

OCCUPATIONAL SAFETY AND HEALTH
STANDARD BOARD

PETITION FILE NO. 577

Petitioners: Donald Zampa and Greg McClelland

BOARD STAFF EVALUATION

Submitted by:


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Senior Safety Engineer

June 17, 2019

OSHSB Petition File No. 577
Elevators for Hoisting Workers
Board Staff Review,
June 17, 2019

INTRODUCTION

Donald A. Zampa, President of the District Council of Iron Workers, and Greg McClelland, Executive Director of the Western Steel Council, submitted petition 577 on June 7, 2019. The Petition seeks an emergency amendment to Construction Safety Orders Section 1630(a) regarding clarification for when an elevator for hoisting workers is required.

REQUESTED ACTION

The Petitioners request that Section 1630(a) be amended and provided new text in underline format as follows: (a) In addition to the stairways required in Section 1629, a construction passenger elevator for hoisting workers shall be installed and in operation on or in any building, or structure designed to be 60 feet or more in height above or 48 feet in depth below ground level when completed. The elevator shall be installed and operational when the building or structure reaches 36 feet in height or 36 feet in depth below ground level. The building or structure height shall be determined by measuring from ground level to the highest structural level including the parapet walls, mechanical rooms, stair towers and elevator penthouse structures but excluding antennas, smokestacks, flag poles and other similar attachments.

BACKGROUND/HISTORY

Section 1630 has been a regulation since before 1975.

Section 1630(a), Elevators for Hoisting Workers, is commonly referred to as a construction personnel hoist (CPH). The Division has historically required, and the construction industry has accepted, that a CPH is required for buildings or structures that, when completed, will reach 60 feet or more in height or 48 feet or more in depth and the time to have the CPH in position is at which time the building or structure reaches 36 feet in height or 36 feet in depth.

An Appeals Board Decision After Reconsideration (DAR) for inspections 1180499, 1205214, and 1192145, dated May 29, 2019¹ ruled that Section 1630(a) was not explicit in prescribing that the elevator was required at 36 feet, only that it was required when the building or structure met the 60 foot-high level. The DAR considered three different decisions made by three different administrative law judges who each ruled that a CPH was not required until the respective buildings reached 60 feet high.

¹ [https://www.dir.ca.gov/oshab/DECISIONS/California-Structural-Concepts.\(1205214\).pdf](https://www.dir.ca.gov/oshab/DECISIONS/California-Structural-Concepts.(1205214).pdf)

PETITIONER'S ASSERTIONS

The Petitioners assert five main points:

1. Widespread confusion and disruption in the construction industry.

This situation is resulting in widespread confusion between subcontractors and general contractors over the need to comply with this practice, both in continuing with existing construction projects and bidding on new contracts.

2. A giant step backwards instead of moving forward to prevent imminent hazards to construction workers.

In those situations where there is a failure to install a CPH, construction workers performing some of the most hazardous work in construction will be working in situations where, should a life-threatening injury occur, there will be no elevator access for emergency personnel to reach the injured worker or to perform an evacuation. These accidents happen far too often, and far too often the result is a fatality. Arrival of emergency personnel as fast as possible is critical when a worker may be bleeding to death, in life-threatening shock, in need of CPR, or in any other life-threatening situation where seconds count. In addition, if an injured worker with fractured ribs or other bones must be evacuated, minimizing motion to avoid the possibility of fractured bones piercing lung tissue or other critical tissue is made much more difficult if the evacuation must occur via a stairway.

3. There is no cost impact to be caused by adopting this amendment.

Adopting this amendment is about preserving the status quo. There is no cost impact associated with it, other than the fact that if it is not adopted, costs to the industry will increase due to the disruption and creation of new hazards the above-reference DAR will cause.

4. This issue is entirely separate and distinct from other issues that have arisen with section 1630.

We are aware the DOSH has filed a Form 9 requesting a number of changes to section 1630, and we are also interested in participating in the normal advisory committee and rulemaking process to improve this important safety standard.

5. However, this single issue needs to be addressed separately from that process and has become an emergency because of the unanticipated DAR referenced above.

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STAFF EVALUATION

In evaluating, the Petition Board Staff reviewed the rulemaking files from 1975, 1979, 1980, 1985, and 1997 and relevant decisions and DARs.

Relevant Standards

Federal Standards

§1926.552 contains the requirements for personnel hoists but there is no requirement to actually have one.

California Standards

T8CCR §1630(a) has been a regulation since before 1975. It has been amended several times over the years. The most recent amendment to the Standard was in 1997.

Germane to the issue at hand is a memo from John Bobis, Principle Safety Engineer to the Standards Board members, dated December 29, 1979, which summarized the results of advisory committee meetings and which stated in part:

“The committee was also of the opinion that the regulations should not be further revised to attempt to indicate at what stage of construction a construction hoist should be provided. Apparently, this has not been a problem in the past and both the Division and the committee were of the opinion that, during preconstruction conference, these matters are routinely resolved by the parties involved.”

Consensus Standards

ASSE 10.4 (2016) has requirements for the installation and operation but not the requirement to provide one for access.

Other Standards, Guidelines, Codes

Board Staff is not aware of any other consensus standards that require a CPH.

Position of Division

The Division’s evaluation, received June 10, 2019, recommends that the Standards Board adopt emergency regulations using the changes, as corrected, proposed by the petitioner. Note that the Division’s corrections were grammatical only.

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Analysis

The recent DAR shows Section 1630(a) could be clearer in its intent regarding when a CPH is required.

Finding of an emergency

The Administrative Procedures Act, Section 11342.545, defines emergency: "Emergency" means a situation that calls for immediate action to avoid serious harm to the public, health, safety, or general welfare.

The Office of Administrative Law (OAL) states: Unless a situation is expressly deemed in statute to meet the emergency standard, an agency must make a finding of emergency by describing specific facts supported by substantial evidence that demonstrate the existence of an emergency and the need for immediate adoption of the proposed regulation.

In addition, if the emergency existed and was known by the agency in sufficient time to have been addressed through nonemergency regulations, the finding of emergency shall include facts explaining the failure to address the situation through nonemergency regulations. A finding of emergency based only upon expediency, convenience, best interest, general public need, or speculation, is not adequate to demonstrate the existence of an emergency. (Government Code section 11346.1(b)(2).)

Based on the OAL statement regarding emergency, the Petitioners' recommended language goes beyond that which constitutes an emergency. Up until recently, the Division has enforced the requirement to have a CPH before a building actually reached 60 feet in height.

However, due to the DAR, it is important to clarify the regulation. To minimize the potential for over-reaching the authority of the Board, which properly would require regular rule making, Section 1630(a) could be amended by adding a clarification for the term "height."

Height, for purposes of this Section, is defined as existing height, or planned height upon completion.

Board staff suggests inserting a definition of "Height" after the existing definition of "Ground Level."

Amend Section 1630(a) as follows:

Ground level, for the purposes of this section, is defined as the level of the primary construction entrance to the building or structure.

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Height, for purposes of this Section, is defined as existing height, or planned height upon completion.

When computing the height...

STAFF RECOMMENDATION

Board staff recommends Petition File No. 577 be GRANTED to the extent that a definition of height is added.