent the elevator from restarting after a normal stop at a landing.

The monitoring device must be properly installed and functional. A functioning device may be removed only after a determination has been made that the residual strength of each belt exceeds 60%. These findings and the date of removal are to be conspicuously documented in the elevator machine room. The removed device must be replaced or returned to proper service within 30 days.

If upon routine inspection, the monitoring device is found to be in a non-functional state, the date and findings are to be conspicuously documented in the elevator machine room.

If upon inspection by the Division, the monitoring device is found to be non-functional or removed, and the required documentation is not in place, the elevator will be removed from service.

If the device is removed to facilitate belt replacement, it must be properly installed and functional before the elevator is returned to service.

A successful test of the device's functionality shall be conducted once a year.

This circular does not preempt the Division from adopting regulations in the future, which may address the monitoring of Coated Steel Belts or any other suspension means.

This circular does not create an obligation on the part of the Division to permit new conveyances utilizing Coated Steel Belts.

Debra Tudor
Principal Engineer
DOSH-Elevator Unit HQS

ADDENDUM 2

Suspension Means – Replacement Reporting Condition

Beginning on the date the Board adopts this Proposed Decision and continuing for a period of two years, the Applicant shall report to the Division within 30 days any and all replacement activity performed on the elevator(s) pursuant to the requirements of ASME A17.1-2004, section 8.6.3 involving the suspension means or suspension means fastenings.

Further:

1. A separate report for each elevator shall be submitted, in a manner acceptable to the Division, to the following address (or to such other address as the Division might specify in the future): DOSH Elevator Unit, 2 MacArthur Place, Suite 700, Santa Ana, CA 92707, Attn: Engineering Section.
2. Each such report shall contain, but not necessarily be limited to, the following information:
 - a. The State-issued conveyance number, complete address, and OSHSB file number that identifies the permanent variance.
 - b. The business name, complete address, telephone number, and contact person of the elevator responsible party (presumably the Applicant or the subsequent holder of this variance).
 - c. The business name, complete address, telephone number, and Certified Qualified Conveyance Company (CQCC) certification number of the firm performing the replacement work.
 - d. The name (as listed on certification), Certified Competent Conveyance Mechanic (CCCM) certification number, certification expiration date, and signature of each CCCM performing the replacement work.
 - e. The date and time the elevator was removed from normal service for suspension replacement, the date and time the replacement work commenced, the date and time the replacement work was completed, and the date and time the elevator was returned to normal service.
 - f. A detailed description of, and clear color photographs depicting, (1) all the conditions that existed in the suspension components requiring their replacement and (2) any conditions that existed to cause damage or distress to the suspension components being replaced.

- g. A detailed list of all elevator components adjusted, repaired, or replaced in conjunction with the suspension component replacement.
 - h. All information provided on the crosshead data plate per ASME A17.1-2004, section 2.20.2.1, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.
 - i. For the suspension means being replaced, all information provided on the data tag required per ASME A17.1-2004, section 2.20.2.2, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.
 - j. For the replacement suspension means, all information provided on the data tag required by ASME A17.1-2004, section 2.20.2.2, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.
 - k. Any other information requested by the Division regarding the replacement of the suspension means or fastenings.
3. In addition to the submission of the report to the Division, the findings of any testing, failure analysis, or other engineering evaluations performed on any portion of the replaced suspension components, or other elevator components replaced in conjunction therewith, shall be submitted to the Division referencing the information contained in item 2a above.

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
(916) 274-5721

In the Matter of Application for
Permanent Variance regarding:

Otis Medical Emergency Elevator Car
Dimensions (Group IV)

OSHSB File No.: see grid in Item A of
Proposed Decision Dated: December 2, 2022

DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached
PROPOSED DECISION by Autumn Gonzalez, Hearing Officer.

DAVID THOMAS, Chairman

BARBARA BURGEL, Member

KATHLEEN CRAWFORD, Member

DAVID HARRISON, Member

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Date of Adoption: December 15, 2022

THE FOREGOING VARIANCE DECISION WAS
ADOPTED ON THE DATE INDICATED ABOVE.
IF YOU ARE DISSATISFIED WITH THE
DECISION, A PETITION FOR REHEARING
MAY BE FILED BY ANY PARTY WITH THE
STANDARDS BOARD WITHIN TWENTY (20)
DAYS AFTER SERVICE OF THE DECISION.
YOUR PETITION FOR REHEARING MUST
FULLY COMPLY WITH THE REQUIREMENTS
OF CALIFORNIA CODE OF REGULATIONS,
TITLE 8, SECTIONS 427, 427.1 AND 427.2.

Note: A copy of this Decision must be
posted for the Applicant's employees to
read, and/or a copy thereof must be
provided to the employees' Authorized
Representatives.

BEFORE THE
 OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
 DEPARTMENT OF INDUSTRIAL RELATIONS
 STATE OF CALIFORNIA

<p>In the Matter of Application for Permanent Variance regarding:</p> <p>Otis Medical Emergency Elevator Car Dimensions (Group IV)</p>	<p>OSHSB File Nos.: see grid below</p> <p><u>PROPOSED DECISION</u></p> <p>Hearing Date: November 30, 2022</p>
--	---

A. Jurisdictional and Procedural Matters

- Each below listed applicant (“Applicant”) has applied for permanent variances from provisions of the Elevator Safety Orders, found at title 8 of the California Code of Regulations¹, with respect to the listed conveyance or conveyances, at the specified location:

Variance No.	Applicant Name	Variance Location Address
22-V-463	1411 S. Flower QOZB, LLC	1411 S. Flower St. Los Angeles, CA
22-V-465	Linc-Wilmington Apts LP	1435 N. Eubank Ave. Los Angeles, CA
22-V-467	San Rafael Senior, L.P.	999 3rd St. San Rafael, CA
22-V-469	SOF-X Sunnyvale, LP	1100 N. Mathilda Ave. Sunnyvale, CA
22-V-471	Suncoast Hill Street LLC	1340 S. Hill St. Los Angeles, CA
22-V-474	Vintage at University Glen, LP	100 Santa Rosa Island Dr. Camarillo, CA
22-V-475	Western & Franklin, LLC	5440 W. Franklin Ave. Los Angeles, CA
22-V-477	Pasadena Studios, LP	280 N. Oakland Ave. Pasadena, CA
22-V-495	Oxnard School District	Rose Avenue Elementary School 220 S. Driskill St. Oxnard, CA

¹ Unless otherwise noted, all references are to the California Code of Regulations, title 8.

22-V-496	San Dieguito Union High School District	710 Encinitas Blvd. Encinitas, CA
22-V-510	475 South Lake Ave., LLC	475 South Lake Ave. Pasadena, CA
22-V-514	BTICS, L.P.	1919 W. Court Street Los Angeles, CA

2. This proceeding is conducted in accordance with Labor Code section 143, and section 401, et. seq. of the Board’s rules of practice and procedure.
3. This hearing was held on November 30, 2022, in Sacramento, California, and via teleconference, by Occupational Safety and Health Standards Board (“Board”), with Hearing Officer Autumn Gonzalez, both presiding and hearing the matter on its merit, as a basis of proposed decision to be advanced to the Board for its consideration, in accordance with section 426.
4. At the hearing, Dan Leacox of Leacox & Associates, and Wolter Geesink with Otis Elevator, appeared on behalf of each Applicant; Mark Wickens and Jose Ceja appeared on behalf of the Division of Occupational Safety and Health (“Division”), and Michael Nelmidia appeared on behalf of the Board.
5. Oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence:

Exhibit Number	Description of Exhibit
PD-1	Permanent variance applications per Section A.1 table
PD-2	OSHSB Notice of Hearing
PD-3	Board Staff Reviews of Variance Application
PD-4	Division Reviews of Variance Application
PD-5	Review Draft-1 Proposed Decision

Official notice is taken of the Board’s rulemaking records, and variance files and decisions, concerning the Elevator Safety Order standards at issue. At close of hearing on November 30, 2022, the record was closed, and the matter taken under submission by the Hearing Officer.

B. Findings of Fact and Applicable Regulations

Based upon the record of this proceeding, the Board finds the following:

1. Applicant requests a permanent variance from section 3041, subdivision (e)(1)(C), which states:

(1) All buildings and structures constructed after the effective date of this order that are provided with one or more passenger

elevators shall be provided with not less than one passenger elevator designed and designated to accommodate the loading and transport of an ambulance gurney or stretcher maximum size 22 ½ in. (572 mm) by 75 in. (1.90 m) in its horizontal position and arranged to serve all landings in conformance with the following:

...

(C) The elevator car shall have a minimum inside car platform of 80 in. (2.03 m) wide by 51 in. (1.30 m) deep.

The intent of this language is to ensure that there is enough space to accommodate the access and egress of a gurney and medical personnel inside of a medical service elevator.

This standard is made applicable to Group IV by section 3141.7, subdivision (b), which reads, "Elevators utilized to provide medical emergency service shall comply with Group II, section 3041(e)."

2. Applicant proposes to comply with the requirements of the 2019 California Building Code, section 3002.4.1a in the design of its medical emergency service elevator. That section requires:

The medical emergency service elevator shall accommodate the loading and transport of two emergency personnel, each requiring a minimum clear 21-inch (533 mm) diameter circular area and an ambulance gurney or stretcher [minimum size 24 inches by 84 inches (610 mm by 2134 mm) with not less than 5-inch (127 mm) radius corners] in the horizontal, open position.

The purpose of this requirement is to ensure that an elevator designated for emergency medical service will accommodate a minimum of two emergency personnel with an ambulance gurney or stretcher.

C. Conclusive Findings

The above-stated procedural prerequisites, legal authority, and factual findings, as further supported by the documentary record and hearing testimony in this matter, provide a substantive and reasonable basis of conclusion that: (1) Each Applicant has complied with the statutory and regulatory requirements that must be met before an application for permanent variance may be conditionally granted; and (2) a preponderance of the evidence establishes that each Applicants' proposal, subject to all conditions and limitations set forth in the below Decision and Order, will provide equivalent safety and health to that which would prevail upon full compliance with the requirements of the Elevator Safety Orders from which variance is being sought.

D. Decision and Order

Each permanent variance application the subject of this proceeding is conditionally GRANTED as specified below, and to the extent, as of the date the Board adopts this Proposed Decision, each Applicant listed in the above section A.1 table shall have permanent variances from sections 3041, subdivision (e)(1)(C) and 3141.7, subdivision (b) subject of the following conditions:

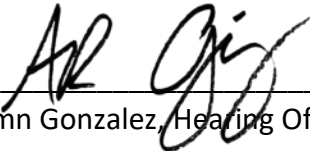
1. All medical emergency service elevator(s) shall comply with the requirements of the 2019 California Building Code section 3002.4.1a:

The medical emergency service elevator shall accommodate the loading and transport of two emergency personnel, each requiring a minimum clear 21-inch (533 mm) diameter circular area and an ambulance gurney or stretcher [minimum size 24 inches by 84 inches (610 mm by 2134 mm) with not less than 5-inch (127 mm) radius corners] in the horizontal, open position.

2. All medical emergency service elevator(s) shall be identified in the building construction documents in accordance with the 2019 California Building Code, section 3002.4a.
3. Dimensional drawings and other information necessary to demonstrate compliance with the conditions of this permanent variance decision shall be provided to the Division, at the time of inspection, for all medical emergency service elevator(s).
4. Any Certified Qualified Conveyance Company performing inspections, maintenance, servicing, or testing the elevators shall be provided a copy of this variance decision.
5. The Division shall be notified when the elevator is ready for inspection. The elevator shall be inspected by the Division, and all applicable requirements met, including conditions of this permanent variance, prior to a Permit to Operate the elevator being issued. The elevator shall not be placed in service prior to the Permit to Operate being issued by Division.
6. Applicant shall notify its employees and their authorized representative, of this order in the same way and to the same extent that employees and authorized representatives are to be notified of docketed permanent variance applications pursuant to sections 411.2 and 411.3.
7. This Decision and Order shall remain in effect unless duly modified or revoked upon application by Applicant, affected employee(s), the Division, or by the Board on its own motion, in accordance with then in effect administrative procedures of the Board.

Pursuant to section 426, subdivision (b) of the Board's procedural regulations, the above Proposed Decision, is hereby submitted to the Occupational Safety and Health Standards Board for consideration of adoption.

DATED: December 2, 2022



Autumn Gonzalez, Hearing Officer

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
(916) 274-5721

In the Matter of Application for
Permanent Variance regarding:

KONE Monospace 300 Elevators (Group IV)

OSHSB File No.: see grid in Item A of
Proposed Decision Dated: December 2, 2022

DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached
PROPOSED DECISION by Autumn Gonzalez, Hearing Officer.

DAVID THOMAS, Chairman

BARBARA BURGEL, Member

KATHLEEN CRAWFORD, Member

DAVID HARRISON, Member

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Date of Adoption: December 15, 2022

THE FOREGOING VARIANCE DECISION WAS
ADOPTED ON THE DATE INDICATED ABOVE.
IF YOU ARE DISSATISFIED WITH THE
DECISION, A PETITION FOR REHEARING
MAY BE FILED BY ANY PARTY WITH THE
STANDARDS BOARD WITHIN TWENTY (20)
DAYS AFTER SERVICE OF THE DECISION.
YOUR PETITION FOR REHEARING MUST
FULLY COMPLY WITH THE REQUIREMENTS
OF CALIFORNIA CODE OF REGULATIONS,
TITLE 8, SECTIONS 427, 427.1 AND 427.2.

Note: A copy of this Decision must be
posted for the Applicant's employees to
read, and/or a copy thereof must be
provided to the employees' Authorized
Representatives.

BEFORE THE
 OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
 DEPARTMENT OF INDUSTRIAL RELATIONS
 STATE OF CALIFORNIA

In the Matter of Application for Permanent Variance Regarding: KONE Monospace 300 Elevators (Group IV)	OSHSB File Nos.: See Section A.1 Table Below <u>PROPOSED DECISION</u> Hearing Date: November 30, 2022
---	---

A. Subject Matter:

- Each below listed applicant (“Applicant”) applied for a permanent variance from provisions of the Elevator Safety Orders, found at Title 8 of the California Code of Regulations, with respect to a conveyance, or conveyances, in the listed quantity, at the listed location:

Variance No.	Applicant Name	Variance Location Address	No. of Elevators
22-V-479	Arden Gateway Owner, LLC	1566 Bartlett Lane Sacramento, CA	1
22-V-480	Arden Gateway Owner, LLC	1572 Bartlett Lane Sacramento, CA	1
22-V-481	Arden Gateway Owner, LLC	1578 Bartlett Lane Sacramento, CA	2
22-V-482	Arden Gateway Owner, LLC	1584 Bartlett Lane Sacramento, CA	1
22-V-487	Fourth and G Partners, LLC	330 G St. West Sacramento, CA	1
22-V-493	Arden Gateway Owner, LLC	1590 Bartlett Lane Sacramento, CA	1

- The subject Title 8, safety order requirements are set out within California Code of Regulations, Title 8, Section 3141 incorporated ASME A17.1-2004, Sections 2.18.5.1 and 2.20.4.

B. Procedural:

1. This hearing was held on November 30, 2022, in Sacramento, California, via teleconference, by delegation of the Occupational Safety and Health Standards Board (“Board”), with Hearing Officer Autumn Gonzalez, both presiding and hearing the matter on its merit, as a basis of proposed decision to be advanced to the Board for its consideration, in accordance with California Code of Regulations, Title 8, Section 426.
2. At the hearing, Fuei Saetern, with KONE, Inc., appeared on behalf of each Applicant; Mark Wickens and Jose Ceja appeared on behalf of the Division of Occupational Safety and Health (“Division”), and Michael Nelmda appeared on behalf of the Board.
3. Documentary and oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence:

Exhibit Number	Description of Exhibit
PD-1	Application(s) for Permanent Variance per section A.1 table
PD-2	OSHSB Notice of Hearing
PD-3	Board Staff Review of Variance Application
PD-4	Division Review of Variance Application
PD-5	Review Draft-1 Proposed Decision

Official notice is taken of the Board’s files, records, recordings and decisions concerning the Elevator Safety Order requirements from which variance shall issue. On November 30, 2022, the hearing and record closed, and the matter was taken under submission by the Hearing Officer.

- C. Findings of Fact—Based on the record of this proceeding, the Board finds the following:
1. Each respective Applicant intends to utilize the KONE Inc. Monospace 300 type elevator, in the quantity, at the location, specified per the above Section A.1 table.
 2. The installation contract for this elevator was or will be signed on or after May 1, 2008, thus making the elevator subject to the Group IV Elevator Safety Orders.
 3. Each Applicant proposes to use hoisting ropes that are 8 mm in diameter which also consist of 0.51 mm diameter outer wires, in variance from the express requirements of ASME A17.1-2004, Section 2.20.4.
 4. In relevant part, ASME A17.1-2004, Section 2.20.4 states:

2.20.4 Minimum Number and Diameter of Suspension Ropes

...The minimum diameter of hoisting and counterweight ropes shall be 9.5 mm (0.375 in.). Outer wires of the ropes shall be not less than 0.56 mm (0.024 in.) in diameter.

5. An intent of the afore cited requirement of ASME A17.1-2004, Section 2.20.4, is to ensure that the number, diameter, and construction of suspension ropes are adequate to provided safely robust and durable suspension means over the course of the ropes' foreseen service life.
6. KONE has represented to Division and Board staff, having established an engineering practice for purposes of Monospace 300 elevator design, of meeting or exceeding the minimum factor of safety of 12 for 8 mm suspension members, as required in ASME A17.1-2010, Section 2.20.3—under which, given that factor of safety, supplemental broken suspension member protection is not required.
7. Also, each Applicant proposes as a further means of maintaining safety equivalence, monitoring the rope in conformity with the criteria specified within the *Inspector's Guide to 6 mm Diameter Governor and 8 mm Diameter Suspension Ropes for KONE Elevators* (per Application attachment "B", or as thereafter revised by KONE subject to Division approval).
8. In addition, each Applicant has proposed to utilize 6 mm diameter governor ropes in variance from Title 8, Section 3141, incorporated ASME A17.1-2004, Section 2.18.5.1.
9. ASME A17.1-2004, Section 2.18.5.1, specifies, in relevant part:

2.18.5.1 Material and Factor of Safety.

... [Governor ropes] not less than 9.5 mm (0.375 in.) in diameter. The factor of safety of governor ropes shall be not less than 5...

10. The Board takes notice of Title 8, Elevator Safety Order Section 3141.7, subpart (a)(10):

A reduced diameter governor rope of equivalent construction and material to that required by ASME A17.1-2004, is permissible if the factor of safety as related to the strength necessary to activate the safety is 5 or greater;

11. Applicants propose use of 6mm governor rope having a safety factor of 5 or greater, in conformity with Section 3141.7(a)(10), the specific parameters of which, being expressly set out within Title 8, Elevator Safety Orders, take precedence over more generally referenced governor rope diameter requirements per ASME A17.1-2004, Section 2.18.5.1. Accordingly, the governor rope specifications being presently proposed, inclusive of a factor of safety of 5 or greater, would comply with current Title 8, Elevator Safety Orders requirements, and therefore not be subject to issuance of permanent variance.

12. Absent evident diminution in elevator safety, over the past decade the Board has issued numerous permanent variances for use in KONE (Ecospace) elevator systems of 8 mm diameter suspension rope materially similar to that presently proposed (e.g. OSHSB File Nos. 06-V-203, 08-V-245, and 13-V-303).
13. As noted by the Board in OSHSB File Nos. 18-V-044, and 18-V-045, Decision and Order Findings, subpart B.17 (hereby incorporated by reference), the strength of wire rope operating as an elevator's suspension means does not remain constant over its years of projected service life. With increasing usage cycles, a reduction in the cross-sectional area of the wire rope normally occurs, resulting in decreased residual strength. This characteristic is of particular relevance to the present matter because, as also noted by Board staff, decreasing wire rope diameter is associated with a higher rate of residual strength loss. This foreseeable reduction in cross-sectional area primarily results from elongation under sheave rounding load, as well as from wear, and wire or strand breaks. However, these characteristics need not compromise elevator safety when properly accounted for in the engineering of elevator suspension means, and associated components.
14. The presently proposed wire rope is Wuxi Universal steel rope Co LTD. 8 mm 8x19S+8x7+PP, with a manufacturer rated breaking strength of 35.8 kN, and an outer wire diameter of less than 0.56 mm, but not less than 0.51 mm. Both Board staff and Division safety engineers have scrutinized the material and structural specifications, and performance testing data, of this particular proposed rope, and conclude it will provide for safety equivalent to ESO compliant 9.5 mm wire rope, with 0.56 mm outer wire (under conditions of use included within the below Decision and Order).
15. The applicant supplies tabulated data regarding the "Maximum Static Load on All Suspension Ropes." To obtain the tabulated data, the applicant uses the following formula derived from ASME A17.1 2004, Section 2.20.3:

$$W = (S \times N) / f$$

where

W = maximum static load imposed on all car ropes with the car and its rated load at any position in the hoistway

N = number of runs of rope under load. For 2:1 roping, N shall be two times the number of ropes used, etc.

S = manufacturer's rated breaking strength of one rope

f = the factor of safety from Table 2.20.3

16. ASME A17.1-2010 Sections 2.20.3 and 2.20.4 utilize the same formula, but provide for use of suspension ropes having a diameter smaller than 9.5 mm, under specified conditions, key among them being that use of ropes having a diameter of between 8 mm to 9.5 mm be engineered with a factor of safety of 12 or higher. This is a higher

minimum factor of safety than that proposed by Applicant, but a minimum recommended by both Board staff and Division as a condition of variance necessary to the achieving of safety equivalence to 9.5 mm rope.

17. Board staff and Division are in accord with Applicant, in proposing as a condition of safety equivalence, that periodic physical examination of the wire ropes be performed to confirm the ropes continue to meet the criteria set out in the (Application attachment) *Inspector's Guide to 6 mm Diameter Governor and 8 mm Diameter Suspension Ropes for KONE Elevators*. Adherence to this condition will provide an additional assurance of safety equivalence, regarding smaller minimum diameter suspension rope outer wire performance over the course of its service life.

18. Both Board staff, and Division, by way of written submissions to the record (Exhibits PD-3 and PD-4 respectively), and stated positions at hearing, are of the well informed opinion that grant of permanent variance, as limited and conditioned per the below Decision and Order will provide employment, places of employment, and subject conveyances, as safe and healthful as would prevail given non-variant conformity with the Elevator Safety Order requirements from which variance has been requested.

D. Conclusive Findings:

The above stated procedural prerequisites, legal authority, and factual findings, as further supported by the documentary record and hearing testimony in this matter, provide a substantive and reasonable basis of conclusion that: (1) Each Applicant has complied with the statutory and regulatory requirements that must be met before an application for permanent variance may be conditionally granted; and (2) a preponderance of the evidence establishes that each Applicants proposal, subject to all conditions and limitations set forth in the below Decision and Order, will provide equivalent safety and health to that which would prevail upon full compliance with the requirements of California Code of Regulation, Title 8, Elevator Safety Orders from which variance is being sought.

E. Decision and Order:

Each Application being the subject of this proceeding, per above Section A.1 table, is conditionally GRANTED, to the extent that each such Applicant shall be issued permanent variance from California Code of Regulations, Title 8, Section 3141 incorporated ASME A17.1-2004, Section 2.20.4, in as much as it precludes use of suspension rope of between 8 mm and 9.5 mm, or outer wire of between 0.51 mm and 0.56 mm in diameter, at such locations and numbers of Group IV KONE Monospace 300 elevators identified in each respective Application, subject to the following conditions:

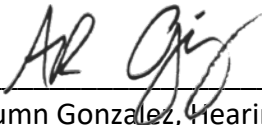
1. The diameter of the hoisting steel ropes shall be not less than 8 mm (0.315 in) diameter and the roping ratio shall be two to one (2:1).

2. The outer wires of the suspension ropes shall be not less than 0.51 mm (0.02 in.) in diameter.
3. The number of suspension ropes shall be not fewer than those specified per hereby incorporated Decision and Order Appendix 1 Table.
4. The ropes shall be inspected annually for wire damage (rouge, valley break etc.) in accordance with "KONE Inc. Inspector's Guide to 6 mm diameter and 8 mm diameter steel ropes for KONE Elevators" (per Application Exhibit B, or as thereafter amended by KONE subject to Division approval).
5. A rope inspection log shall be maintained and available in the elevator controller room / space at all times.
6. The elevator rated speed shall not exceed those speeds specified per the Decision and Order Appendix 1 Table.
7. The maximum suspended load shall not exceed those weights (plus 5%) specified per the Decision and Order Appendix 1 Table.
8. The opening to the hoistway shall be effectively barricaded when car top inspection, maintenance, servicing, or testing of the elevator equipment in the hoistway is required. If the service personnel must leave the area for any reason, the hoistway and control room doors shall be closed.
9. The installation shall meet the suspension wire rope factor of safety requirements of ASME A17.1-2013 Section 2.20.3.
10. Any Certified Qualified Conveyance Company performing inspections, maintenance, servicing or testing the elevators shall be provided a copy of this variance decision.
11. The Division shall be notified when the elevator is ready for inspection. The elevator shall be inspected by the Division and a "Permit to Operate" issued before the elevator is placed in service.
12. The Applicant shall comply with suspension means replacement reporting condition per hereby incorporated Decision and Order Appendix 2.
13. The Applicant shall notify its employees or their authorized representative(s), or both, of this order in the same way and to the same extent that employees and authorized representatives are to be notified of docketed permanent variance applications pursuant to California Code of Regulations, Title 8, Sections 411.2 and 411.3.
14. This Decision and Order shall remain in effect unless modified or revoked upon application by the Applicant, affected employee(s), the Division of Occupational Safety

and Health, or by the Board on its own motion, in accordance with procedures per Title 8, Division 1, Chapter 3.5.

Pursuant to California Code of Regulations, Title 8, Section 426(b), the above, duly completed proposed Decision, is hereby submitted to the Occupational Safety and Health Standards Board for consideration of adoption.

Dated: December 6, 2022



Autumn Gonzalez, Hearing Officer

Appendix 1

Monospace 300 Suspension Ropes Appendix 1 Table

Variance Number	Elevator ID	Minimum Quantity of Ropes (per Condition 3)	Maximum Speed in Feet per Minute (per Condition 6)	Maximum Suspended Load (per Condition 7)
22-V-479	1	7	150	12247
22-V-480	1	7	150	12247
22-V-481	1	7	150	12247
22-V-481	2	7	150	12247
22-V-482	1	7	150	12247
22-V-487	1	7	150	12247
22-V-493	1	7	150	12247

Appendix 2

Suspension Means Replacement Reporting Condition

Beginning on the date the Board adopts this Proposed Decision and continuing for a period of two years, the Applicant shall report to the Division within 30 days any and all replacement activity performed on the elevator(s) pursuant to the requirements of ASME A17.1-2004, Section 8.6.3 involving the suspension means or suspension means fastenings. Further:

1. A separate report for each elevator shall be submitted, in a manner acceptable to the Division, to the following address (or to such other address as the Division might specify in the future): DOSH Elevator Unit, 2 MacArthur Place, Suite 700, Santa Ana, CA 92707, Attn: Engineering Section.
2. Each such report shall contain, but not necessarily be limited to, the following information:
 - a. The State-issued conveyance number, complete address, and OSHSB file number that identifies the permanent variance.
 - b. The business name, complete address, telephone number, and contact person of the elevator responsible party (presumably the Applicant or the subsequent holder of this variance).
 - c. The business name, complete address, telephone number, and Certified Qualified Conveyance Company (CQCC) certification number of the firm performing the replacement work.
 - d. The name (as listed on certification), Certified Competent Conveyance Mechanic (CCCM) certification number, certification expiration date, and signature of each CCCM performing the replacement work.
 - e. The date and time the elevator was removed from normal service for suspension replacement, the date and time the replacement work commenced, the date and time the replacement work was completed, and the date and time the elevator was returned to normal service.
 - f. A detailed description of, and clear color photographs depicting, (1) all the conditions that existed in the suspension components requiring their replacement and (2) any conditions that existed to cause damage or distress to the suspension components being replaced.
 - g. A detailed list of all elevator components adjusted, repaired, or replaced in conjunction with the suspension component replacement.

- h. All information provided on the crosshead data plate per ASME A17.1-2004, Section 2.20.2.1, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.
 - i. For the suspension means being replaced, all information provided on the data tag required per ASME A17.1-2004, Section 2.20.2.2, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.
 - j. For the replacement suspension means, all information provided on the data tag required by ASME A17.1-2004, Section 2.20.2.2, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.
 - k. Any other information requested by the Division regarding the replacement of the suspension means or fastenings.
3. In addition to the submission of the report to the Division, the findings of any testing, failure analysis, or other engineering evaluations performed on any portion of the replaced suspension components, or other elevator components replaced in conjunction therewith, shall be submitted to the Division referencing the information contained in above Appendix 2, Section 2, Subsection (a), above.

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
(916) 274-5721

In the Matter of Application for
Permanent Variance regarding:

KONE Monospace 500 Elevators (Group IV)

OSHSB File No.: see grid in Item A of
Proposed Decision Dated: December 2, 2022

DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached
PROPOSED DECISION by Autumn Gonzalez, Hearing Officer.

DAVID THOMAS, Chairman

BARBARA BURGEL, Member

KATHLEEN CRAWFORD, Member

DAVID HARRISON, Member

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Date of Adoption: December 15, 2022

THE FOREGOING VARIANCE DECISION WAS
ADOPTED ON THE DATE INDICATED ABOVE.
IF YOU ARE DISSATISFIED WITH THE
DECISION, A PETITION FOR REHEARING
MAY BE FILED BY ANY PARTY WITH THE
STANDARDS BOARD WITHIN TWENTY (20)
DAYS AFTER SERVICE OF THE DECISION.
YOUR PETITION FOR REHEARING MUST
FULLY COMPLY WITH THE REQUIREMENTS
OF CALIFORNIA CODE OF REGULATIONS,
TITLE 8, SECTIONS 427, 427.1 AND 427.2.

Note: A copy of this Decision must be
posted for the Applicant's employees to
read, and/or a copy thereof must be
provided to the employees' Authorized
Representatives.

BEFORE THE
 OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
 DEPARTMENT OF INDUSTRIAL RELATIONS
 STATE OF CALIFORNIA

In the Matter of Application for Permanent Variance Regarding: KONE Monospace 500 Elevators (Group IV)	OSHSB File Nos.: see grid below <u>PROPOSED DECISION</u> Hearing Date: November 30, 2022
---	--

A. Subject Matter:

- Each below listed applicant (“Applicant”) applied for a permanent variance from provisions of the Elevator Safety Orders, found at title 8 of the California Code of Regulations, with respect to a conveyance, or conveyances, in the listed quantity, at the listed location:

Variance No.	Applicant Name	Variance Location Address	No. of Elevators
22-V-483	The Scripps Research Institute	10330 John Jay Hopkins Dr. San Diego, CA	1
22-V-484	San Bernardino Community College District	701 South Mount Vernon Ave. San Bernardino, CA	2
22-V-508	Santa Monica Malibu Unified School District	601 Pico Blvd. Santa Monica, CA	3

- The subject title 8, safety order requirements are set out within California Code of Regulations, title 8, section 3141 incorporated ASME A17.1-2004, Sections 2.18.5.1 and 2.20.4.

B. Procedural:

- This hearing was held on November 30, 2022, in Sacramento, California, via teleconference, by delegation of the Occupational Safety and Health Standards Board (“Board”), with Hearing Officer Autumn Gonzalez, both presiding and hearing the matter on its merit, as a basis of proposed decision to be advanced to the Board for its consideration, in accordance with California Code of Regulations, title 8, section 426.

2. At the hearing, Fuei Saetern, with KONE, Inc., appeared on behalf of each Applicant; Mark Wickens and Jose Ceja appeared on behalf of the Division of Occupational Safety and Health (“Division”), and Michael Nelmidia appeared on behalf of the Board.
3. Documentary and oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence:

Exhibit Number	Description of Exhibit
PD-1	Application(s) for Permanent Variance per section A.1 table
PD-2	OSHSB Notice of Hearing
PD-3	Board Staff Review of Variance Application
PD-4	Division Review of Variance Application
PD-5	Review Draft-1 Proposed Decision

Official notice is taken of the Board’s files, records, recordings and decisions concerning the Elevator Safety Order requirements from which variance shall issue. On November 30, 2022, the hearing and record closed, and the matter was taken under submission by the Hearing Officer.

- C. Findings of Fact—Based on the record of this proceeding, the Board finds the following:
1. Each respective Applicant intends to utilize the KONE Inc. Monospace 500 type elevator, in the quantity, at the location, specified per the above Section A.1 table.
 2. The installation contract for this elevator was or will be signed on or after May 1, 2008, thus making the elevator subject to the Group IV Elevator Safety Orders.
 3. Each Applicant proposes to use hoisting ropes that are 8 mm in diameter which also consist of 0.51 mm diameter outer wires, in variance from the express requirements of ASME A17.1-2004, Section 2.20.4.
 4. In relevant part, ASME A17.1-2004, Section 2.20.4 states:

2.20.4 Minimum Number and Diameter of Suspension Ropes

...The minimum diameter of hoisting and counterweight ropes shall be 9.5 mm (0.375 in.). Outer wires of the ropes shall be not less than 0.56 mm (0.024 in.) in diameter.

5. An intent of the afore cited requirement of ASME A17.1-2004, Section 2.20.4, is to ensure that the number, diameter, and construction of suspension ropes are adequate to provided safely robust and durable suspension means over the course of the ropes’ foreseen service life.

6. KONE has represented to Division and Board staff, having established an engineering practice for purposes of Monospace 500 elevator design, of meeting or exceeding the minimum factor of safety of 12 for 8 mm suspension members, as required in ASME A17.1-2010, Section 2.20.3—under which, given that factor of safety, supplemental broken suspension member protection is not required.
7. Also, each Applicant proposes as a further means of maintaining safety equivalence, monitoring the rope in conformity with the criteria specified within the *Inspector's Guide to 6 mm Diameter Governor and 8 mm Diameter Suspension Ropes for KONE Elevators* (per Application attachment "B", or as thereafter revised by KONE subject to Division approval).
8. In addition, each Applicant has proposed to utilize 6 mm diameter governor ropes in variance from title 8, section 3141, incorporated ASME A17.1-2004, Section 2.18.5.1.
9. ASME A17.1-2004, Section 2.18.5.1, specifies, in relevant part:

2.18.5.1 Material and Factor of Safety.

... [Governor ropes] not less than 9.5 mm (0.375 in.) in diameter. The factor of safety of governor ropes shall be not less than 5...

10. The Board takes notice of title 8, Elevator Safety Order Section 3141.7, subpart (a)(10):

A reduced diameter governor rope of equivalent construction and material to that required by ASME A17.1-2004, is permissible if the factor of safety as related to the strength necessary to activate the safety is 5 or greater;

11. Applicants propose use of 6mm governor rope having a safety factor of 5 or greater, in conformity with Section 3141.7(a)(10), the specific parameters of which, being expressly set out within title 8, Elevator Safety Orders, take precedence over more generally referenced governor rope diameter requirements per ASME A17.1-2004, Section 2.18.5.1. Accordingly, the governor rope specifications being presently proposed, inclusive of a factor of safety of 5 or greater, would comply with current title 8, Elevator Safety Orders requirements, and therefore not be subject to issuance of permanent variance.
12. Absent evident diminution in elevator safety, over the past decade the Board has issued numerous permanent variances for use in KONE (Ecospace) elevator systems of 8 mm diameter suspension rope materially similar to that presently proposed (e.g. OSHSB File Nos. 06-V-203, 08-V-245, and 13-V-303).
13. As noted by the Board in OSHSB File Nos. 18-V-044, and 18-V-045, Decision and Order Findings, subpart B.17 (hereby incorporated by reference), the strength of wire rope operating as an elevator's suspension means does not remain constant over its years of

projected service life. With increasing usage cycles, a reduction in the cross-sectional area of the wire rope normally occurs, resulting in decreased residual strength. This characteristic is of particular relevance to the present matter because, as also noted by Board staff, decreasing wire rope diameter is associated with a higher rate of residual strength loss. This foreseeable reduction in cross-sectional area primarily results from elongation under sheave rounding load, as well as from wear, and wire or strand breaks. However, these characteristics need not compromise elevator safety when properly accounted for in the engineering of elevator suspension means, and associated components.

14. The presently proposed wire rope is Wuxi Universal steel rope Co LTD. 8 mm 8x19S+8x7+PP, with a manufacturer rated breaking strength of 35.8 kN, and an outer wire diameter of less than 0.56 mm, but not less than 0.51 mm. Both Board staff and Division safety engineers have scrutinized the material and structural specifications, and performance testing data, of this particular proposed rope, and conclude it will provide for safety equivalent to ESO compliant 9.5 mm wire rope, with 0.56 mm outer wire (under conditions of use included within the below Decision and Order).
15. The applicant supplies tabulated data regarding the “Maximum Static Load on All Suspension Ropes.” To obtain the tabulated data, the applicant uses the following formula derived from ASME A17.1 2004, Section 2.20.3:

$$W = (S \times N) / f$$

where

W = maximum static load imposed on all car ropes with the car and its rated load at any position in the hoistway

N = number of runs of rope under load. For 2:1 roping, N shall be two times the number of ropes used, etc.

S = manufacturer's rated breaking strength of one rope

f = the factor of safety from Table 2.20.3

16. ASME A17.1-2010 Sections 2.20.3 and 2.20.4 utilize the same formula, but provide for use of suspension ropes having a diameter smaller than 9.5 mm, under specified conditions, key among them being that use of ropes having a diameter of between 8 mm to 9.5 mm be engineered with a factor of safety of 12 or higher. This is a higher minimum factor of safety than that proposed by Applicant, but a minimum recommended by both Board staff and Division as a condition of variance necessary to the achieving of safety equivalence to 9.5 mm rope.
17. Board staff and Division are in accord with Applicant, in proposing as a condition of safety equivalence, that periodic physical examination of the wire ropes be performed to confirm the ropes continue to meet the criteria set out in the (Application attachment) *Inspector's Guide to 6 mm Diameter Governor and 8 mm Diameter*

Suspension Ropes for KONE Elevators. Adherence to this condition will provide an additional assurance of safety equivalence, regarding smaller minimum diameter suspension rope outer wire performance over the course of its service life.

18. Both Board staff, and Division, by way of written submissions to the record (Exhibits PD-3 and PD-4 respectively), and stated positions at hearing, are of the well informed opinion that grant of permanent variance, as limited and conditioned per the below Decision and Order will provide employment, places of employment, and subject conveyances, as safe and healthful as would prevail given non-variant conformity with the Elevator Safety Order requirements from which variance has been requested.

D. Conclusive Findings:

The above stated procedural prerequisites, legal authority, and factual findings, as further supported by the documentary record and hearing testimony in this matter, provide a substantive and reasonable basis of conclusion that: (1) Each Applicant has complied with the statutory and regulatory requirements that must be met before an application for permanent variance may be conditionally granted; and (2) a preponderance of the evidence establishes that each Applicants proposal, subject to all conditions and limitations set forth in the below Decision and Order, will provide equivalent safety and health to that which would prevail upon full compliance with the requirements of California Code of Regulation, title 8, Elevator Safety Orders from which variance is being sought.

E. Decision and Order:

Each Application being the subject of this proceeding, per above Section A.1 table, is conditionally GRANTED, to the extent that each such Applicant shall be issued permanent variance from California Code of Regulations, title 8, section 3141 incorporated ASME A17.1-2004, Section 2.20.4, in as much as it precludes use of suspension rope of between 8 mm and 9.5 mm, or outer wire of between 0.51 mm and 0.56 mm in diameter, at such locations and numbers of Group IV KONE Monospace 500 elevators identified in each respective Application, subject to the following conditions:

1. The diameter of the hoisting steel ropes shall be not less than 8 mm (0.315 in) diameter and the roping ratio shall be two to one (2:1).
2. The outer wires of the suspension ropes shall be not less than 0.51 mm (0.02 in.) in diameter.
3. The number of suspension ropes shall be not fewer than those specified per hereby incorporated Decision and Order Appendix 1 Table.
4. The ropes shall be inspected annually for wire damage (rouge, valley break etc.) in accordance with "KONE Inc. Inspector's Guide to 6 mm diameter and 8 mm diameter

steel ropes for KONE Elevators” (per Application Exhibit B, or as thereafter amended by KONE subject to Division approval).

5. A rope inspection log shall be maintained and available in the elevator controller room / space at all times.
6. The elevator rated speed shall not exceed those speeds specified per the Decision and Order Appendix 1 Table.
7. The maximum suspended load shall not exceed those weights (plus 5%) specified per the Decision and Order Appendix 1 Table.
8. The opening to the hoistway shall be effectively barricaded when car top inspection, maintenance, servicing, or testing of the elevator equipment in the hoistway is required. If the service personnel must leave the area for any reason, the hoistway and control room doors shall be closed.
9. The installation shall meet the suspension wire rope factor of safety requirements of ASME A17.1-2013 Section 2.20.3.
10. Any Certified Qualified Conveyance Company performing inspections, maintenance, servicing or testing the elevators shall be provided a copy of this variance decision.
11. The Division shall be notified when the elevator is ready for inspection. The elevator shall be inspected by the Division and a “Permit to Operate” issued before the elevator is placed in service.
12. The Applicant shall comply with suspension means replacement reporting condition per hereby incorporated Decision and Order Appendix 2.
13. The Applicant shall notify its employees or their authorized representative(s), or both, of this order in the same way and to the same extent that employees and authorized representatives are to be notified of docketed permanent variance applications pursuant to California Code of Regulations, title 8, sections 411.2 and 411.3.
14. This Decision and Order shall remain in effect unless modified or revoked upon application by the Applicant, affected employee(s), the Division of Occupational Safety and Health, or by the Board on its own motion, in accordance with procedures per Title 8, Division 1, Chapter 3.5.

Pursuant to California Code of Regulations, title 8, section 426(b), the above, duly completed Proposed Decision, is hereby submitted to the Occupational Safety and Health Standards Board for consideration of adoption.

Dated: December 2, 2022



Autumn Gonzalez, Hearing Officer

Appendix 1

Monospace 500 Suspension Appendix 1 Table.

Variance Number	Elevator ID	Minimum Quantity of Ropes (per Condition 3)	Maximum Speed in Feet per Minute (per Condition 6)	Maximum Suspended Load (per Condition 7)
22-V-483	Pass	7	150	12247
22-V-484	1	7	150	12247
22-V-484	2	7	150	12247
22-V-508	1	7	150	12247
22-V-508	2	6	150	10497
22-V-508	3	6	150	10497

Appendix 2

Suspension Means Replacement Reporting Condition

Beginning on the date the Board adopts this Proposed Decision and continuing for a period of two years, the Applicant shall report to the Division within 30 days any and all replacement activity performed on the elevator(s) pursuant to the requirements of ASME A17.1-2004, Section 8.6.3 involving the suspension means or suspension means fastenings. Further:

1. A separate report for each elevator shall be submitted, in a manner acceptable to the Division, to the following address (or to such other address as the Division might specify in the future): DOSH Elevator Unit, 2 MacArthur Place, Suite 700, Santa Ana, CA 92707, Attn: Engineering Section.
2. Each such report shall contain, but not necessarily be limited to, the following information:
 - a. The State-issued conveyance number, complete address, and OSHSB file number that identifies the permanent variance.
 - b. The business name, complete address, telephone number, and contact person of the elevator responsible party (presumably the Applicant or the subsequent holder of this variance).
 - c. The business name, complete address, telephone number, and Certified Qualified Conveyance Company (CQCC) certification number of the firm performing the replacement work.
 - d. The name (as listed on certification), Certified Competent Conveyance Mechanic (CCCM) certification number, certification expiration date, and signature of each CCCM performing the replacement work.
 - e. The date and time the elevator was removed from normal service for suspension replacement, the date and time the replacement work commenced, the date and time the replacement work was completed, and the date and time the elevator was returned to normal service.
 - f. A detailed description of, and clear color photographs depicting, (1) all the conditions that existed in the suspension components requiring their replacement and (2) any conditions that existed to cause damage or distress to the suspension components being replaced.
 - g. A detailed list of all elevator components adjusted, repaired, or replaced in conjunction with the suspension component replacement.

- h. All information provided on the crosshead data plate per ASME A17.1-2004, Section 2.20.2.1, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.
 - i. For the suspension means being replaced, all information provided on the data tag required per ASME A17.1-2004, Section 2.20.2.2, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.
 - j. For the replacement suspension means, all information provided on the data tag required by ASME A17.1-2004, Section 2.20.2.2, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.
 - k. Any other information requested by the Division regarding the replacement of the suspension means or fastenings.
3. In addition to the submission of the report to the Division, the findings of any testing, failure analysis, or other engineering evaluations performed on any portion of the replaced suspension components, or other elevator components replaced in conjunction therewith, shall be submitted to the Division referencing the information contained in above Appendix 2, Section 2, Subsection (a), above.

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
(916) 274-5721

In the Matter of Application for
Permanent Variance regarding:

Schindler 3300 with SIL-Rated Drive to
De-energize Drive Motor (Group IV)

OSHSB File No.: Per table, in Jurisdictional
and Procedural Matters below
Proposed Decision Dated: December 2, 2022

DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached
PROPOSED DECISION by Autumn Gonzalez, Hearing Officer.

DAVID THOMAS, Chairman

BARBARA BURGEL, Member

KATHLEEN CRAWFORD, Member

DAVID HARRISON, Member

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Date of Adoption: December 15, 2022

THE FOREGOING VARIANCE DECISION WAS
ADOPTED ON THE DATE INDICATED ABOVE.
IF YOU ARE DISSATISFIED WITH THE
DECISION, A PETITION FOR REHEARING
MAY BE FILED BY ANY PARTY WITH THE
STANDARDS BOARD WITHIN TWENTY (20)
DAYS AFTER SERVICE OF THE DECISION.
YOUR PETITION FOR REHEARING MUST
FULLY COMPLY WITH THE REQUIREMENTS
OF CALIFORNIA CODE OF REGULATIONS,
TITLE 8, SECTIONS 427, 427.1 AND 427.2.

Note: A copy of this Decision must be
posted for the Applicant's employees to
read, and/or a copy thereof must be
provided to the employees' Authorized
Representatives.

BEFORE THE
 OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
 DEPARTMENT OF INDUSTRIAL RELATIONS
 STATE OF CALIFORNIA

<p>In the Matter of Application for Permanent Variance Regarding:</p> <p>Schindler 3300 with SIL-Rated Drive to De-energize Drive Motor (Group IV)</p>	<p>OSHSB File Nos.: Per table, in Jurisdictional and Procedural Matters below</p> <p><u>PROPOSED DECISION</u></p> <p>Hearing Date: November 30, 2022</p>
--	--

Jurisdictional and Procedural Matters

- Each below listed applicant (“Applicant”) has applied for permanent variance from certain provisions of the Elevator Safety Orders, found at title 8, of the California Code of Regulations, with respect to a conveyance, or conveyances, in the listed quantity, at the listed location:

Variance No.	Applicant Name	Variance Location Address	No. of Elevators
22-V-485	NCRC Lake Forest, LP	24551 Raymond Way Lake Forest, CA	1

- This proceeding is conducted in accordance with Labor Code section 143, and California Code of Regulations, title 8, section 401, et. seq.
- This hearing was held on November 30, 2022, in Sacramento, California, via teleconference, by Occupational Safety and Health Standards Board (“Board”), with Hearing Officer Autumn Gonzalez, both presiding and hearing the matter on its merit, as a basis of proposed decision to be advanced to the Board for its consideration, in accordance with California Code of Regulations, title 8, section 426.
- At the hearing, Jennifer Linares, with the Schindler Elevator Corporation, appeared on behalf of each Applicant; Jose Ceja, Mark Wickens and David Morris appeared on behalf of the Division of Occupational Safety and Health (“Division”), and Michael Nelmidia appeared on behalf of Board staff, in a technical advisory role apart from the Board.
- Oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence:

Exhibit Number	Description of Exhibit
PD-1	Permanent variance applications per section A.1 table
PD-2	OSHSB Notice of Hearing
PD-3	Board Staff Reviews of Variance Application
PD-4	Division Reviews of Variance Application
PD-5	Review Draft-1 Proposed Decision

Official notice taken of the Board’s rulemaking records, and variance decisions concerning the safety order requirements from which variance is requested. At close of hearing on November 30, 2022, the record was closed, and the matter taken under submission by the Hearing Officer.

Relevant Safety Order Provisions

Applicant seeks a permanent variance from section 3141 [ASME A17.1-2004, sections 2.20.1, 2.20.2.1, 2.20.2.2(a), 2.20.2.2(f), 2.20.3, 2.20.4, 2.20.9.5.4, 2.26.1.4.4(a), 8.4.10.1.1(a)(2)(B), 2.14.1.7.1, and 2.26.9.6.1]. The relevant language of those sections are below.

1. Suspension Means

Section 3141 [ASME A17.1-2004, section 2.20.1, Suspension Means] states in part:

Elevator cars shall be suspended by steel wire ropes attached to the car frame or passing around sheaves attached to the car frame specified in 2.15.1. Ropes that have previously been installed and used on another installation shall not be reused. Only iron (low-carbon steel) or steel wire ropes, having the commercial classification “Elevator Wire Rope,” or wire rope specifically constructed for elevator use, shall be used for the suspension of elevator cars and for the suspension of counterweights. The wire material for ropes shall be manufactured by the open-hearth or electric furnace process, or their equivalent.

Section 3141 [ASME A17.1-2004, section 2.20.2.1(b), On Crosshead Data Plate] states in part:

The crosshead data plate required by 2.16.3 shall bear the following wire-rope data:

(b) the diameter in millimeters (mm) or inches (in.)

Section 3141 [ASME A17.1-2004, section 2.20.2.2(a) and (f) On Rope Data Tag] states in part:

A metal data tag shall be securely attached-to-one of the wire-rope fastenings. This data tag shall bear the following wire-rope data:

(a) the diameter in millimeters (mm) or inches (in.)

[...]

(f) whether the ropes were non preformed or preformed

Section 3141 [ASME A17.1-2004, section 2.20.3, Factor of Safety] states:

The factor of safety of the suspension wire ropes shall be not less than shown in Table 2.20.3. Figure 8.2.7 gives the minimum factor of safety for intermediate rope speeds. The factor of safety shall be based on the actual rope speed corresponding to the rated speed of the car.

The factor of safety shall be calculated by the following formula:

$$f = \frac{S \times N}{W}$$

where:

N= number of runs of rope under load. For 2:1 roping, N shall be two times the number of ropes used, etc.

S= manufacturer's rated breaking strength of one rope

W= maximum static load imposed on all car ropes with the car and its rated load at any position in the hoistway

Section 3141 [ASME A17.1-2004, section 2.20.4, Minimum Number and Diameter of Suspension Ropes] states:

The minimum number of hoisting ropes used shall be three for traction elevators and two for drum-type elevators.

Where a car counterweight is used, the number of counterweight ropes used shall be not less than two.

The term "diameter," where used in reference to ropes, shall refer to the nominal diameter as given by the rope manufacturer.

The minimum diameter of hoisting and counterweight ropes shall be 9.5 mm (0.375 in.). Outer wires of the ropes shall be not less than 0.56 mm (0.024 in.) in diameter.

Section 3141 [ASME A17.1-2004, section 2.20.9.3.4] states:

Cast or forged steel rope sockets, shackle rods, and their connections shall be made of unwelded steel, having an elongation of not less than 20% in a gauge

length of 50 mm (2 in.), when measured in accordance with ASTM E 8, and conforming to ASTM A 668, Class B for forged steel, and ASTM A 27, Grade 60/30 for cast steel, and shall be stress relieved. Steels of greater strength shall be permitted, provided they have an elongation of not less than 20% in a length of 50 mm (2 in.).

Section 3141 [ASME A17.1-2004, section 2.20.9.5.4] states:

When the rope has been seated in the wedge socket by the load on the rope, the wedge shall be visible, and at least two wire-rope retaining clips shall be provided to attach the termination side to the load-carrying side of the rope (see Fig. 2.20.9.5). The first clip shall be placed a maximum of 4 times the rope diameter above the socket, and the second clip shall be located within 8 times the rope diameter above the first clip. The purpose of the two clips is to retain the wedge and prevent the rope from slipping in the socket should the load on the rope be removed for any reason. The clips shall be designed and installed so that they do not distort or damage the rope in any manner.

2. Inspection Transfer Switch

Section 3141[ASME A17.1-2004, section 2.26.1.4.4(a), Machine Room Inspection Operation] states:

When machine room inspection operation is provided, it shall conform to 2.26.1.4.1, and the transfer switch shall be

(a) located in the machine room[.]

3. Seismic Reset Switch

Section 3141[ASME A17.1-2004, section 8.4.10.1.1(a)(2)(b), Earthquake Equipment] states:

(a) All traction elevators operating at a rated speed of 0.75 m/s (150 ft/min) or more and having counterweights located in the same hoistway shall be provided with the following:

(1) seismic zone 3 or greater: a minimum of one seismic switch per building

(2) seismic zone 2 or greater:

(a) a displacement switch for each elevator

(b) an identified momentary reset button or switch for each elevator, located in the control panel in the elevator machine room

4. Car-top Railings

Section 3141[ASME A17.1-2004, section 2.14.1.7.1] states:

A standard railing conforming to 2.10.2 shall be provided on the outside perimeter of the car top on all sides where the perpendicular distance between the edges of the car top and the adjacent hoistway enclosure exceeds 300 mm (12 in.) horizontal clearance.

5. SIL-Rated System to Inhibit Current Flow to AC Drive Motor

Section 3141[ASME A17.1-2004, section 2.26.9.6.1] states:

Two separate means shall be provided to independently inhibit the flow of alternating current through the solid state devices that connect the direct current power source to the alternating-current driving motor. At least one of the means shall be an electromechanical relay.

Findings of Fact

Based on the record of this proceeding, the Board finds the following:

1. Applicant intends to utilize Schindler model 3300 MRL elevator cars at the locations listed in Jurisdictional and Procedural Matters, section 1.
2. The installation contract for these elevator was or will be signed on or after May 1, 2008, thus making the elevator subject to the Group IV Elevator Safety Orders.
3. The Schindler model 3300 MRL elevator cars are not supported by circular steel wire ropes, as required by the Elevator Safety Orders (ESO). They utilize non-circular elastomeric-coated steel belts and specialized suspension means fastenings.
4. No machine room is provided, preventing the inspection transfer switch from being located in the elevator machine room. The lack of machine room also prevents the seismic reset switch from being located in the elevator machine room.
5. Applicant proposes to relocate the inspection transfer switch and seismic reset switch in an alternative enclosure.
6. The driving machine and governor are positioned in the hoistway and restrict the required overhead clearance to the elevator car top.
7. Applicant proposes to insert the car-top railings at the perimeter of the car top.
8. Applicant intends to use an elevator control system, model CO NX100NA, with a standalone, solid-state motor control drive system that includes devices and circuits having a Safety Integrity Level (SIL) rating to execute specific elevator safety functions.

Conclusive Findings:

The above-stated procedural prerequisites, legal authority, and factual findings, as further supported by the documentary record and hearing testimony in this matter, provide a

substantive and reasonable basis of conclusion that: (1) Applicant has complied with the statutory and regulatory requirements that must be met before an application for permanent variance may be conditionally granted; and (2) a preponderance of the evidence establishes that Applicant's proposal, subject to all conditions and limitations set forth in the below Decision and Order, will provide equivalent safety and health to that which would prevail upon full compliance with the requirements of California Code of Regulation, title 8, Elevator Safety Orders from which variance is being sought.

Decision and Order:

Each Application being the subject of this proceeding, per the table in Jurisdictional and Procedural Matters, section 1 above, is conditionally GRANTED, to the extent that each such Applicant shall be issued permanent variance from California Code of Regulations, title 8, section 3141 shall be GRANTED subject to the following conditions and limitations:

Elevator Safety Orders:

- Suspension Means: 2.20.1, 2.20.2.1, 2.20.2.2(a), 2.20.2.2(f), 2.20.3, 2.20.4, 2.20.9.3.4, and 2.20.9.5.4 (Only to the extent necessary to permit the use of the Elastomeric-coated Steel Belts proposed by the Applicant, in lieu of circular steel suspension ropes.);
- Inspection transfer switch: 2.26.1.4.4(a) (Only to the extent necessary to permit the inspection transfer switch to reside at a location other than the machine room);
- Seismic reset switch: 8.4.10.1.1(a)(2)(b) (Only to the extent necessary to permit the seismic reset switch to reside at a location other than the machine room. room);
- Car-Top Railing: 2.14.1.7.1 (Only to the extent necessary to permit the use of the car-top railing system proposed by the Applicant, where the railing system is located inset from the elevator car top perimeter);
- Means of Removing Power: 2.26.9.6.1 (Only to the extent necessary to permit the use of SIL-rated devices and circuits as a means to remove power from the AC driving motor, where the redundant monitoring of electrical protective devices is required by the Elevator Safety Orders).

Conditions:

1. The elevator suspension system shall comply to the following:
 - a. The suspension traction media (STM) members and their associated fastenings shall conform to the applicable requirements of ASME A17.1-2013, sections:
 - 2.20.4.3 – Minimum Number of Suspension Members
 - 2.20.3 – Factor of Safety
 - 2.20.9 – Suspension Member Fastening

- b. The Applicant shall not utilize the elevator unless the manufacturer has written procedures for the installation, maintenance, inspection and testing of the STM members and fastenings and related monitoring and detection systems and criteria for STM replacement, and the Applicant shall make those procedures and criteria available to the Certified Competent Conveyance Mechanic (CCCM) at the location of the elevator, and to the Division upon request.

STM member mandatory replacement criteria shall include:

- i. Any exposed wire, strand or cord;
 - ii. Any wire, strand or cord breaks through the elastomeric coating;
 - iii. Any evidence of rouging (steel tension element corrosion) on any part of the elastomeric-coated steel suspension member;
 - iv. Any deformation in the elastomeric suspension member such as, but not limited to, kinks or bends;
- c. Traction drive sheaves must have a minimum diameter of 72 mm. The maximum speed of STM members running on 72 mm, 87 mm and 125 mm drive sheaves shall be no greater than 2.5 m/s, 6.0 m/s and 8.0 m/s respectively.
- d. If any one STM member needs replacement, the complete set of suspension members on the elevator shall be replaced. Exception: if a new suspension member is damaged during installation, and prior to any contemporaneously installed STM having been placed into service, it is permissible to replace the individual damaged suspension member. STM members that have been installed on another installation shall not be re-used.
- e. A traction loss detection means shall be provided that conforms to the requirements of ASME A17.1-2013, section 2.20.8.1. The means shall be tested for correct function annually in accordance with ASME A17.1-2013, section 8.6.4.19.12.
- f. A broken suspension member detection means shall be provided that conforms to the requirements of ASME A17.1-2013, section 2.20.8.2. The means shall be tested for correct function annually in accordance with ASME A17.1-2013, section 8.6.4.19.13(a).
- g. An elevator controller integrated bend cycle monitoring system shall monitor actual STM bend cycles, by means of continuously counting, and storing in nonvolatile memory, the number of trips that the STM makes traveling, and thereby being bent, over the elevator sheaves. The bend cycle limit monitoring means shall automatically stop the car normally at the next available landing before the bend cycle correlated residual strength of any single STM member drops below 80 percent of full rated strength. The monitoring means shall prevent the car from restarting. The bend cycle monitoring system shall be tested annually in accordance with the procedures required by condition 1b above.
- h. The elevator shall be provided with a device to monitor the remaining residual strength of each STM member. The device shall conform to the requirements of

Division Circular Letter E-10-04, a copy of which is attached hereto as Exhibit 1 and incorporated herein by reference.

- i. The elevator crosshead data plate shall comply with the requirements of ASME A17.1-2013, section 2.20.2.1.
 - j. A suspension means data tag shall be provided that complies with the requirements of ASME A17.1-2013, section 2.20.2.2.
 - k. Comprehensive visual inspections of the entire length of each and all installed suspension members, to the criteria developed in condition 1b, shall be conducted and documented every six months by a CCCM.
 - l. The Applicant shall be subject to the requirements set out in Exhibit 2 of this Decision and Order, "Suspension Means Replacement Reporting Condition," Incorporated herein by this reference.
 - m. Records of all tests and inspections shall be maintenance records subject to ASME A17.1-2004, sections 8.6.1.2 and 8.6.1.4, respectively.
2. If the inspection transfer switch required by ASME A17.1-2004, section 2.26.1.4.4 does not reside in a machine room, that switch shall not reside in the elevator hoistway. The switch shall reside in the control/machinery room/space containing the elevator's control equipment in an enclosure secured by a lock openable by a Group 1 security key. The enclosure is to remain locked at all times when not in use.
3. If the seismic reset switch does not reside in the machine room, that switch shall not reside in the elevator hoistway. The switch shall reside in the control/machinery room/space containing the elevator's control equipment in an enclosure secured by a lock openable by a Group 1 security key. The enclosure is to remain locked at all times when not in use.
4. If there is an inset car-top railing:
- a. Serviceable equipment shall be positioned so that mechanics and inspectors do not have to climb on the railings to perform adjustments, maintenance, repairs or inspections. The Applicant shall not permit anyone to stand or climb over the car-top railing.
 - b. The distance that the railing can be inset shall be limited to not more than 6 inches.
 - c. All exposed areas of the car top outside the car-top railing where the distance from the railing to the edge of the car top exceeds 2 inches, shall be beveled with metal, at an angle of not less than 75 degrees with the horizontal, from the mid or top rail to the outside of the car top, such that no person or object can stand, sit, kneel, rest, or be placed in the exposed areas.

- d. The top of the beveled area and/or car top outside the railing shall be clearly marked. The markings shall consist of alternating 4-inch diagonal red and white stripes.
- e. The applicant shall provide durable signs with lettering not less than 1/2 inch on a contrasting background on each inset railing. Each sign shall state:

CAUTION
STAY INSIDE RAILING
NO LEANING BEYOND RAILING
NO STEPPING ON, OR BEYOND, RAILING

- f. The Group IV requirements for car-top clearances shall be maintained (car-top clearances outside the railing will be measured from the car top and not from the required bevel).
5. The SIL-rated devices and circuits used to inhibit electrical current flow in accordance with ASME A17.1-2004, section 2.26.9.6.1 shall comply with the following:
- a. The SIL-rated devices and circuits shall consist of a Variodyn SIL-3 rated Regenerative, Variable Voltage Variable Frequency (VVVF) motor drive unit, model VAF013 or VAF023, labeled or marked with the SIL rating (not less than SIL 3), the name or mark of the certifying organization, and the SIL certification number (968/FSP 1556.00), and followed by the applicable revision number (as in 968/FSP 1556.00/19).
 - b. The devices and circuits shall be certified for compliance with the applicable requirements of ASME A17.1-2013, section 2.26.4.3.2.
 - c. The access door or cover of the enclosures containing the SIL-rated components shall be clearly labeled or tagged on their exterior with the statement:

Assembly contains SIL-rated devices.
Refer to Maintenance Control Program and
wiring diagrams prior to performing work.

- d. Unique maintenance procedures or methods required for the inspection, testing, or replacement of the SIL-rated circuits shall be developed and a copy maintained in the elevator machine/control room/space. The procedures or methods shall include clear color photographs of each SIL-rated component, with notations identifying parts and locations.
- e. Wiring diagrams that include part identification, SIL, and certification information shall be maintained in the elevator machine/control room/space.
- f. A successful test of the SIL-rated devices and circuits shall be conducted initially and not less than annually in accordance with the testing procedure. The test shall demonstrate that SIL-rated devices, safety functions, and related circuits operate as intended.

- g. Any alterations to the SIL-rated devices and circuits shall be made in compliance with the Elevator Safety Orders. If the Elevator Safety Orders do not contain specific provisions for the alteration of SIL-rated devices, the alterations shall be made in conformance with ASME A17.1-2013, section 8.7.1.9.
 - h. Any replacement of the SIL-rated devices and circuits shall be made in compliance with the Elevator Safety Orders. If the Elevator Safety Orders do not contain specific provisions for the replacement of SIL-rated devices, the replacement shall be made in conformance with ASME A17.1-2013, section 8.6.3.14.
 - i. Any repairs to the SIL-rated devices and circuits shall be made in compliance with the Elevator Safety Orders. If the Elevator Safety Orders do not contain specific provisions for the repair of SIL-rated devices, the repairs shall be made in conformance with ASME A17.1-2013, section 8.6.2.6.
 - j. Any space containing SIL-rated devices and circuits shall be maintained within the temperature and humidity range specified by Schindler Elevator Corporation. The temperature and humidity range shall be posted on each enclosure containing SIL-rated devices and circuits.
 - k. Field changes to the SIL-rated system are not permitted. Any changes to the SIL-rated system's devices and circuitry will require recertification and all necessary updates to the documentation and diagrams required by conditions d. and e. above.
6. The Division shall be notified when the elevator is ready for inspection. The elevator shall be inspected by the Division, and all applicable requirements met, including conditions of this permanent variance, prior to a Permit to Operate the elevator being issued. The elevator shall not be placed in service prior to the Permit to Operate being issued by Division.
7. The Applicant shall notify its employees or their authorized representative(s), or both, of this order in the same way that the Applicant was required to notify them of the docketed application for permanent variance per California Code of Regulations, title 8, sections 411.2 and 411.3.
8. This Decision and Order shall remain in effect unless modified or revoked upon application by the Applicant, affected employee(s), the Division of Occupational Safety and Health, or by the Board on its own motion, in the procedural manner prescribed per title 8, Chapter 3.5, Subchapter 1.

Pursuant to California Code of Regulations, title 8, section 426(b), the above, duly completed Proposed Decision, is hereby submitted to the Occupational Safety and Health Standards Board for consideration of adoption.

DATED: December 2, 2022



Autumn Gonzalez, Hearing Officer

EXHIBIT 1

October 6, 2010

CIRCULAR LETTER E-10-04

TO: Installers, Manufacturers of Conveyances and Related Equipment and Other Interested Parties

SUBJECT: Coated Steel Belt Monitoring

The Elevator Safety Orders require routine inspection of the suspension means of an elevator to assure its safe operation.

The California Labor Code section 7318 allows the Division to promulgate special safety orders in the absence of regulation.

As it is not possible to see the steel cable suspension means of a Coated Steel Belt, a monitoring device which has been accepted by the Division is required on all Coated Steel Belts which will automatically stop the car if the residual strength of any belt drops below 60%. The Device shall prevent the elevator from restarting after a normal stop at a landing.

The monitoring device must be properly installed and functional. A functioning device may be removed only after a determination has been made that the residual strength of each belt exceeds 60%. These findings and the date of removal are to be conspicuously documented in the elevator machine room. The removed device must be replaced or returned to proper service within 30 days.

If upon routine inspection, the monitoring device is found to be in a non-functional state, the date and findings are to be conspicuously documented in the elevator machine room.

If upon inspection by the Division, the monitoring device is found to be non-functional or removed, and the required documentation is not in place, the elevator will be removed from service.

If the device is removed to facilitate belt replacement, it must be properly installed and functional before the elevator is returned to service.

A successful test of the device's functionality shall be conducted once a year.

This circular does not preempt the Division from adopting regulations in the future, which may address the monitoring of Coated Steel Belts or any other suspension means.

This circular does not create an obligation on the part of the Division to permit new conveyances utilizing Coated Steel Belts.

Debra Tudor
Principal Engineer
DOSH-Elevator Unit HQS

EXHIBIT 2

Suspension Means – Replacement Reporting Condition

Beginning on the date the Board adopts this Proposed Decision and continuing for a period of two years, the Applicant shall report to the Division within 30 days any and all replacement activity performed on the elevator(s) pursuant to the requirements of ASME A17.1-2004, section 8.6.3 involving the suspension means or suspension means fastenings. Further:

1. A separate report for each elevator shall be submitted, in a manner acceptable to the Division, to the following address (or to such other address as the Division might specify in the future): DOSH Elevator Unit, 2 MacArthur Pl., Suite 700, Santa Ana, CA 92707, Attn: Engineering section.
2. Each such report shall contain, but not necessarily be limited to, the following information:
 - a. The State-issued conveyance number, complete address, and OSHSB file number that identifies the permanent variance.
 - b. The business name, complete address, telephone number, and contact person of the elevator responsible party (presumably the Applicant or the subsequent holder of this variance).
 - c. The business name, complete address, telephone number, and Certified Qualified Conveyance Company (CQCC) certification number of the firm performing the replacement work.
 - d. The name (as listed on certification), Certified Competent Conveyance Mechanic (CCCM) certification number, certification expiration date, and signature of each CCCM performing the replacement work.
 - e. The date and time the elevator was removed from normal service for suspension replacement, the date and time the replacement work commenced, the date and time the replacement work was completed, and the date and time the elevator was returned to normal service.
 - f. A detailed description of, and clear color photographs depicting, (1) all the conditions that existed in the suspension components requiring their replacement and (2) any conditions that existed to cause damage or distress to the suspension components being replaced.
 - g. A detailed list of all elevator components adjusted, repaired, or replaced in conjunction with the suspension component replacement.
 - h. All information provided on the crosshead data plate per ASME A17.1-2004, section 2.20.2.1, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.

- i. For the suspension means being replaced, all information provided on the data tag required per ASME A17.1-2004, section 2.20.2.2, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.
 - j. For the replacement suspension means, all information provided on the data tag required by ASME A17.1-2004, section 2.20.2.2, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.
 - k. Any other information requested by the Division regarding the replacement of the suspension means or fastenings.
3. In addition to the submission of the report to the Division, the findings of any testing, failure analysis, or other engineering evaluations performed on any portion of the replaced suspension components, or other elevator components replaced in conjunction therewith, shall be submitted to the Division referencing the information contained in item 2a above.

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
(916) 274-5721

In the Matter of Application for
Permanent Variance regarding:

Mitsubishi Elevators (Group IV)

OSHSB File No.: See Section A.1 table of
Proposed Decision Dated: December 2, 2022

DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached
PROPOSED DECISION by Autumn Gonzalez, Hearing Officer.

DAVID THOMAS, Chairman

BARBARA BURGEL, Member

KATHLEEN CRAWFORD, Member

DAVID HARRISON, Member

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Date of Adoption: December 15, 2022

THE FOREGOING VARIANCE DECISION WAS
ADOPTED ON THE DATE INDICATED ABOVE.
IF YOU ARE DISSATISFIED WITH THE
DECISION, A PETITION FOR REHEARING
MAY BE FILED BY ANY PARTY WITH THE
STANDARDS BOARD WITHIN TWENTY (20)
DAYS AFTER SERVICE OF THE DECISION.
YOUR PETITION FOR REHEARING MUST
FULLY COMPLY WITH THE REQUIREMENTS
OF CALIFORNIA CODE OF REGULATIONS,
TITLE 8, SECTIONS 427, 427.1 AND 427.2.

Note: A copy of this Decision must be
posted for the Applicant's employees to
read, and/or a copy thereof must be
provided to the employees' Authorized
Representatives.

BEFORE THE
 OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
 DEPARTMENT OF INDUSTRIAL RELATIONS
 STATE OF CALIFORNIA

<p>In the Matter of Application for Permanent Variance Regarding:</p> <p>Mitsubishi Elevators (Group IV)</p>	<p>OSHSB File Nos.: See section A.1 Table</p> <p><u>PROPOSED DECISION</u></p> <p>Hearing Date: November 30, 2022</p>
--	--

A. Procedural Matters:

- Each below listed applicant (“Applicant”) has applied for permanent variance from provisions of the Elevator Safety Orders, found at title 8 of the California Code of Regulations¹, with respect to a conveyance, or conveyances, in the listed quantity, at the listed location:

Variance No.	Applicant Name	Variance Location Address	No. of Elevators
22-V-490	IQHQ-Spur PH I, LLC	580 Dubuque Ave. South San Francisco, CA	7
22-V-491	RCR Tasman I, LLC	5150 Calle Del Sol Santa Clara, CA	5
22-V-492	Tasman ASL Propco, LLC	2350 Calle De Luna Santa Clara, CA	4
22-V-509	CoreSite Real Estate CV9., LP	2915 Stender Way Santa Clara, CA	1

- The safety orders at issue are set forth in the prefatory portion of the Decision and Order. This proceeding is conducted in accordance with section 401, et. seq, and Labor Code section 143.
- This hearing was held on November 30, 2022, in Sacramento, California, via teleconference, by delegation of the Occupational Safety and Health Standards Board (“Board”), with Hearing Officer Autumn Gonzalez, both presiding and hearing the matter on its merit, as a basis of proposed decision to be advanced to the Board for its consideration, in accordance with section 426.
- At the hearing, Matt Jaskiewicz, with Mitsubishi Electric, Elevator Division, appeared on behalf of each Applicant, Jose Ceja, Mark Wickens and David Morris appeared on behalf of the Division

¹ Unless otherwise noted, all references are to California Code of Regulations, title 8.

of Occupational Safety and Health (“Division”), and Michael Nelmidia appeared on behalf of Board staff in a technical advisory role apart from the Board.

5. At the hearing, documentary and oral evidence was received, and by stipulation of all parties, documents were accepted into evidence:

Exhibit Number	Description of Exhibit
PD-1	Permanent variance applications per section A.1 table
PD-2	OSHSB Notice of Hearing
PD-3	Board Staff Reviews of Variance Application
PD-4	Division Reviews of Variance Application
PD-5	Review Draft-1 Proposed Decision

Official Notice is taken of the Board’s rulemaking records and variance decisions concerning the safety order requirements from which variance is requested. At the close of hearing on November 30, 2022, the record was closed and the matter taken under submission by the Hearing Officer.

B. Findings of Fact:

Based on the record of this proceeding, the Board makes the following findings of fact:

1. Each section A table specified Applicant intends to utilize Mitsubishi elevators at the location and in the number stated in the table in Item A. The installation contracts for these elevators were signed on or after May 1, 2008, thus making the elevators subject to the Group IV Elevator Safety Orders.
2. The Board takes official notice and incorporates herein, Subsections D.3 through D.5 of the February 20, 2014, Decision of the Board in OSHSB Permanent Variance File No. 13-V-270.
3. As reflected in the record of this matter, including Board staff Pending Application for Permanent Variance Opinion Letter as PD-3, Division evaluation as PD-4, and testimony at hearing, it is the professionally informed opinion of Board staff and Division, that grant of requested variance, subject to conditions and limitations in substantial conforming with those set out per below Decision and Order, will provide Occupational Safety and Health equivalent or superior to that provided by the safety order requirements from which variance is sought.

C. Conclusive Findings:

The above stated procedural prerequisites, legal authority, and factual findings, as further supported by the documentary record and hearing testimony in this matter, provide a substantive and reasonable basis of conclusion that: (1) Each Applicant has complied with the statutory and regulatory requirements that must be met before an application for permanent variance may be

conditionally granted, and (2) a preponderance of the evidence establishes that each Applicants proposal, subject to all conditions and limitations set forth in the below Decision and Order, will provide equivalent safety and health to that which would prevail upon full compliance with the requirements of the Elevator Safety Orders from which variance is being sought.

D. Decision and Order:

As of such date as the Board adopts this Proposed Decision, each Application for Permanent Variance listed in the above section A.1 table, is conditionally GRANTED to the extent each Applicant of record shall have permanent variance from section 3141 [ASME A17.1-2004, sections 2.10.2.2 (only to the extent necessary to permit the intermediate rail to be located at a point other than halfway between the top rail and the surface on which the railing is installed), 2.10.2.4 (only to the extent necessary to permit a bevel sloping that conforms with the variance conditions) and 2.14.1.7.1 (only to the extent necessary to permit the car top railing to be inset to clear obstructions when the conveyance is elevated to perform work on the machine and/or governor). The variance applies to the location and number of elevators stated in the section A.1 table, and the variance is subject to the above limitations and following conditions:

1. The car top railing may be inset only to the extent necessary to clear obstructions when the conveyance is located at the top landing to perform work on the machine and/or governor.
2. Serviceable equipment shall be positioned so that mechanics, inspectors, and others working on the car top can remain positioned on the car top within the confines of the railings and do not have to climb on or over railings to perform adjustment, maintenance, minor repairs, inspections, or similar tasks. Persons performing those tasks are not to stand on or climb over railing, and those persons shall not remove handrails unless the equipment has been secured from movement and approved personal fall protection is used.
3. All exposed areas outside the car top railing shall preclude standing or placing objects or persons which may fall, and shall be beveled from an intermediate or bottom rail to the outside of the car top.
4. The top surface of the beveled area shall be clearly marked. The markings shall consist of alternating 4-inch red and white diagonal stripes.
5. The Applicant shall provide a durable sign with lettering not less than ½-inch high on a contrasting background. The sign shall be located on the inset top railing; the sign shall be visible from the access side of the car top, and the sign shall state:

CAUTION
DO NOT STAND ON OR CLIMB OVER RAILING.
PERSONNEL ARE PROHIBITED FROM REMOVING HANDRAIL

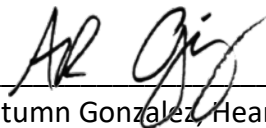
UNLESS THE EQUIPMENT HAS BEEN SECURED FROM MOVEMENT
AND APPROVED PERSONAL FALL PROTECTION IS USED.

6. The Group IV requirements for car top clearances shall be maintained (car top clearances outside the railing will be measured from the car top and not from the required bevel).
7. A mechanical means (e.g., locking bar mechanism) that will secure the car to the guide rail to prevent unintended movement shall be provided and used during machine and/or governor car-top work. The mechanical means (e.g., locking bar mechanism) shall have a safety factor of not less than 3.5 for the total unbalanced load.
8. An electrical switch or a lockout/tagout procedure shall be provided that will remove power from the driving machine and brake when the mechanical means (e.g., locking bar mechanism) is engaged.
9. In order to inhibit employees from working outside the car top railing, sections shall not be hinged and they shall be installed by means that will inhibit (but not necessarily completely preclude) removal. The Applicant shall ensure that all persons performing work that requires removal of any part of the car top railing are provided with fall protection that is appropriate and suitable for the assigned work. That fall protection shall consist of a personal fall arrest system or fall restraint system that complies with California Code of Regulations, title 8, section 1670.
10. The bevel utilized by the Applicant in accordance with the variance granted from ASME A17.1-2004, section 2.10.2.4 shall slope at not less than 75 degrees from the horizontal to serve as the toe board; however, that slope may be reduced to a minimum of 40 degrees from the horizontal as may be required for sections where machine encroachment occurs.
11. If the Applicant directs or allows its employees to perform tasks on the car top, the Applicant shall develop, implement, and document a safety training program that shall provide training to Applicant employees. Components of the training shall include, but not necessarily be limited to, the following: car blocking procedures; how examination, inspection, adjustment, repair, removal and replacement of elevator components are to be performed safely, consistent with the requirements of the variance conditions; applicable provisions of the law and other sources of safety practices regarding the operation of the elevator. A copy of the training program shall be located in the control room of each elevator that is the subject of this variance, and a copy of the training program shall be attached to a copy of this variance that shall be retained in any building where an elevator subject to this variance is located. The Applicant shall not allow Certified Qualified Conveyance Company (CQCC) or other contractor personnel to work on the top of any elevator subject to this variance unless the Applicant first ascertains from the CQCC or other contractor that the personnel in question have received training equivalent to, or more extensive than, the training components referred to in this condition.

12. Any CQCC performing inspections, maintenance, servicing, or testing of the elevators shall be provided a copy of this variance decision.
13. The Division shall be notified when the elevator is ready for inspection. The elevator shall be inspected by the Division, and a Permit to Operate shall be issued before the elevator is placed in service.
14. The Applicant shall notify its employees or their authorized representative(s), or both, of this order in the same way and to the same extent that employees and authorized representatives are to be notified of docketed permanent variance applications pursuant to sections 411.2 and 411.3.
15. This Decision and Order shall remain in effect unless modified or revoked upon application by the Applicant, affected employee(s), the Division, or by the Board on its own motion, in the manner prescribed for its issuance.

Pursuant to section 426(b), the above Proposed Decision, is hereby submitted to the Occupational Safety and Health Standards Board for consideration of adoption.

Dated: December 2, 2022



Autumn Gonzalez, Hearing Officer

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
(916) 274-5721

In the Matter of Application for
Permanent Variance regarding:

Otis E2 Controller w/variant Gov.
(Group IV)

OSHSB File No.: see grid in Item A of
Proposed Decision Dated: December 2, 2022

DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached
PROPOSED DECISION by Autumn Gonzalez, Hearing Officer.

DAVID THOMAS, Chairman

BARBARA BURGEL, Member

KATHLEEN CRAWFORD, Member

DAVID HARRISON, Member

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Date of Adoption: December 15, 2022

THE FOREGOING VARIANCE DECISION WAS
ADOPTED ON THE DATE INDICATED ABOVE.
IF YOU ARE DISSATISFIED WITH THE
DECISION, A PETITION FOR REHEARING
MAY BE FILED BY ANY PARTY WITH THE
STANDARDS BOARD WITHIN TWENTY (20)
DAYS AFTER SERVICE OF THE DECISION.
YOUR PETITION FOR REHEARING MUST
FULLY COMPLY WITH THE REQUIREMENTS
OF CALIFORNIA CODE OF REGULATIONS,
TITLE 8, SECTIONS 427, 427.1 AND 427.2.

Note: A copy of this Decision must be
posted for the Applicant's employees to
read, and/or a copy thereof must be
provided to the employees' Authorized
Representatives.

BEFORE THE
 OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
 DEPARTMENT OF INDUSTRIAL RELATIONS
 STATE OF CALIFORNIA

In the Matter of Application for Permanent Variance Regarding: Otis E2 Controller w/variant Gov. (Group IV)	OSHSB File Nos.: see grid below <u>PROPOSED DECISION</u> Hearing Date: November 30, 2022
--	--

A. Subject Matter:

- Each below listed applicant (“Applicant”) has applied for permanent variances from provisions of the Elevator Safety Orders, found at title 8 of the California Code of Regulations, with respect to a conveyance, or conveyances, in the listed quantity, at the listed location:

Variance No.	Applicant Name	Variance Location Address	No. of Elevators
22-V-498	19 Bway Tower Development, LLC	1950 Broadway Oakland, CA	4

- The subject safety order requirements are specified in the portion of the below Decision and Order, preceding the variance conditions.
- Jurisdiction: these proceedings are conducted in accordance with Labor Code Section 143, and California Code of Regulations, title 8, section 401, et. seq.

B. Procedural:

- This hearing was held on November 30, 2022, in Sacramento, California, via teleconference, by Occupational Safety and Health Standards Board (“Board”), with Hearing Officer Autumn Gonzalez, both presiding and hearing the matter on its merit, as a basis of proposed decision to be advanced to the Board for its consideration, in accordance with California Code of Regulations, title 8, section 426.
- At the hearing, Dan Leacox of Leacox & Associates, and Wolter Geesink with Otis Elevator, appeared on behalf of each Applicant; Mark Wickens and Jose Ceja appeared on behalf of the Division of Occupational Safety and Health (“Division”), and Michael Nelmidia appeared on behalf of the Board.
- Oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence:

Exhibit Number	Description of Exhibit
PD-1	Application(s) for Permanent Variance per Section A.1 table
PD-2	OSHSB Notice of Hearing
PD-3	Board Staff Review of Variance Application
PD-4	Division Review of Variance Application
PD-5	Review Draft-1 Proposed Decision

Official notice taken of the Board’s files, records, recordings and decisions concerning Otis elevators. At close of hearing on November 30, 2022, the record was closed, and the matter taken under submission by the Hearing Officer.

C. Findings of Fact—Based on the record of this proceeding, the Board finds the following:

1. The installation contracts for elevators, the subject of permanent variance application(s) specified per Section A.1 table, were signed on or after May 1, 2008, making the elevators subject to the Group IV Elevator Safety Orders (“ESO”).
2. Each Applicant proposes the use of a Safety Integrity Level (SIL) rated software system and circuits consisting of three computer control boards that communicate on a Control Area Network (CAN) to monitor elevator safety devices and perform certain safety functions. Elevator electrical protective devices (EPDs) and other control devices are connected to these control boards. Software specifically designed for this SIL system continuously monitors these devices and performs certain elevator safety functions. The design of this SIL rated software system and its related circuits includes a required redundant means to remove the power from the driving machine motor and brake under certain conditions. Currently in effect title 8 ESOs do not allow this redundancy to be solely dependent on a software controlled means as proposed by the Applicant.
3. Use of the SIL rated software system and its related circuits, as proposed by the Applicant, would be compliant with requirements of ASME A17.1-2013, Section 2.26.9.3.2.
4. Section 3141 [referencing ASME A17.1-2004, Section 2.14.1.7.1] states: “A standard railing conforming to 2.10.2 shall be provided on the outside perimeter of the car top on all sides where the perpendicular distance between the edges of the car top and the adjacent hoistway enclosure exceeds 300 mm (12 in.) horizontal clearance.”
5. A safety enhancing purpose of this code requirement is to provide fall protection from a potentially hazardous condition. The code requires the handrails to be installed at the perimeter of the car to prevent persons or objects from occupying the area beyond the handrail adjacent to an opening through which a person could fall a distance posing risk of serious injury or death.

6. Each Applicant proposes to inset the car top railings in a manner consistent with previous permanent variances granted to Otis Gen2S products. (e.g. OSHSB File Nos. 14-V-375, 16-V-360)
7. Use of inset car top railings as proposed by the Applicant, subject to conditions per below Section E, Decision and Order, will provide safety equivalent to that of ASME A17.1-2004, Section 2.14.1.7.1, requirements from which permanent variance is sought.
8. Section 3141 [referencing ASME A17.1-2004, Section 2.18.7.4], as well as 8 CCR § 3141.7(a)(10) specify the pitch diameter of governor sheaves and governor tension sheaves relative to the diameter of the governor rope, given certain rope construction and material.
9. A safety enhancing purpose of ASME A17.1-2004, Section 2.18.7.4, is to prevent the bending of the governor rope around a sheave of insufficient diameter, such that it could reduce the rope's life expectancy and working strength.
10. Each Applicant's proposed use of a governor with sheave pitch diameter of not less than the product of the governor rope diameter and a multiplier of 30, in conjunction with a steel governor rope with a diameter of 8 mm (0.315 in.), 8 strand construction, and a factor of safety of 8 or greater, subject to conditions per below Section E, Decision and Order, will provide safety equivalent to that of the subject ESO requirements from which permanent variance is sought.
11. In its evaluation of application for permanent variance, OSHSB 16-V-042, dated February 24, 2016, the Division states that the Occupational Safety and Health Standards Board has granted permanent variances for installations similar to those for which variance is now sought (e.g. OSHSB File No. 15-V-169).
12. Both by way of its written evaluation (Exhibit PD-4), and statements at hearing, Division has taken the position that each Applicant's proposal for permanent variance and means of safety equivalence, subject to Division recommended conditions (in substantial part incorporated into the below Decision and Order), will provide safety equivalent to the title 8 standards from which permanent variance is sought. Further, at hearing in the matter, Board staff stated full concurrence with the foregoing position of Division.

D. Conclusive Findings:

The above stated procedural prerequisites, legal authority, and factual findings, as further supported by the documentary record and hearing testimony in this matter, provide a substantive and reasonable basis of conclusion that: (1) Each Applicant has complied with the statutory and regulatory requirements that must be met before an application for permanent variance may be conditionally granted, and (2) a preponderance of the evidence

establishes that each Applicants proposal, subject to all conditions and limitations set forth in the below Decision and Order, will provide equivalent safety and health to that which would prevail upon full compliance with the requirements of California Code of Regulation, title 8, Elevator Safety Orders from which variance is being sought.

E. Decision and Order:

Each application that is the subject of this proceeding, as specified per the Section A.1 table, is conditionally GRANTED as specified below, and to the extent, as of the date the Board adopts this Proposed Decision, each specified Applicant shall have permanent variance from California Code of Regulations, title 8, section 3141 [ASME A17.1-2004, Sections 2.26.9.4, 2.14.1.7.1, 2.18.7.4, and 2.18.5.1] of the Elevator Safety Orders, with respect to the means of removing power from driving machine motor and brakes, car top railings, and reduced governor sheave diameter, subject to the following conditions:

1. If there is an inset car top railing:
 - a. Serviceable equipment shall be positioned so that mechanics and inspectors do not have to climb on railings to perform adjustment, maintenance, repairs or inspections. The applicant shall not permit anyone to stand on or climb over the car top railing.
 - b. The distance that the car top railing may be inset shall be limited to no more than 6 inches.
 - c. All exposed areas outside the car top railing shall preclude standing or placing objects or persons which may fall, and shall be beveled from the mid- or top rail to the outside of the car top.
 - d. The top of the beveled area and/or the car top area outside the railing, shall be clearly marked. The markings shall consist of alternating four-inch diagonal red and white stripes.
 - e. The applicant shall provide durable signs with lettering not less than ½ inch on a contrasting background on each inset railing; each sign shall state:

**CAUTION
DO NOT STAND ON OR CLIMB OVER RAILING**

- f. The Group IV requirements for car top clearances shall be maintained (car top clearances outside the railing shall be measured from the car top and not from the required bevel).
2. The speed governor rope and sheaves shall comply with the following:

- a. The governor shall be used in conjunction with a 8 mm (0.315 in.) diameter steel governor rope with 8-strand, regular lay construction.
 - b. The governor rope shall have a factor of safety of 8 or greater as related to the strength necessary to activate the safety.
 - c. The governor sheaves shall have a pitch diameter of not less than 240 mm (9.45 in.).
3. The SIL rated software system and its related circuits shall comply with the following:
- a. The SIL-rated software system and related circuits shall consist of three circuit board components (SSIB, KSIB, and HSIB), each labeled or marked with the SIL rating (not less than SIL 3), the name or mark of the certifying organization, and the SIL certification number (AEB 012, EU-ESD 012 or both) followed by the applicable revision number (as in AEB 012/2, EU-ESD 012/1).
 - b. The software system and related circuits shall be certified for compliance with the applicable requirements of ASME A17.1-2013 Section 2.26.4.3.2.
 - c. The access door or cover of the enclosures containing the SIL rated components shall be clearly labeled or tagged on their exterior with the statement:

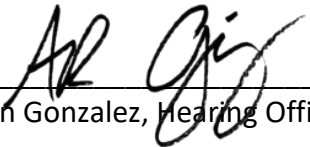
**Assembly contains SIL rated devices.
Refer to Maintenance Control Program and
wiring diagrams prior to performing work.**

- d. Unique maintenance procedures or methods required for the inspection, tests and replacement of the SIL rated circuits shall be developed and a copy maintained in the elevator machine room. The procedures or methods shall include clear color photographs of each SIL rated component, with notations indicating part identification and location installed.
- e. Wiring diagrams that include part identification, SIL, and certification information, shall be maintained in the elevator machine room.
- f. A successful test of the SIL rated software system and its related circuits shall be conducted initially and not less than annually in accordance with the testing procedure. The test shall demonstrate that SIL rated devices, safety functions, and related circuits operate as intended.
- g. Alterations to the SIL rated software system and its related circuits shall be made in compliance with the Elevator Safety Orders. If the Elevator Safety Orders do not contain specific provisions for the alteration of SIL rated devices the alterations shall be made in conformance with ASME A17.1-2013, Section 8.7.1.9.

- h. Replacement of the SIL rated software system or its related circuits shall be made in compliance with the Elevator Safety Orders. If the Elevator Safety Orders do not contain specific provisions for the replacement of SIL rated devices, the replacement shall be made in conformance with ASME A17.1-2013, Section 8.6.3.14.
 - i. Repairs to the SIL rated software system and its related circuits shall be made in compliance with the Elevator Safety Orders. If the Elevator Safety Orders do not contain specific provisions for the repair of SIL rated devices, the repairs shall be made in conformance with ASME A17.1-2013, Section 8.6.2.6.
 - j. Any space containing SIL rated software or circuits shall be maintained within the temperature and humidity range specified by Otis Elevator Company. The temperature and humidity range shall be posted on each enclosure containing SIL rated software or circuits.
 - k. Field software changes are not permitted. Any changes to the TUV certified SIL rated software will require updated documentation and recertification.
4. The elevator shall be serviced, maintained, adjusted, tested, and inspected only by Certified Competent Conveyance Mechanics who have been trained to, and are competent to perform those tasks on the elevator system (including SIL 3-rated devices) in accordance with the written procedures and criteria required by Condition No. 3 and in accordance with the terms of this permanent variance.
 5. Any Certified Qualified Conveyance Company performing inspections, maintenance, servicing, or testing of the elevators shall be provided a copy of this variance decision.
 6. The Division shall be notified when the elevator is ready for inspection. The elevator shall be inspected by the Division, and a Permit to Operate shall be issued before the elevator is placed in service.
 7. The Applicant shall notify its employees or their authorized representative(s), or both, of this order in the same way and to the same extent that employees and authorized representatives are to be notified of docketed permanent variance applications pursuant to California Code of Regulations, title 8, sections 411.2 and 411.3.
 8. This Decision and Order shall remain in effect unless modified or revoked upon application by the Applicant, affected employee(s), the Division of Occupational Safety and Health, or by the Board on its own motion, in the manner prescribed for its issuance.

Pursuant to California Code of Regulations, title 8, section 426(b), the above, duly completed Proposed Decision, is hereby submitted to the Occupational Safety and Health Standards Board for consideration of adoption.

Dated: December 2, 2022



Autumn Gonzalez, Hearing Officer

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
(916) 274-5721

In the Matter of Application for
Permanent Variance by:

La Mesa Bookshop LLC

OSHSB File No.: 22-V-505

Proposed Decision Dated: December 2, 2022

DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached
PROPOSED DECISION by Autumn Gonzalez, Hearing Officer.

DAVID THOMAS, Chairman

BARBARA BURGEL, Member

KATHLEEN CRAWFORD, Member

DAVID HARRISON, Member

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Date of Adoption: December 15, 2022

THE FOREGOING VARIANCE DECISION WAS
ADOPTED ON THE DATE INDICATED ABOVE.
IF YOU ARE DISSATISFIED WITH THE
DECISION, A PETITION FOR REHEARING
MAY BE FILED BY ANY PARTY WITH THE
STANDARDS BOARD WITHIN TWENTY (20)
DAYS AFTER SERVICE OF THE DECISION.
YOUR PETITION FOR REHEARING MUST
FULLY COMPLY WITH THE REQUIREMENTS
OF CALIFORNIA CODE OF REGULATIONS,
TITLE 8, SECTIONS 427, 427.1 AND 427.2.

Note: A copy of this Decision must be
posted for the Applicant's employees to
read, and/or a copy thereof must be
provided to the employees' Authorized
Representatives.

BEFORE THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
DEPARTMENT OF INDUSTRIAL RELATIONS
STATE OF CALIFORNIA

In the Matter of Application for Permanent Variance by: La Mesa Bookshop LLC	OSHSB File No.: 22-V-505 Proposed Decision Hearing Date: November 30, 2022
---	--

A. Procedural Matters

1. La Mesa Bookshop LLC (“Applicant”) has applied for a permanent variance from provisions of title 8 of the California Code of Regulations regarding vertical platform (wheelchair) lifts, with respect to one vertical platform (wheelchair) lift proposed to be located at:

8235 La Mesa Blvd.
La Mesa, CA
2. The safety orders at issue are stated in the prefatory part of the Decision and Order. This proceeding is conducted in accordance with Labor Code section 143, and California Code of Regulations, title 8, section 401, et. seq.
3. This hearing was held on November 30, 2022, in Sacramento, California, via teleconference, by delegation of the Occupational Safety and Health Standards Board (“Board”), with Hearing Officer Autumn Gonzalez, both presiding and hearing the matter on its merit, as a basis of proposed decision to be advanced to the Board for its consideration, in accordance with California Code of Regulations, title 8, section 426.
4. Appearing at hearing were Craig Fiore with McKinley Elevator Corporation appearing on behalf of the Applicant; Jose Ceja, Mark Wickens and David Morris appeared on behalf of the Division of Occupational Safety and Health (“Division”); and Michael Nelmidia appeared on behalf of Board staff acting in a technical advisory role apart from the Board.
5. Documentary and oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence:

Exhibit Number	Description of Exhibit
PD-1	Application for Permanent Variance
PD-2	OSHSB Notice of Hearing
PD-3	Board Staff Review of Variance Application
PD-4	Division Review of Variance Application
PD-5	Review Draft-1 Proposed Decision

Official notice is taken of the Board’s files, records, recordings and decisions concerning the Elevator Safety Order requirements from which variance shall issue. On November 30, 2022, the hearing and record closed, and the matter was taken under submission by the Hearing Officer.

B. Findings of Fact

Based on the record of this proceeding, and officially noticed Board records per (above section A.5) stipulation of Applicant and Division—inclusive of permanent variance file records of sworn testimony, findings and decisions in OSHSB File No. 15-V-297, the Board finds the following:

1. The Applicant proposes to install one vertical platform (wheelchair) lift at a location having the address of:

8235 La Mesa Blvd.
La Mesa, CA
2. Applicant requests variance solely from title 8, sections 3142, subdivision (a) and 3142.1.
3. The subject vertical lift is proposed to be a Garaventa Lift, Model GVL-EN-168, with a vertical travel range of approximately 168 inches. That range of travel exceeds the 12-foot maximum vertical rise allowed by ASME A18.1-2003, section 2.7.1—the State of California standard in force at the time of this Decision.
4. The Division’s evaluation in this Matter, states that the more recent consensus code, ASME A18.1-2005, allows for vertical platform lifts to have a travel not exceeding 14 feet (168 in.).
5. Permanent variances regarding the extended travel of vertical platform lifts, of similar configuration to that of the subject proposed model, have been previously granted, without subsequent safety problems attributable to such variance being reported. (e.g. OSHSB File Nos. 13-V-260, 15-V-097, 15-V-297, 18-V-069)

6. It is the well informed professional opinion of Board staff and Division (per Exhibits PD-3, and PD-4, respectively) that equivalent safety will be achieved upon grant of presently requested permanent variance, subject to conditions materially equivalent to those imposed by Board adopted Decision and Order, In Matters of Application for Permanent Variance Nos. 15-V-297, and 18-V-069. Board Staff concurs with Division (per Exhibit PD-3) in recommending such conditional grant.
7. With respect to the equivalence or superior of safety, conditions and limitations of the below Decision and Order are in material conformity with those of previously issued Permanent Variance Nos. 15-V-297, and 18-V-069.

C. Conclusive Findings

On the basis of the above procedural matters, legal authority, and findings of fact, the Board finds that Applicant has complied with the statutory and regulatory requirements that must be met before an application for a permanent variance may be granted and that a preponderance of the evidence establishes that the Applicant's proposal, subject to all limiting conditions set forth in the below Decision and Order, will provide both conveyance safety, and employment and a place of employment that are as safe and healthful as those that would prevail if the Applicant complied with the safety orders at issue.

D. Decision and Order

The Application for Permanent Variance of La Mesa Bookshop LLC, OSHSB File No. 22-V-505, is conditionally GRANTED to the limited extent, upon the Board's adoption of this Proposed Decision, La Mesa Bookshop LLC, shall have permanent variance from California Code of Regulations, title 8, sections 3142(a) and 3142.1 incorporated ASME A18.1-2003, section 2.7.1, inasmuch as each restricts the vertical rise of a wheelchair lift to a maximum of 12 feet, with respect to one (1) Garaventa Lift, Model GVL-EN-168 Vertical Platform Lift, to be located at:

8235 La Mesa Blvd.
La Mesa, CA

The above referenced vertical platform lift shall be subject to the following further conditions and limitations:

1. This lift may travel up to 168 inches, unless the manufacturer's instructions provide for a lesser vertical travel limit, or lesser total elevation change, in which case, travel shall be limited to the lesser limit or elevation change.

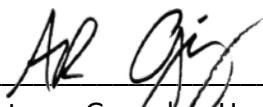
2. The wheelchair lift shall be installed and operated in accordance with the manufacturer's instructions, unless the provisions of this variance or applicable provisions of the law provide or require otherwise.
3. Durable signs with lettering not less than 5/16 inch on a contrasting background shall be permanently and conspicuously posted inside the car and at all landings indicating that the lift is for the exclusive use of persons with physical impairments and that the lift is not to be used to transport material or equipment. The use of the lift shall be limited in accordance with these signs.
4. A maintenance contract shall be executed between the owner/operator and a Certified Qualified Conveyance Company (CQCC). The contract shall stipulate that the routine preventive maintenance required by section 3094.5(a)(1) shall be performed at least quarterly and shall include but not be limited to:
 - (a) Platform driving means examination;
 - (b) Platform examination;
 - (c) Suspension means examination;
 - (d) Platform alignment;
 - (e) Vibration examination;
 - (f) Door/gate electrical; and
 - (g) Mechanical lock examination.
5. The lift shall be tested annually for proper operation under rated load conditions. The Division's Elevator Unit District Office shall be provided written notification in advance of the test, and the test shall include a check of car or platform safety device.
6. The lift shall be shut down immediately if the lift experiences unusual noise and vibration, and the Applicant shall notify the CQCC immediately. The lift shall only be restarted by the CQCC.
7. The Applicant shall notify the CQCC if the lift shuts down for any reason. The lift shall only be restarted by the CQCC.
8. Service logs including, but not limited to, the device shutdown(s) shall be kept in the maintenance office and shall be available to the Division. The shutdown

information shall contain the date of the shutdown, cause of the shutdown, and the action taken to correct the shutdown.

9. The Applicant shall provide training on the safe operation of the lift in accordance with section 3203. Such training shall be conducted annually for all employees using or who will be assisting others in using the lift. The Applicant shall notify the Division in writing that training has been conducted. A copy of the training manual (used for the subject training), and documentation identifying the trainer and attendees shall be maintained for at least 1 year and provided to the Division upon request.
10. Any CQCC performing inspections, maintenance, servicing or testing of the elevators shall be provided a copy of this variance decision.
11. The Division shall be notified when the lift is ready for inspection, and the lift shall be inspected by the Division and a Permit to Operate shall be issued before the lift is put into service.
12. The Applicant shall notify its employees or their authorized representative(s), or both, of this order in the same way and to the same extent that employees and authorized representatives are to be notified of docketed permanent variance applications pursuant to California Code of Regulations, title 8, sections 411.2 and 411.3.
13. This Decision and Order shall remain in effect unless modified or revoked upon application by the Applicant, affected employee(s), the Division, or by the Board on its own motion, in the procedural manner prescribed per title 8, Division 1, Chapter 3.5.

Pursuant to California Code of Regulations, title 8, section 426(b), the above, duly completed Proposed Decision, is hereby submitted to the Occupational Safety and Health Standards Board for consideration of adoption.

Dated: December 2, 2022



Autumn Gonzalez, Hearing Officer

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
(916) 274-5721

In the Matter of Application for
Permanent Variance regarding:

Schindler Model 3300 Elevators with
variant Gov. Ropes & Sheaves (Group IV)

OSHSB File No.: See section A.1 table
Proposed Decision Dated: December 2, 2022

DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached
PROPOSED DECISION by Autumn Gonzalez, Hearing Officer.

DAVID THOMAS, Chairman

BARBARA BURGEL, Member

KATHLEEN CRAWFORD, Member

DAVID HARRISON, Member

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Date of Adoption: December 15, 2022

THE FOREGOING VARIANCE DECISION WAS
ADOPTED ON THE DATE INDICATED ABOVE.
IF YOU ARE DISSATISFIED WITH THE
DECISION, A PETITION FOR REHEARING
MAY BE FILED BY ANY PARTY WITH THE
STANDARDS BOARD WITHIN TWENTY (20)
DAYS AFTER SERVICE OF THE DECISION.
YOUR PETITION FOR REHEARING MUST
FULLY COMPLY WITH THE REQUIREMENTS
OF CALIFORNIA CODE OF REGULATIONS,
TITLE 8, SECTIONS 427, 427.1 AND 427.2.

Note: A copy of this Decision must be
posted for the Applicant's employees to
read, and/or a copy thereof must be
provided to the employees' Authorized
Representatives.

BEFORE THE
 OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
 DEPARTMENT OF INDUSTRIAL RELATIONS
 STATE OF CALIFORNIA

<p>In the Matter of Application for Permanent Variance Regarding:</p> <p>Schindler Model 3300 Elevators with variant Gov. Ropes & Sheaves (Group IV)</p>	<p>OSHSB File Nos.: See section A.1 table below</p> <p><u>PROPOSED DECISION</u></p> <p>Hearing Date: November 30, 2022</p>
--	--

A. Subject Matter and Jurisdiction:

- Each below listed applicant (“Applicant”) has applied for permanent variance from certain provisions of the Elevator Safety Orders, found at title 8, of the California Code of Regulations, with respect to a conveyance, or conveyances, in the listed quantity, at the listed location:

Variance No.	Applicant Name	Variance Location Address	No. of Elevators
22-V-507	San Diego County Regional Airport Authority	2417 McCain Road San Diego, CA	2

- This proceeding is conducted in accordance with Labor Code section 143, and California Code of Regulations, title 8, section 401, et. seq.
- The safety orders at issue are set out in below section C.1—C.4.

B. Process and Procedure:

- This hearing was held on November 30, 2022, in Sacramento, California, via teleconference, by Occupational Safety and Health Standards Board (“Board”), with Hearing Officer Autumn Gonzalez, both presiding and hearing the matter on its merit, as a basis of proposed decision to be advanced to the Board for its consideration, in accordance with California Code of Regulations, title 8, section 426.
- At the hearing, Jennifer Linares, with the Schindler Elevator Corporation, appeared on behalf of each Applicant; Jose Ceja, Mark Wickens and David Morris appeared on behalf of the Division of Occupational Safety and Health (“Division”); and Michael Nelmidia appeared on behalf of Board staff, in a technical advisory role apart from the Board.
- Oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence:

Exhibit Number	Description of Exhibit
PD-1	Permanent variance applications per section A.1 table
PD-2	OSHSB Notice of Hearing
PD-3	Board Staff Reviews of Variance Application
PD-4	Division Reviews of Variance Application
PD-5	Review Draft-1 Proposed Decision

Official notice is taken of the Board’s rulemaking records, and variance decisions concerning the safety order requirements from which variance is requested. At close of hearing on November 30, 2022, the record was closed, and the matter taken under submission by the Hearing Officer.

C. Findings of Fact—Based upon the record of this proceeding, the Board finds the following:

Requested Suspension Means Related Variance:

1. As each pertains to the non-circular elastomeric coated suspension means characteristic of the Schindler Model 3300 elevator, each Applicant presently seeks permanent variance from the following title 8, Elevator Safety Order incorporated ASME Safety Code for Elevators and Escalators (ASME Code) A17.1-2004, sections and subsections:

- section 2.20.1—Wire rope suspension means
- section 2.20.2.1—Crosshead data plate
- Subsection 2.20.2.2(a)—Wire rope data tag
- Subsection 2.20.2.2(f)—ID of steel wire rope as preformed or nonpreformed
- section 2.20.3—Wire rope safety factor
- section 2.20.4—Number and diameter of wire ropes
- section 2.20.9.3.4—Wire rope end connections
- section 2.20.9.5.4—Wire rope sockets

Requested Car Top Railing Inset Variance:

2. As it pertains to top of car railing placement requiring space occupied by upper hoistway mounted elevator machinery characteristic of the Schindler Model 3300 elevator, each Applicant presently seeks permanent variance from the following title 8, Elevator Safety Order incorporated ASME Code A17.1-2004, section:

section 2.14.1.7.1—Top of Car Perimeter Railing Placement

Requested Seismic Reset Switch Placement Variance:

3. As it pertains to installation of the requisite seismic reset switch within a “machine room” location incompatible with machine-room-less design of the Schindler Model 3300 elevator, each Applicant presently seeks permanent variance from the following title 8, Elevator Safety Order incorporated ASME Code subsection:

Requested Transfer Switch Placement Variance:

4. As it pertains to installation of the requisite transfer switch within a “machine room” location incompatible with machine-room-less design of the Schindler Model 3300 elevator, each Applicant presently seeks permanent variance from the following title 8, Elevator Safety Order incorporated ASME Code A17.1-2004, subsection:

Subsection 2.26.1.4.4(a)--Transfer Switch Placement in Machine Room

Requested Governor Sheave to Rope Diameter Ratio Variance:

5. As it pertains to installation of requisite pitch diameter of the governor sheaves and governor tension sheaves, each Applicant presently seeks permanent variance from the following title 8, Elevator Safety Order incorporated ASME Code A17.1-2004, subsection:

section 3141 [ASME A17.1-2004, section 2.18.7.4] states:

“The pitch diameter of governor sheaves and governor tension sheaves shall be not less than the product of the diameter of the rope and the applicable multiplier listed in Table 2.18.7.4, based on the rated speed and the number of strands in the rope.”

Table 2.18.7.4 Multiplier for Determining Governor Sheave Pitch Diameter

Rated Speed, m/s (ft/min)	Number of Strands	Multiplier
1.00 or less (200 or less)	6	42
1.00 or less (200 or less)	8	30
Over 1.00 (over 200)	6	46
Over 1.00 (over 200)	8	32

50 mm (2 in.) when tested in accordance with ASTM E 8. Forged, cast, or welded parts shall be stress relieved. Cast iron shall have a factor of safety of not less than 10.

6. Per the Application, the proposal is stated as follows: “The approved speed governor provided for this elevator has a sheave diameter-to-governor rope diameter ratio [D/d] of 33. This is not compliant with the current Group IV Elevator Safety Orders which require a [D/d] of 42-46. Equivalent safety will be attained by providing a governor rope with a breaking strength that provides a factor of safety greater than that required by the Elevator Safety Orders, and a governor sheave diameter which complies with the requirements of ASME A17.1-2010, section 2.18.5.1, and section 2.18.7.4, which, under certain conditions, permits the use of a governor rope and governor sheave ratio [D/d] of not less than 30.”
7. Having analyzed the request, as reflected in its Review of Application (Exhibit PD-4) Division is of the well informed professional opinion that the proposal, in as much as it

is to use a governor with sheave pitch diameter of not less than the product of the governor rope diameter and a multiplier of 30, in conjunction with a steel governor rope with a diameter of 6 mm (0.25 in.), 6-strand construction, and a factor of safety of 8 or greater, will provide safety, and workplace safety and health equivalent or superior to that of the ASME A17.1-2004, section 2.18.7.4. Division also correctly notes Applicant's proposed governor sheave pitch diameter, and reduced diameter governor rope installation is similar to installations for which a permanent variance has been previously conditionally granted. (e.g. OSHSB File No. 19-V-076)

Official Notice and Incorporation by Reference—OSHSB File No. 15-V-349:

8. Per hereby entered stipulation offered at hearing by Applicant, Division, and Board staff, concerning preexisting Board records, including decisions in matters of permanent variance from Elevator Safety Order requirements, the Board takes Official Notice and expressly incorporates herein by reference, OSHSB File No. 15-V-349, Decision and Order adopted November 17, 2016, section D.1—D.75 findings, and therein entered record upon which it was based.

Positions of Division, and Board Staff:

9. Having fully reviewed each Applicant's request for variance from the above identified Elevator Safety Order requirements, it is the concurrent opinion of Division and Board staff, that conditionally limited grant to each Applicant of permanent variance as specified per the below Decision and Order, will provide for elevator safety, and occupational safety and health, equivalent or superior to that of the Elevator Safety Order requirements from which variance is being sought. The present opinion of Division and Board staff, to any extent it may vary from those previously held with respect to the previously heard matter in OSHSB File No. 15-V-349, reflects further scrutiny of the subject matter, consultation between Division, Board staff, Applicant representatives, and refinement of recommended conditions and limitations.

D. Conclusive Findings:

The above stated procedural prerequisites, legal authority, and factual findings, as further supported by the documentary record and hearing testimony in this matter, provide a substantive and reasonable basis of conclusion that: (1) Each Applicant has complied with the statutory and regulatory requirements that must be met before an application for permanent variance may be conditionally granted, and (2) a preponderance of the evidence establishes that each Applicant's proposal, subject to all conditions and limitations set forth in the below Decision and Order, will provide equivalent safety and health to that which would prevail upon full compliance with the requirements of California Code of Regulation, title 8, Elevator Safety Orders from which variance is being sought.

E. Decision and Order:

Each section A table identified Applicant is hereby conditionally GRANTED Permanent Variance as specified below, and to the limited extent, as of the date the Board adopts this Proposed Decision, with respect to the section A specified number of Schindler Model 3300 elevator(s), at the specified location, each shall conditionally hold permanent variance from the following subparts of ASME A17.1-2004, currently incorporated by reference into California Code of Regulations, title 8, section 3141.

Suspension Members: Each Applicant shall conditionally hold permanent variance from the following title 8, section 3141, incorporated sections and subsections of ASME A17.12004, to the limited extent variance is necessary to provide for use of noncircular elastomeric-coated steel suspension members and concomitant components, and configurations— section 2.20.1; section 2.20.2.1; Subsection 2.20.2.2(a); Subsection 2.20.2.2(f); section 2.20.3; section 2.20.4: section 2.20.9.3.4; and section 2.20.9.5.4.

Inspection Transfer Switch: Each Applicant shall conditionally hold permanent variance from certain requirements of the following title 8, section 3141 incorporated section of ASME A17.1-2004, to the extent variance is necessary to having the requisite inspection transfer switch located elsewhere than a machine room, within a Security Group I enclosure built into an upper floor landing door jam, or within other readily accessible and secure space shared with the motion controller outside the hoistway: section 2.26.1.4.4.

Seismic Safety Switch Placement: Each Applicant shall conditionally hold permanent variance from certain requirements of the following title 8, section 3141, incorporated section of ASME A17.1-2004, to the limited extent variance is necessary to having the requisite seismic reset switch located elsewhere than a machine room, within a Security Group I enclosure built into an upper floor landing door jam, or within other readily accessible and secure space shared with the motion controller outside the hoistway: section 8.4.10.1.1.

Car Top Railing: Each Applicant shall conditionally hold permanent variance from certain requirements of the following title 8, section 3141, incorporated section of ASME A17.1-2004, to the limited extent variance is necessary to provide for the below specified inseting of the subject elevator's top of car railing: section 2.14.1.7.1.

Governor Rope and Sheave: Each Applicant shall conditionally hold permanent variance from certain requirements of the following title 8, section 3141, incorporated section of ASME A17.1-2004, to the limited extent variance is necessary to allow for the below specified governor rope and governor sheave parameters: section 2.18.7.4.

Further Conditions and Limitations:

1. The elevator suspension system shall comply to the following:
 - 1.1. The suspension traction media (STM) members and their associated fastenings shall conform to the applicable requirements of ASME A17.1-2013, sections:
 - 2.20.4.3 – Minimum Number of Suspension Members

- 2.20.3 – Factor of Safety
- 2.20.9 – Suspension Member Fastening

1.1.1 Additionally, STMs shall meet or exceed all requirements of ASME 17.6-2010, Standard for Elevator Suspension, Compensation, and Governor Systems, Part 3 Noncircular Elastomeric Coated Steel Suspension Members for Elevators.

- 1.2. The Applicant shall not utilize the elevator unless the manufacturer has written procedures for the installation, maintenance, inspection and testing of the STM members and fastenings and related monitoring and detection systems and criteria for STM replacement, and the Applicant shall make those procedures and criteria available to the Certified Competent Conveyance Mechanic (CCCM) at the location of the elevator, and to the Division of Occupational Safety and Health (Division) upon request.
- 1.3. STM member mandatory replacement criteria shall include:
 - 1.3.1 Any exposed wire, strand or cord;
 - 1.3.2 Any wire, strand or cord breaks through the elastomeric coating;
 - 1.3.3 Any evidence of rouging (steel tension element corrosion) on any part of the elastomeric coated steel suspension member;
 - 1.3.4 Any deformation in the elastomeric suspension member such as, but not limited to, kinks or bends.
- 1.4. Traction drive sheaves must have a minimum diameter of 72 mm. The maximum speed of STM members running on 72 mm, 87 mm and 125 mm drive sheaves shall be no greater than 2.5 m/s, 6.0 m/s and 8.0 m/s respectively.
- 1.5. If any one STM member needs replacement, the complete set of suspension members on the elevator shall be replaced. Exception: If a new suspension member is damaged during installation, and prior to any contemporaneously installed STM having been placed into service, it is permissible to replace the individual damaged suspension member. STM members that have been installed on another installation shall not be re-used.
- 1.6. A traction loss detection means shall be provided that conforms to the requirements of ASME A17.1-2013, section 2.20.8.1. The means shall be tested for correct function annually in accordance with ASME A17.1-2013, section 8.6.4.19.12.
- 1.7. A broken suspension member detection means shall be provided that conforms to the requirements of ASME A17.1-2013, section 2.20.8.2. The means shall be tested for correct function annually in accordance with ASME A17.1-2013, section 8.6.4.19.13(a).

- 1.8. An elevator controller integrated bend cycle monitoring system shall monitor actual STM bend cycles, by means of continuously counting, and storing in nonvolatile memory, the number of trips that the STM makes traveling, and thereby being bent, over the elevator sheaves. The bend cycle limit monitoring means shall automatically stop the car normally at the next available landing before the bend cycle correlated residual strength of any single STM member drops below 80 percent of full rated strength. The monitoring means shall prevent the car from restarting. Notwithstanding any less frequent periodic testing requirement per Addendum 1 (Division Circular Letter), the bend cycle monitoring system shall be tested semi-annually in accordance with the procedures required per above Conditions 1.2, and 1.3.
- 1.9. Each elevator shall be provided with a device that electronically detects a reduction in residual strength of each STM member. The device shall be in compliance with Division Circular Letter E-10-04, a copy of which is attached hereto as Addendum 1, and incorporated herein by reference.
- 1.10. The elevator crosshead data plate shall comply with the requirements of ASME A17.1-2013, section 2.20.2.1.
- 1.11. A suspension means data tag shall be provided that complies with the requirements of ASME A17.1-2013, section 2.20.2.2.
- 1.12. Comprehensive visual inspections of the entire length of each and all installed suspension members, in conformity with above Conditions 1.2 and 1.3 specified criteria, shall be conducted and documented every six months by a CCCM.
- 1.13. The Applicant shall be subject to the requirements per hereto attached, and inhere incorporated, Addendum 2, "Suspension Means Replacement Reporting Condition."
- 1.14. Records of all tests and inspections shall be maintenance records subject to ASME A17.1-2004, sections 8.6.1.2, and 8.6.1.4, respectively.
2. Inspection Transfer switch and Seismic Reset switch placement and enclosure shall comply with the following:
 - 2.1. If the inspection transfer switch required by ASME A17.1-2004, Rule 2.26.1.4.4, does not reside in a machine room, that switch shall not reside in the elevator hoistway. The switch shall reside in the control/machinery room/space containing the elevator's control equipment in an enclosure secured by a lock openable by a Group 1 security key. The enclosure is to remain locked at all times when not in use.
 - 2.2. If the seismic reset switch does not reside in the machine room, that switch shall not reside in the elevator hoistway. The switch shall reside in the control/machinery room/space containing the elevator's control equipment in

an enclosure secured by a lock openable by a Group 1 security key. The enclosure is to remain locked at all times when not in use.

3. Any and all inset car top railing shall comply with the following:
 - 3.1. Serviceable equipment shall be positioned so that mechanics and inspectors do not have to stand on or climb over the railings to perform adjustments, maintenance, repairs or inspections. The Applicant shall not permit anyone to stand or climb over the car top railing.
 - 3.2. The distance that the railing can be inset shall be limited to not more than 6 inches.
 - 3.3. All exposed areas of the car top outside the car top railing where the distance from the railing to the edge of the car top exceeds 2 inches, shall be beveled with metal, at an angle of not less than 75 degrees with the horizontal, from the mid or top rail to the outside of the car top, such that no person or object can stand, sit, kneel, rest, or be placed in the exposed areas.
 - 3.4. The top surface of the beveled area and/or car top outside the railing, shall be clearly marked. The markings shall consist of alternating 4 inch diagonal red and white stripes.
 - 3.5. The applicant shall provide durable signs with lettering not less than 1/2 inch on a contrasting background on each inset railing; each sign shall state:

**CAUTION
STAY INSIDE RAILING
NO LEANING BEYOND RAILING
NO STEPPING ON, OR BEYOND, RAILING**

- 3.6. The Group IV requirements for car top clearances shall be maintained (car top clearances outside the railing will be measured from the car top and not from the required bevel).
4. The elevator shall be serviced, maintained, adjusted, tested, and inspected only by CCCM having been trained, and competent, to perform those tasks on the Schindler Model 3300 elevator system in accordance with written procedures and criteria, including as required per above Conditions 1.2, and 1.3.
5. The speed governor rope and sheaves shall comply with the following:
 - 5.1. The governor shall be used in conjunction with a steel 6 mm (0.25 in.) diameter governor rope with 6-strand, regular lay construction.
 - 5.2. The governor rope shall have a factor of safety of 8 or greater as related to the strength necessary to activate the safety.

- 5.3. The governor sheaves shall have a pitch diameter of not less than 200 mm (7.87 in.).
6. The Division shall be notified when the elevator is ready for inspection. The elevator shall be inspected by the Division, and all applicable requirements met, including conditions of this permanent variance, prior to a Permit to Operate the elevator being issued. The elevator shall not be placed in service prior to the Permit to Operate being issued by Division.
7. The Applicant shall notify its employees or their authorized representative(s), or both, of this order in the same way and to the same extent that employees and authorized representatives are to be notified of docketed permanent variance applications pursuant to California Code of Regulations, title 8, sections 411.2, and 411.3.
8. This Decision and Order shall remain in effect unless modified or revoked upon application by the Applicant, affected employee(s), the Division, or by the Board on its own motion, in procedural accordance with title 8, sections 411, et. seq.

Pursuant to California Code of Regulations, title 8, section 426(b), the above, duly completed Proposed Decision, is hereby submitted to the Occupational Safety and Health Standards Board for consideration of adoption.

Dated: December 2, 2022



Autumn Gonzalez, Hearing Officer

ADDENDUM 1

October 6, 2010

CIRCULAR LETTER E-10-04

TO: Installers, Manufacturers of Conveyances and Related Equipment and, Other Interested Parties

SUBJECT: Coated Steel Belt Monitoring

The Elevator Safety Orders require routine inspection of the suspension means of an elevator to assure its safe operation.

The California Labor Code section 7318 allows the Division to promulgate special safety orders in the absence of regulation.

As it is not possible to see the steel cable suspension means of a Coated Steel Belt, a monitoring device which has been accepted by the Division is required on all Coated Steel Belts which will automatically stop the car if the residual strength of any belt drops below 60%. The Device shall prevent the elevator from restarting after a normal stop at a landing.

The monitoring device must be properly installed and functional. A functioning device may be removed only after a determination has been made that the residual strength of each belt exceeds 60%. These findings and the date of removal are to be conspicuously documented in the elevator machine room. The removed device must be replaced or returned to proper service within 30 days.

If upon routine inspection, the monitoring device is found to be in a non-functional state, the date and findings are to be conspicuously documented in the elevator machine room.

If upon inspection by the Division, the monitoring device is found to be non-functional or removed, and the required documentation is not in place, the elevator will be removed from service.

If the device is removed to facilitate belt replacement, it must be properly installed and functional before the elevator is returned to service.

A successful test of the device's functionality shall be conducted once a year.

This circular does not preempt the Division from adopting regulations in the future, which may address the monitoring of Coated Steel Belts or any other suspension means.

This circular does not create an obligation on the part of the Division to permit new conveyances utilizing Coated Steel Belts.

Debra Tudor
Principal Engineer
DOSH-Elevator Unit HQS

ADDENDUM 2

Suspension Means – Replacement Reporting Condition

Beginning on the date the Board adopts this Proposed Decision and continuing for a period of two years, the Applicant shall report to the Division within 30 days any and all replacement activity performed on the elevator(s) pursuant to the requirements of ASME A17.1-2004, section 8.6.3 involving the suspension means or suspension means fastenings.

Further:

1. A separate report for each elevator shall be submitted, in a manner acceptable to the Division, to the following address (or to such other address as the Division might specify in the future): DOSH Elevator Unit, 2 MacArthur Place, Suite 700, Santa Ana, CA 92707, Attn: Engineering section.
2. Each such report shall contain, but not necessarily be limited to, the following information:
 - a. The State-issued conveyance number, complete address, and OSHSB file number that identifies the permanent variance.
 - b. The business name, complete address, telephone number, and contact person of the elevator responsible party (presumably the Applicant or the subsequent holder of this variance).
 - c. The business name, complete address, telephone number, and Certified Qualified Conveyance Company (CQCC) certification number of the firm performing the replacement work.
 - d. The name (as listed on certification), Certified Competent Conveyance Mechanic (CCCM) certification number, certification expiration date, and signature of each CCCM performing the replacement work.
 - e. The date and time the elevator was removed from normal service for suspension replacement, the date and time the replacement work commenced, the date and time the replacement work was completed, and the date and time the elevator was returned to normal service.
 - f. A detailed description of, and clear color photographs depicting, (1) all the conditions that existed in the suspension components requiring their replacement and (2) any conditions that existed to cause damage or distress to the suspension components being replaced.
 - g. A detailed list of all elevator components adjusted, repaired, or replaced in conjunction with the suspension component replacement.

- h. All information provided on the crosshead data plate per ASME A17.1-2004, section 2.20.2.1, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.
 - i. For the suspension means being replaced, all information provided on the data tag required per ASME A17.1-2004, section 2.20.2.2, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.
 - j. For the replacement suspension means, all information provided on the data tag required by ASME A17.1-2004, section 2.20.2.2, unless that ASME requirement is modified by the conditions of a variance that pertains to the elevator in question, in which case, the information to be reported shall be the information required by the ASME provision as modified by the variance.
 - k. Any other information requested by the Division regarding the replacement of the suspension means or fastenings.
3. In addition to the submission of the report to the Division, the findings of any testing, failure analysis, or other engineering evaluations performed on any portion of the replaced suspension components, or other elevator components replaced in conjunction therewith, shall be submitted to the Division referencing the information contained in item 2a above.

Occupational Safety and Health Standards Board

Business Meeting
Legislative Update

**THERE WILL BE NO
LEGISLATIVE UPDATE
FOR THIS MONTH'S
MEETING, AS THE
2023-2024
LEGISLATIVE
SESSION JUST
CONVENED ON
DECEMBER 5, 2022.**

Occupational Safety and Health Standards Board

Business Meeting Executive Officer's Report