

Occupational Safety and Health Standards Board

Public Meeting and Business Meeting

September 17, 2020

Via teleconference / videoconference

Board Meeting Packet

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

1017 L Street, PMB 254
Sacramento, CA 95814-3805
(916) 274-5721
FAX (916) 274-5743
Website address: 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.

September 17, 2020 at 10:00 a.m.
TELECONFERENCE AGENDA**PUBLIC MEETING AND BUSINESS MEETING
OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD**

PLEASE NOTE: In accordance with [Executive Order N-29-20](#), and [Executive Order N-33-20](#), the **PHYSICAL** meeting location has been cancelled for September.

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.

OR

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.

AND

Public Comment Queue:

In advance of the meeting: Stakeholders who wish to comment on agenda items may submit a request to be added to the public comment queue by emailing OSHSB@dir.ca.gov. Please be sure to include your name, affiliation and comment topic within the email.

During the meeting: You can submit your name, affiliation and comment topic to OSHSB@dir.ca.gov, make a request to speak via WebEx "Chat" function, or dial 916-274-5721 to be placed in the queue for public comment.

NOTE: In accordance with [Executive Order N-29-20](#),
Board Members will participate via Teleconference.

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 Section 11125.7).

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

A. 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 PETITION DECISION FOR ADOPTION

1. Stephen Knight, Executive Director, Worksafe
Frances C. Schreiber, Labor & Employment Committee of the National Lawyers Guild
Petition File No. 583

Petitioners request to amend Title 8 standards to create two new regulations. The first, a temporary emergency standard that would provide specific protections to California employees who may have exposure to COVID-19, but who are not protected by the Aerosol Transmissible Diseases standards (Sections 5199 and 5199.1). The second standard would be a permanent rulemaking effort to protect workers from infectious diseases including novel pathogens (e.g. COVID-19).

B. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

C. OTHER

1. DOSH Update
2. Legislative Update
3. Executive Officer's Report
4. Board Member Comments and 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. (Government Code Sections 11125 & 11125.7(a).).

D. CLOSED SESSION

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; and
2. WSPA v. OSHSB, et al., County of Sacramento, CA Superior Court Case No. 34-2019-00260210.
3. Personnel

E. RETURN TO OPEN SESSION

1. Report from Closed Session

F. ADJOURNMENT OF THE BUSINESS MEETING

Next Meeting: October 15, 2020
Teleconference and Video-conference
(In accordance with Executive Orders N-29-20 and N-33-20)
10:00 a.m.

CLOSED SESSION

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

PUBLIC COMMENT

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 hearing.

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**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 **September 17, 2020**, at 10:00 a.m.
in the Auditorium of the Harris State Building
1515 Clay Street, Oakland, California.

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 **September 17, 2020**, at 10:00 a.m.
in the Auditorium of the Harris State Building
1515 Clay Street, Oakland, California.

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).

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**OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD**

A handwritten signature in blue ink, reading "Dave Thomas".

DAVE THOMAS, Chairman

Occupational Safety and Health Standards Board

Business Meeting

Occupational Safety and Health Standards Board

Business Meeting
Petition 583 Decision

DATE: September 17, 2020
Attachments

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PETITION FILE NO. 583
PROPOSED PETITION DECISION OF THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

INTRODUCTION

The Occupational Safety and Health Standards Board (Board) received a petition on May 20, 2020, filed by Worksafe and National Lawyers' Guild, Labor & Employment Committee (Petitioners), requesting that the Board amend title 8 standards to create two new regulations. The first, a temporary emergency standard that would provide specific protections to California employees who may have exposure to COVID-19, but who are not protected by the Aerosol Transmissible Diseases standards (sections 5199 and 5199.1)¹. The second proposed standard would be a permanent rulemaking effort to protect workers from infectious diseases including novel pathogens (e.g. COVID-19).

Labor Code section 142.2 permits interested persons to propose new or revised regulations concerning occupational safety and health and requires the Board to consider such proposals and render a decision no later than six months following receipt. This time frame has been extended by 120 days, by California Governor Gavin Newsom's Executive Orders N-63-20, and N-71-20, in recognition of the State of Emergency caused by COVID-19.

Further, as required by Labor Code section 147, any proposed occupational safety or health standard received by the Board from a source other than the Division of Occupational Safety and Health (Division) must be referred to the Division for evaluation. The Division has 60 days after receipt to submit an evaluation regarding the proposal; this timeline, running concurrently with the Board's timeline as described above, has also been extended by 120 days pursuant to Executive Orders N-63-20 and N-71-20.

SUMMARY

The Petition requests the Board adopt new regulatory requirements including, but not restricted to:

- Establishing a framework parallel to the Illness and Injury Prevention Program (IIPP) regulation, section 3203, which requires employers to create a written plan for employee protection;

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

- Creating procedures to identify and evaluate COVID-19 hazards, and to identify jobs categories, tasks, and procedures where employees may be exposed to COVID-19, as well as procedures to control the hazard of exposure;
- Creating procedures to respond to employees who have been diagnosed with COVID-19, who have symptoms of COVID-19, and who have been exposed to COVID-19;
- Establishing a job hazard analysis to identify modes of transmission in the workplace and adopt and implement preventative measures to minimize risk, including social distancing, ventilation systems, hygiene measures, and personal protective equipment (PPE);
- Institute a provision of employee training.

EMERGENCY RULEMAKING

The Government Code section 11346.1 provides for expedited rulemaking, under certain emergency circumstances, allowing for adoption of regulations generally remaining in effect for 180 days. The requisite “emergency” is defined as “a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.” (G.C. section 11342.545.) Per G.C. section 11346.1(b)(2), “[a] finding of emergency based only upon expediency, convenience, best interest, general public need, or speculation, shall not be adequate to demonstrate the existence of an emergency. If the situation identified in the finding of emergency existed and was known by the agency adopting the emergency regulation 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.”

At least five days prior to submission of the proposed emergency regulation to the Office of Administrative Law (OAL) for review, notice of the proposed action is to be sent to persons having filed a request for notice of regulatory action with OAL. (G.C. section 11346.1(a)(2).) OAL guidelines specify completion of its pre-adoption review within 10 calendar days of submission. (G. C. section 11349.6(b).).

The submitting agency is not required to provide the 5 day notice if the emergency situation clearly poses such an immediate, serious harm that delaying action to allow public comment would be inconsistent with the public interest. (G.C. section 11346.1(a)(3).)

DIVISION EVALUATION

In its report concerning the Petition, dated July 30, 2020, the Division reviewed the Petitioner’s proposed changes to title 8. The review included an assessment of the hazards associated with exposure to COVID-19, information provided in the Petition, applicable title 8 standards, federal OSHA standards, and Cal/OSHA enforcement authority.

The Division staff evaluation recommends the Petition be approved. The Division’s report finds that an emergency regulation is warranted by the COVID-19 public health crisis. While section 5199 provides specific protections for infectious diseases such as COVID-19, it does not cover all California workers. The Division’s report also finds that while there are general title 8

provisions that constitute a basis for Cal/OSHA to enforce the protection of workers from COVID-19, enforcement efforts would benefit from a specific regulatory mandate related to prevention of the spread of infectious diseases. Moreover, guidance currently exists from a number of authorities—including both federal OSHA and Cal/OSHA—on how employers can best protect workers from COVID-19, making development of an emergency standard feasible.

The Division's evaluation concludes that protections similar to current guidelines could be adopted via an emergency regulation, and the adoption of such standards would create clarity for employers and assist the Division's enforcement efforts. The Division also recommends an advisory committee be convened after the pandemic subsides to determine whether a permanent regulation should be adopted to address the protection of non-5199 workers from infectious diseases, including novel pathogens.

BOARD STAFF EVALUATION

The Board staff evaluation dated August 10, 2020, included a review of the Petition, and relevant federal, California, consensus, and other standards. The evaluation notes that as of September 8, 2020, state government website <https://covid19.ca.gov> reports there were over 453,000 COVID-19 cases in California, and over 8,000 people had died from the illness. That website, as of September 2, 2020, reports over 737,000 cases of COVID-19, and 13,758 deaths. Moreover, the overall impact of the illness has been disproportionately borne by the state's Latino population.

The Board staff evaluation recognizes that COVID-19 exposure is a significant issue, but the evaluation is not persuaded that further rulemaking is necessary. Many of the regulatory additions requested by the Petitioner were found by the Board staff evaluation to already be required by existing title 8 regulations. The Board staff evaluation suggests that enforcement and consultative outreach, rather than new regulations, would be the most effective use of limited state resources.

DISCUSSION

According to research cited in the Division's evaluation, organ failure and death may result from COVID-19. (Division, p. 5.) Approximately 14% of COVID-19 patients are hospitalized, and individuals with underlying health conditions being most at risk for hospitalization and death. (*Id.*) Both the Division and Board staff evaluations clearly set forth the seriousness of the COVID-19 pandemic, which is responsible for the illnesses, hospitalizations, and deaths of thousands of Californians. The Board staff evaluation, however, questions whether new regulations are necessary.

The Board acknowledges the concerns presented by the Board staff evaluation, regarding promulgation of new regulations and use of State resources. While those concerns are taken seriously, ultimately, the Board is in agreement with the Petitioners' assessment, and Division's assertion as the enforcement agency, that an emergency regulation would enhance worker safety. COVID-19 is a hazard to working people. The Division is well positioned, as the State agency

responsible for enforcement, to advise the Board regarding the enforceability of new safety order requirements under consideration. Accordingly, the Board also accepts the Division's assertion that an emergency regulation would strengthen, rather than complicate, the Division's enforcement efforts.

CONCLUSION AND ORDER

The Board has considered the Petition and the recommendations of the Division and Board staff. For reasons stated in the preceding discussion, the Petition is hereby GRANTED in part as follows:

The Division is requested to work with Board staff to expeditiously submit a proposal for an emergency regulation to protect all workers not covered by section 5199 from COVID-19 exposure in the workplace, for consideration no later than the November 19th, 2020 Board meeting. The proposal should include the proposed Emergency Regulatory Text, Finding of Emergency, and an Economic Impact Statement.

In the event the Board adopts an emergency regulation as a result of said proposal:

The Board requests the Division work with Board staff to convene a representative advisory committee to review any emergency COVID-19 rulemaking(s) adopted by the Board, for the purpose of establishing reasonable and necessary improvements required to avoid serious harm, as further guidance on the prevention of workplace transmission and exposure becomes available. The emergency rulemaking advisory committee should address these issues:

1. The prevailing guidance for worker protections from COVID-19 exposure in the workplace;
2. Notification for affected employers and workers;
3. Current industry best practices and guidelines; and
4. Considerations for the most vulnerable/impacted industries and professions.

The Petitioners should be invited to participate. Representatives for the following stakeholders should also be invited to participate:

1. California Department of Public Health
2. A representative cross-section of County and City Public Health Officers
3. A representative cross-section of Labor and Management representatives

The Division is requested to report back to the Board within 4 months, and again at 8 months, after the initial adoption of an emergency regulation, and within 4 months of any re-adoption.² The Board requests that this report include the following items at a minimum:

² Pursuant to Governor's Executive Order N-40-20, the timelines for filing, refiling, certification and/or review of regulations and emergency regulations are extended for a period of 60 calendar days. These timelines are further extended for 60 days by Executive Order N-66-20.

1. The dates of any advisory committee meetings and a list of invitees and participants;
2. A brief summary of the discussion, including participant concerns, and any available minutes;
3. Dates of future meetings, if applicable; and
4. Whether the Division is preparing to propose amendments to the emergency rulemaking, and the projected timeframe for providing the proposal to Board staff for notice of proposed emergency rulemaking.

If proposed amendments to an emergency rulemaking are being prepared, it should include the proposed updated Emergency Regulatory Text, updated Finding of Emergency (including evidence of necessity to avoid serious harm), and updated Economic Impact Statement.

Furthermore, the Board requests the Division convene a representative advisory committee after the COVID-19 pandemic subsides, as evidenced by the lifting of the State of Emergency declared by Governor's proclamation on March 4, 2020, to consider the necessity for a permanent regulation to protect workers not covered by section 5199 from airborne infectious diseases, including novel pathogens.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD
(Board)

PETITION FILE NO. 583

BOARD STAFF EVALUATION

Submitted by: David Kernazitskas, MSPH, CIH, CSP

Senior Safety Engineer

August 10, 2020

INTRODUCTION

Petition File No. 583 (Petition) was submitted by the Labor and Employment Committee of National Lawyers Guild and Worksafe (Petitioners) on May 20, 2020. The Petition seeks two Board actions to minimize the exposure of employees to SARS-CoV-2, the virus that causes COVID-19.

REQUESTED ACTION

The Petitioners' first request is for an emergency temporary standard (ETS) to immediately place into effect protections from COVID-19 for employees, who are not covered by Title 8 CCR 5199 or 5199.1 (Aerosol Transmissible Diseases and Aerosol Transmissible Diseases – Zoonotic, respectively). The second request is for a permanent standard to protect all workers from current and future infectious diseases, including novel pathogens.

PETITIONER'S ASSERTIONS

The Petitioners assert:

- “With respect to the request for an emergency temporary standard...time is of the essence.”
- The emergency temporary standard “will protect the lives not only of employees...[but also] of their families [and communities].”
- “Without specific occupational health and safety measures...Californians will die unnecessarily.”
- COVID-19 and infectious diseases are “toxic materials or harmful physical agents” covered by Labor Code 144.6, which requires the Board to: *“adopt that standard which most adequately assures, to the extent feasible, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to a hazard regulated by such standard for the period of his working life.”*
- “The COVID-19 pandemic is not going away anytime soon. And other novel pathogens may threaten this state and the world in the future. As more and more workers are brought back, their lives and livelihoods are pitted against each other. In order to protect the lives and health of workers and their families, in the face of this public health emergency, clarity is required.”
- With regard to protecting employees from COVID-19, Title 8 Section 3203 (Injury and Illness Prevention Program (IIPP)) and “a small number of more specific standards have not been adequate. Lives are being lost and will continue to be lost without consistent rules as a starting point.”

STAFF EVALUATION

In support of their request, the Petitioners provide draft language for a proposed ETS, which follows the general outline of the existing IIPP standard (i.e. identify a person responsible for

implementing the plan, develop procedures for identifying and evaluating COVID-19 workplace hazards, develop procedures to control the hazard using hierarchy of controls, etc.). They propose some additional specific requirements to be included with the IIPP-like requirements, which they deem helpful to employers seeking to protect employees from exposure to COVID-19.

The proposed temporary standard aims to require employers to minimize the risk of COVID-19 transmission to employees from coworkers and the public. The suggested text requires employers to identify “a competent employer representative to develop and administer a written Compliance Action Plan [CAP] to protect employees.” The text proposes timelines for updating the CAP and requires the employer to share the information with workers and labor representatives.

Further, the text includes requirements for procedures to identify, evaluate, and control COVID-19 workplace hazards. The proposal also requires identification of job categories and tasks where employees can be exposed to COVID-19, as well as procedures to respond to employees exposed to, exhibiting symptoms of, or diagnosed with the illness. Finally, the proposal outlines requirements for performing job hazard analyses, social distancing, employee training and recordkeeping.

Relevant Standards

Federal Standards

Federal OSHA regulations do not specifically address employee protections against COVID-19. Generally applicable standards that apply to controlling employee exposures to the virus include OSHA’s PPE standards (29 CFR 1910 Subpart I), which require gloves, eye and face protection, and respiratory protection. The General Duty Clause, which requires employers to furnish employees a workplace free from recognized hazards that cause or are likely to cause death or serious physical harm, applies to the presence of SARS-CoV-2 in the workplace. Finally, OSHA’s Bloodborne Pathogens standard (29 CFR 1910.1030) may be helpful in providing a framework for controlling potential virus exposure from bodily fluids expressed via respiratory secretions¹.

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) brought suit against federal OSHA in the United States Court of Appeals for the District of Columbia Circuit, attempting to compel OSHA to create an ETS to provide specific employee protections against COVID-19 risks. In the suit, the AFL-CIO alleges that the guidance documents produced by OSHA do not carry the weight of enforceable standards and are therefore insufficient to protect employees from COVID-19 hazards.

In a May 29, 2020, federal OSHA response to the action, OSHA claims:

¹ “Guidance on Preparing Workplaces for COVID-19.” U.S. Department of Labor, Occupational Safety and Health Administration. <https://www.osha.gov/Publications/OSHA3990.pdf>. Accessed 7/24/20.

Petitioner [AFL-CIO] fails to demonstrate that any employer has or would forgo compliance with any of the potential standards to which Petitioner alludes, simply because they are not set forth in an ETS. Nor could Petitioner do so, because the standards Petitioner seeks are largely already mandatory and enforceable either through existing OSHA requirements or the veritable gamut of non-OSHA public safety requirements enacted by federal, state, and local officials in response to the pandemic.²

The court ruled in favor of federal OSHA, stating:

In light of the unprecedented nature of the COVID-19 pandemic, as well as the regulatory tools that the OSHA has at its disposal to ensure that employers are maintaining hazard-free work environments..., the OSHA reasonably determined that an ETS is not necessary at this time.³

California Standards

Cal/OSHA's Aerosol Transmissible Diseases (ATD) standard (Title 8, Section 5199) directly applies to novel viruses such as SARS-Cov-2, but the scope of the standard is limited mostly to medical offices, certain laboratories, correctional facilities, homeless shelters, drug treatment programs, and any other employer that Cal/OSHA informs in writing that they must comply with the ATD standard. Employers not included in the scope of the ATD standard have generally applicable requirements, which include the Injury and Illness Prevention Program (IIPP, Section 3203), Washing facilities (Sections 1527, 3366, 3457, and 8397.4), PPE (Section 3380), Respiratory Protection (Section 5144), Sanitation (Article 9), and Control of Harmful Exposures (Section 5141).

Additionally, Cal/OSHA recommends that employers not covered by the ATD standard comply with the recommendations from the Centers for Disease Control (CDC) "Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19)." Cal/OSHA provides a number of documents with guidance for specific industry sectors, as well as model ATD plans and programs⁴. Several Cal/OSHA guidance documents point out that updating the employer's IIPP to address exposure to SARS-Cov-2 is "mandatory in most California workplaces since COVID-19 is widespread in the community."⁵

² United States Court of Appeals FOR THE DISTRICT OF COLUMBIA CIRCUIT, No. 20-1158. Document #1844937. Filed 5/29/2020. Page 24 of 73. An online copy was found here on 7/24/2020:

https://www.ali.org/media/filer_public/2f/4f/2f4fcca1-8b14-4725-a6f3-4a302f3eb83d/osha_response_to_afl-cio_petition_for_writ_of_mandamus_2020.pdf

³ United States Court of Appeals FOR THE DISTRICT OF COLUMBIA CIRCUIT, No. 20-1158. Document #1846700. Filed 6/11/2020. Page 1 of 2. An online copy was found here on 7/24/2020:

<https://environblog.jenner.com/files/order-no-20-1158-1.pdf>

⁴ "Cal/OSHA Guidance on Requirements to Protect Workers from Coronavirus." State of California, Department of Industrial Relations. <https://www.dir.ca.gov/dosh/coronavirus/Health-Care-General-Industry.html>. Accessed 4/29/2020.

⁵ "Safety & Health Guidance." Cal/OSHA Publications. <https://www.dir.ca.gov/dosh/puborder.asp>. Accessed 4/30/2020.

Consensus and Other Standards

A variety of sources exist which provide information on reducing potential employee exposure to SARS-CoV-2. In general, the sources provide information on reducing transmission among employees, maintaining healthy business operations, and maintaining a healthy work environment. The CDC, the World Health Organization (WHO), the American Industrial Hygiene Association, and the California Department of Public Health are examples of the many organizations that provide such information.

The state of Virginia, which has a state-run OSHA program (VOSH), adopted an ETS on July 15, 2020, “designed to establish requirements for employers to control, prevent, and mitigate the spread of SARS-CoV-2.”⁶ The standard is the first of its kind in the nation and is “designed to supplement and enhance existing VOSH laws, rules, regulations, and standards applicable [to COVID-19].” The standard allows businesses to comply with CDC guidelines, instead of VOSH regulations, where the CDC guidelines are more protective. In general, the VOSH program mandates compliance with many of the recommended practices found in guidelines from a variety of credible occupational safety and health organizations.

The state of Oregon has also started the process of developing regulations to protect employees in healthcare settings and in general industry. A timeline for such actions anticipates emergency regulations to be in place by September 1, 2020, and permanent regulations to be in place, at least in part, by March 1, 2021⁷.

Position of Division (Cal/OSHA)

In its July 30, 2020, evaluation of Petition 583, Cal/OSHA recommends that the Standards Board grant the petition, in part, by requesting Cal/OSHA to develop a proposed emergency temporary standard for the consideration of the Standards Board. Cal/OSHA also recommends that the Board request Cal/OSHA to convene a future advisory committee to determine whether a permanent regulation should be promulgated to protect Non-5199 Workers from infectious diseases, including novel pathogens.

In support of the recommendation, the evaluation states,

If COVID-19-specific protections similar to the [COVID-19-specific] guidelines were spelled out in the Title 8 standards, Cal/OSHA could more easily enforce requirements that would be specific, detailed, and more protective of workers...A specific COVID19 emergency regulation in Title 8 would provide clear instructions to employers and

⁶ Virginia Department of Labor and Industry. “16VAC25-220 Emergency Temporary Standard, Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19.” Safety and Health Codes Board. July 15, 2020. <https://www.doli.virginia.gov/wp-content/uploads/2020/07/RIS-filed-RTD-Final-ETS-7.24.2020.pdf>. Accessed 7/24/2020.

⁷ Potential Oregon OSHA Rulemaking Timeline COVID-19/Infectious Diseases. Rev. July 13, 2020. <https://osha.oregon.gov/rules/advisory/infectiousdisease/Documents/Infectious-Disease-Public-Timeline.pdf>. Accessed 7/28/2020.

employees on what needs to be done to protect workers from COVID-19, eliminating any confusion and enhancing compliance.

Analysis

As the Board is aware, the WHO declared the COVID-19 outbreak a pandemic on March 11, 2020.⁸ On March 19, 2020, Governor Newsom signed Executive Order N-33-20⁹, requiring all residents of California to shelter in place, except as needed to maintain critical infrastructure sectors.

The Petitioners assert that employees not covered by one of California's ATD standards, which would include the majority of California workers, are not sufficiently protected by existing regulations and are at risk of death from COVID-19 without their proposed ETS or another enforceable standard. They state:

Lives are being lost and will continue to be lost without consistent rules as a starting point for our state's workplaces that allow employers some flexibility with respect to individual needs in their places of employment.

Cal/OSHA's webpage for COVID-19 guidance to employers contains the following statement:

Workplace safety and health regulations in California require employers to take steps to protect workers exposed to infectious diseases like the Novel Coronavirus (COVID-19), which is widespread in the community. Cal/OSHA has posted guidance to help employers comply with these requirements and to provide workers information on how to protect themselves and prevent the spread of the disease. (Emphasis added.)¹⁰

Eric Berg, Deputy Chief of Health for Cal/OSHA has recently testified to the Board that Cal/OSHA is enforcing existing COVID-19 protections and providing consultative outreach to employers with exposed employees. Board staff is unable to find evidence that the vast majority of California workplaces are not already in compliance with COVID-19 requirements and guidelines.

A Nevada OSHA press release on July 17, 2020 reported that an average of 80%-90% of Nevada businesses from a variety of sectors are in compliance with the state's guidelines for employee COVID-19 protections. The release states:

Follow up visits have been conducted at 192 businesses where Nevada OSHA officials found that 93 percent of those locations are now in compliance.

⁸ "WHO Director-General's opening remarks at the media briefing on COVID-19 – 11 March 2020." <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>. Accessed 4/28/20.

⁹ "Executive Order N-33-20." Executive Department, State of California. <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>. Accessed 4/30/2020.

¹⁰ Cal/OSHA and Statewide Industry Guidance on COVID-19. <https://www.dir.ca.gov/dosh/coronavirus/Health-Care-General-Industry.html>. Accessed 7/27/2020.

Since initial observations to determine compliance with mandated health and safety measures began, Division of Industrial Relations officials have visited 2,257 business establishments in northern and southern Nevada. As of July 15, the overall compliance rate for all business sectors statewide stood at 82 percent, with an 86 percent compliance rate in northern Nevada, and 80 percent in the south.¹¹

Board staff cautions that a new regulation would place additional regulatory burden on California businesses that are already compliant with California's COVID-19 requirements and guidelines. Some employers exhibit a lack of regard for Cal/OSHA regulations and continue to do so despite robust efforts on the part of regulatory agencies and employer and labor groups. It is the opinion of Board staff that during the pandemic crisis, Cal/OSHA's limited resources should continue to be focused on enforcement and consultation outreach specifically targeted at employers and sectors of the economy with deficient COVID-19 protections, as this is more likely to be effective at ensuring employee protections.

The Petitioners' effort to prescribe specific requirements in conjunction with an IIPP-like framework may contradict the legislative intent described in Government Code Section 11340.1(a):

It is the intent of the Legislature that agencies shall actively seek to reduce the unnecessary regulatory burden on private individuals and entities by substituting performance standards for prescriptive standards wherever performance standards can be reasonably expected to be as effective and less burdensome, and that this substitution shall be considered during the course of the agency rulemaking process. (Emphasis added.)

California's IIPP regulation is a performance standard that has been used successfully since its effective date in 1991 to require employers to identify and address workplace hazards in accordance with the referenced legislative intent. Unnecessarily creating an offshoot of the IIPP, without substantial evidence of need, can harm the existing protective nature of the regulation and its benefit to California workplaces by diluting its capacity to serve as the primary regulation requiring employers to address newly discovered hazards.

Because of the novel nature of the COVID-19 virus, guidelines for employers to reference for assistance in protecting employees frequently change. Attempting to codify some of those requirements will no doubt result in confusion when the updated guidelines conflict with the written regulation. Although the Petitioners suggest a requirement for employers to update their programs within 10 days of new information, current regulations require employers address hazards "in a timely manner based on the severity of the hazard". As it would be

¹¹ "DIVISION OF INDUSTRIAL RELATIONS ANNOUNCES CITATIONS, INDUSTRY-LEVEL COMPLIANCE RATES WITH COVID-19 HEALTH AND SAFETY REQUIREMENTS." Division of Business and Industry. Las Vegas, NV. July 17, 2020. http://business.nv.gov/News_Media/Press_Releases/2020/Industrial_Relations_COVID-19/Division_of_Industrial_Relations_announces_citations_industry-level_compliance_rates_with_COVID-19_health_and_safety_requirements/. Accessed 7/27/2020.

improper for employers to delay 10 days prior to addressing some hazards, the Petitioners' proposal would be less protective than current regulations. It is already the responsibility of employers to be aware of new information, and regulations setting specific prescriptive requirements are likely to become quickly outdated in the rapidly evolving crisis, creating a potential for wasteful enforcement actions.

For example, the state of Virginia's recently adopted ETS would encounter conflicts with the Petitioners' proposal for updating the program. VOSH allows employers to follow CDC guidance instead of state law where the CDC guidance is more protective, without providing information for determining the effectiveness of the protective measures. VOSH also requires employers to screen employees for signs or symptoms of COVID-19 before each shift. Updated guidance now recommends employees self-screen at home before coming to work¹². Relying on California's performance-based IIPP allows employers to respond to updated worker protection guidelines in a more efficient and responsive manner, which translates into more-effective employee protections.

As of July 26, 2020, at 11:00am, the <https://covid19.ca.gov/> website for California's COVID-19 data, says that there are 453,659 cases in the state and that 8,416 people have died from the illness. As pointed out by several observers, the Latino population in California has been disproportionately affected by the virus. The following figures are reproduced from the COVID-19.ca.gov website:

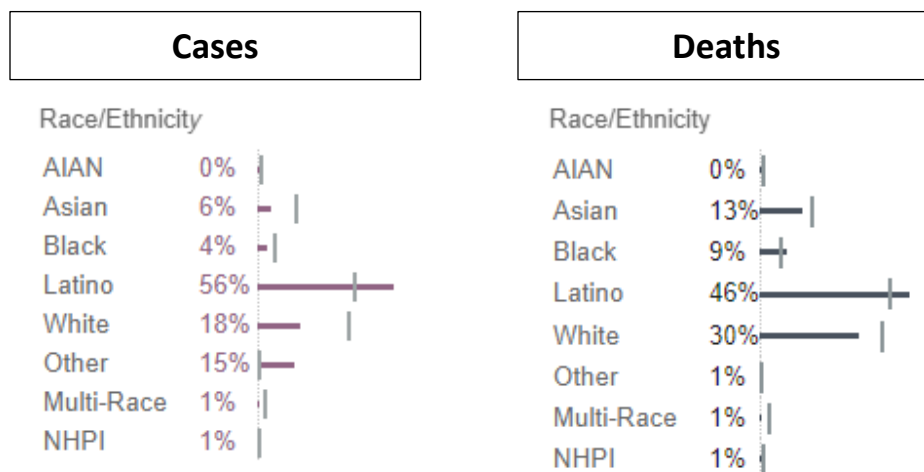


Figure 1. California data indicating that 56% of the identified COVID-19 cases and 46% of the deaths have occurred in the Latino population. The vertical gray lines indicate the percentage of the population for each Race/Ethnicity.

¹² Interim Guidance for Businesses and Employers Responding to Coronavirus Disease 2019 (COVID-19), May 2020. <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html#more-changes>. Accessed 8/5/2020.

The same website also provides the number of cases and deaths by county:

Positive Cases by County (Updated 7/25/2020)			Deaths by County (Updated 7/25/2020)		
Los Angeles	172,611	38%	Los Angeles	4,351	52%
Riverside	34,921	8%	Riverside	637	8%
Orange	33,978	7%	Orange	562	7%
San Bernardino	29,265	6%	San Diego	533	6%
San Diego	26,703	6%	San Bernardino	372	4%
Kern	16,910	4%	Santa Clara	184	2%
Fresno	12,866	3%	Imperial	181	2%
Alameda	10,361	2%	Alameda	178	2%
San Joaquin	10,347	2%	Tulare	168	2%
Santa Clara	8,767	2%	Kern	123	1%

Figure 2. California data showing that Los Angeles County has more COVID-19 cases than the next seven counties combined and more deaths than the next nine counties combined.

Public health experts are at a loss for an explanation of the disproportionate impact on the Latino communities. The phenomenon has appeared in several other states, including Arizona, Florida, North Carolina, Texas, Washington, and Wisconsin. In an attempt to explain the data, a New York Times article says that contact tracers have found large spikes in the number of cases associated with large family gatherings both in the United States and in Latin American countries. The article also states that:

During the lockdown, millions of Latino workers kept a bare-bones economy running: at the cutting tables of food-processing plants, as farmhands, as hospital orderlies, food preparers, supermarket workers and in many other jobs deemed essential. And they brought the virus home to often cramped living quarters, compounding the spread.¹³

Instead of directing limited resources to create new regulations to prescriptively require what is already required by the existing IIPP performance regulation, enforcement and consultative efforts could continue to focus on businesses in specific parts of the state, such as Los Angeles County, where about 40% of the cases and 50% of the deaths in California have occurred, or on specific industries identified as having disproportionately high incidents of infection. Developing an ETS and a follow-up permanent regulation for the entire state may not be the most effective use of California's limited Cal/OSHA and Board resources.

¹³ Shawn Hubler, Thomas Fuller, Anjali Singhvi and Juliette Love. "Many Latinos Couldn't Stay Home. Now Virus Cases Are Soaring in Their Communities." New York Times. Published June 26, 2020. Updated June 28, 2020. <https://www.nytimes.com/2020/06/26/us/corona-virus-latinos.html>. Accessed 7/27/2020.

The Petitioners have identified a concern in that the tragic effects of the COVID-19 pandemic disproportionately affect people of generally lower-income and socio-economic status, but they have provided no evidence that their proposed statewide ETS, which is necessarily limited to workers, will remedy this concern. Alternatively, the State's approach to date has utilized tactics learned from emergency management, focusing finite resources asymmetrically to provide containment and abatement. Crowded public places and inadequate social distancing and face-covering provide opportunities for virus transmission not limited to workplaces. Cal/OSHA's continued coordination of efforts with other State agencies, including the California Department of Public Health, is more likely to be effective in addressing the need in disproportionately impacted communities.

Board staff is not aware of any California studies or data showing that employers are lacking the information necessary to provide employee protections from COVID-19 hazards, nor that the vast majority of employers are not already doing as much as they are able to keep their employees, customers, and businesses functioning safely in accordance with federal, state, and local requirements. Cal/OSHA enforcement officers are able to cite employers who flout worker protection regulations. Employers who fail to properly address the hazard to employees presented by COVID-19 incur risks of being shut down, fined, having licenses revoked, and a damaged reputation in the public forum.

After reviewing the Petition and existing regulations governing the concerns raised by the Petitioners, Board staff is of the opinion that while the risk of exposure to SARS-CoV-2 is significant, new regulations, whether in the form of an emergency or permanent regulation, are not likely to significantly improve employee outcomes. Employers have ready access to credible information to combat exposure to SARS-CoV-2 and are already required to effectively address such challenges in their workplace. Continued enforcement of existing regulations and consultative outreach is a more efficient and likely effective use of the Cal/OSHA's limited resources.

STAFF RECOMMENDATION

Consistent with the foregoing discussion, Board staff does not believe that the Petitioners' emergency request is necessary and recommends that Petition File No. 583 be DENIED.



Memorandum

Date: July 30, 2020

To: Christina Shupe, Executive Officer
Occupational Safety and Health Standards Board

From: Douglas L. Parker, Chief 
Division of Occupational Safety and Health

Re: Evaluation of Petition 583 to Adopt an Emergency Regulation to Protect Workers from COVID-19, and a Permanent Regulation to Protect Workers from Infectious Diseases

1.0 INTRODUCTION

On May 20, 2020, the Division of Occupational Safety and Health (Cal/OSHA) received a petition from Frances C. Schreiber, National Lawyers Guild, and Stephen Knight, Worksafe (Petitioners). Petitioners propose that the Occupational Safety and Health Standards Board (Standards Board) amend the California Code of Regulations, title 8 (Title 8) as follows:

- Adopt a new emergency regulation¹ to protect employees in any facility, service category, or operation from SARS-CoV-2 (the virus that causes COVID-19) who are not covered by the Aerosol Transmissible Disease standard at Title 8, sections 5199 or 5199.1 ("Non-5199 Workers"); and
- Adopt a permanent regulation to protect employees from infectious diseases, including those caused by novel pathogens.

Labor Code section 142.2 permits interested persons to propose new or revised standards concerning occupational safety and health and requires the Occupational Safety and Health Standards Board (Standards Board) to consider such proposals and render a decision no later than six months following receipt. California Governor Gavin Newsom, in recognition of the State of Emergency that exists in California as a result of the threat of COVID-19, extended this time

¹ Petitioners use the term "emergency temporary standard" to refer to an emergency regulation.

period by 120 days in [Executive Order N-71-20](#) (modifying extension in Executive Order N-63-20).

Further, as required by Labor Code section 147, any proposed occupational safety or health standard received by the Standards Board from a source other than Cal/OSHA must be referred to Cal/OSHA for evaluation. Cal/OSHA has 60 days after receipt to submit a report to the Standards Board on the proposal. The Governor has also extended this time period an additional 120 days.

For the reasons discussed below, Cal/OSHA recommends that the Standards Board grant the petition, in part, by requesting Cal/OSHA to develop a proposed emergency temporary standard for the consideration of the Standards Board. The Board should also request Cal/OSHA to convene a future advisory committee to determine whether a permanent regulation should be promulgated to protect Non-5199 Workers from infectious diseases, including novel pathogens.

2.0 REGULATORY CHANGES REQUESTED BY THE PETITIONER

Petitioners propose to amend Title 8, through the adoption of an emergency regulation to require employers to take specific steps to protect Non-5199 Workers from COVID-19.

Specifically, Petitioners request that a temporary emergency regulation be adopted that requires employers to:

- a. Minimize the risk of transmission of COVID-19 to employees from other employees or from the public, through procedures that shall include the following elements:
 1. Identification of a competent employer representative to establish, implement, and maintain an effective written Compliance Action Plan (Plan) to protect employees and requires employers to share the Plan with employees and employee representatives;
 2. Procedures to identify and evaluate workplace hazards that may expose employees to COVID-19;
 3. Methods and/or procedures to control employee exposure to COVID-19 and correcting unsafe or unhealthy conditions. These shall include engineering controls, work practices and procedures, and personal protective equipment (PPE); and

4. Procedures to respond to an employee report that:
 - A. The employee has been diagnosed with COVID-19;
 - B. The employee has symptoms of COVID-19; or
 - C. The employee has been exposed to a person who has been diagnosed with COVID-19.
- b. Conduct a Job Hazard Analysis to identify potential modes of COVID-19 transmission and adopt and implement feasible preventive measures to eliminate or minimize transmission risk. A written list of these measures shall be provided to each employee, and shall include at least the following:
 1. Identification of job categories, tasks, and procedures in which employees may have occupational exposure to COVID-19;
 2. Specific measures to ensure social distancing of at least six (6) feet between employees and other persons: measures to be used to protect employees interacting with the public include the use of barriers between employees and the public, limiting the number of members of the public in the facility, marking distances in areas where the public may congregate, and ensuring that where employees interact with the public at a distance of less than six (6) feet, employees are provided with access to N-95 or filtering facepiece respirators and face shields;
 3. Installing ventilation systems to reduce employee exposure to airborne COVID-19 virus;
 4. Implementing measures to ensure personal hygiene;
 5. Immediate cleaning of all shared materials before another employee handles that material and regularly scheduled frequent cleaning and disinfection of areas and surfaces that may become contaminated and pose an infection risk to employees; and
 6. Implementing other procedures to minimize the likelihood the public may contaminate employees, such as providing employees with PPE, *e.g.*, gloves, and requiring members of the public to cover their noses and mouths with face coverings while in the facility to minimize the transmission of airborne pathogens to employees.

- c. Provide employees with the tools, operating equipment, and PPE necessary to comply fully with public health orders, regulations, and laws, at no cost to employees. PPE shall be assessed and certified as required by Title 8, section 3380, subdivision (f) for the hazard of exposure to COVID-19, and employees shall be trained on the proper use of PPE required for potential exposure to COVID-19. Employees who provide their own PPE that meets or exceeds the PPE required by Cal/OSHA shall not suffer any adverse action by the employer. Further, all employees who are directed by their employer to wear compliant PPE shall be provided with a medical evaluation in accordance with Title 8, section 5144, subdivision (e). Employee respiratory protection, including filtering facepiece respirators, designed to protect employees exposed to airborne pathogen hazards, shall comply with Title 8, section 5144.
- d. Train employees on the Plan, ensure compliance with the Plan, and provide each employee with a copy of the Plan, along with the full list of relevant compliance measures.
- e. Maintain records of the Plan, in accordance with Title 8, section 3203, subdivision (b).

In addition, Petitioners propose to amend the California Code of Regulations, title 8, through the adoption of a permanent regulation intended to protect all workers from infectious diseases, including novel pathogens. Petitioners have not provided suggested regulatory language for a permanent regulation.

3.0 HAZARDS ASSOCIATED WITH EXPOSURE TO COVID-19

COVID-19 is widespread in the community and is transmitted easily from person to person. Routes of exposure include:

- **Airborne transmission:** An infected person (with or without symptoms) sheds virus in small particles when breathing, talking, coughing, sneezing, etc. The contaminated particles are suspended in the air. A susceptible person is infected when inhaling the contaminated particles.
- **Droplet transmission:** An infected person expels droplets containing the virus when talking, coughing, and sneezing. A susceptible person is infected when the droplets contact that person's conjunctivae or the mucous membranes of the nose, mouth, or eyes.

- **Surface transmission:** An infected person coughs or sneezes and sheds virus onto a surface or object. A susceptible person is infected when they touch the contaminated surface or object and then touch their own mouth, nose, or eyes.

The airborne transmission is the dominant route for the spread of COVID-19.² Surface transmission is believed to be less common than airborne and droplet transmission.³ Transmission can occur from an infected person who is asymptomatic or presymptomatic.⁴

Infection with COVID-19 may result in a serious illness that includes difficulty breathing, pneumonia, and hospitalization. In some cases, the disease progresses, and organ failure and death may result. Approximately 14% of COVID-19 patients are hospitalized, 2% are admitted to an intensive care unit, and 5% die based on data through May 30, 2020. Hospitalizations are six times higher and deaths are 12 times higher among patients with a reported underlying health condition (cardiovascular disease, diabetes, and chronic lung disease)

² Renyi Zhang, Yixin Li, Annie L. Zhang, Yuan Wang, Mario J. Molina. *Identifying airborne transmission as the dominant route for the spread of COVID-19*. Proceedings of the National Academy of Sciences, Jun 2020, 117 (26) 14857-14863. <https://www.pnas.org/content/117/26/14857>.

Parham Azimi, Zahra Keshavarz, Jose Guillermo Cedeno Laurent, Brent R. Stephens, Joseph G. Allen. Mechanistic Transmission Modeling of COVID-19 on the Diamond Princess Cruise Ship Demonstrates the Importance of Aerosol Transmission. BMJ. July 15, 2020. <https://doi.org/10.1101/2020.07.13.20153049>.

Guenther, Thomas and Czech-Sioli, Manja and Indenbirken, Daniela and Robitailles, Alexis and Tenhaken, Peter and Exner, Martin and Ottinger, Matthias and Fischer, Nicole and Grundhoff, Adam and Brinkmann, Melanie, Investigation of a superspreading event preceding the largest meat processing plant-related SARS-Coronavirus 2 outbreak in Germany (July 17, 2020). <http://dx.doi.org/10.2139/ssrn.3654517>

Rachael M. Jones (2020): Relative contributions of transmission routes for COVID-19 among healthcare personnel providing patient care, Journal of Occupational and Environmental Hygiene, DOI: 10.1080/15459624.2020.1784427. <https://www.tandfonline.com/doi/full/10.1080/15459624.2020.1784427>

Lidia Morawska, Donald K Milton, It is Time to Address Airborne Transmission of COVID-19, *Clinical Infectious Diseases*, ciaa939, <https://doi.org/10.1093/cid/ciaa939>

Guenther, Thomas and Czech-Sioli, Manja and Indenbirken, Daniela and Robitailles, Alexis and Tenhaken, Peter and Exner, Martin and Ottinger, Matthias and Fischer, Nicole and Grundhoff, Adam and Brinkmann, Melanie, Investigation of a superspreading event preceding the largest meat processing plant-related SARS-Coronavirus 2 outbreak in Germany (July 17, 2020). Available at SSRN: <https://ssrn.com/abstract=3654517>

³ Centers for Disease Control and Infection. CDC updates COVID-19 transmission webpage to clarify information about types of spread. May 23, 2020. Accessed July 07, 2020. <https://www.cdc.gov/media/releases/2020/s0522-cdc-updates-covid-transmission.html>

⁴ Furukawa NW, Brooks JT, Sobel J. *Evidence Supporting Transmission of Severe Acute Respiratory Syndrome Coronavirus 2 While Presymptomatic or Asymptomatic*. Emerging Infectious Diseases. 2020 Jul. <https://doi.org/10.3201/eid2607.201595>

compared with those without reported underlying conditions.⁵

There are no established safe exposure limits to an infectious pathogen such as SARS-CoV-2. It is unknown how many infectious particles are needed to cause infection and disease.

4.0 APPLICABLE TITLE 8 REGULATIONS

The following are Title 8 regulations that are be applicable to protecting Non-5199 Workers from COVID-19. Section 5199 is not discussed as the petition is specific to Non-5199 Workers.

As discussed below, while the following standards require protections against COVID-19, they are not specific to this virus and generally do not identify the particular measures or controls that employers must take to prevent workplace spread of COVID-19. For these reasons, as explained in section 7.0, Cal/OSHA recommends the adoption of an emergency regulation, which would complement and augment the existing rules and provide clear guidance to employers and workers. Given the unprecedented nature of the current pandemic, it is essential that Cal/OSHA have all available tools to protect workers from COVID-19 illness and death.

4.2.1 Section 3203. Injury and Illness Prevention Program.

Title 8, section 3203 applies to nearly all California workplaces and requires employers to establish, implement, and maintain an effective written Injury and Illness Prevention Program (IIPP) to protect their employees, and to keep records of the steps taken to implement and maintain the IIPP. Its requirements are general in nature, and as such it requires employers to address all workplace hazards, including those that are not specifically addressed by other Cal/OSHA regulations.

4.2.1.1 Title 8, section 3203, subdivision (a)(4), identifying and evaluating workplace hazards

⁵ Stokes EK, Zambrano LD, Anderson KN, et al. Coronavirus Disease 2019 Case Surveillance — United States, January 22–May 30, 2020. MMWR Morb Mortal Wkly Rep 2020;69:759–765.
DOI: http://dx.doi.org/10.15585/mmwr.mm6924e2external_icon

Section 3203, subdivision (a)(4) requires employers to implement procedures for identifying and evaluating workplace hazards. Due to the widespread transmission of COVID-19 in California, this subdivision requires employers to evaluate COVID-19-transmission hazards and risks in their workplaces.

Section 3203, subdivision (a)(4) reads, in pertinent part, as follows:

Include procedures for identifying and evaluating work place hazards including scheduled periodic inspections to identify unsafe conditions and work practices.

(A) When the Program is first established;

* * * *

(B) Whenever new substances, processes, procedures, or equipment are introduced to the workplace that represent a new occupational safety and health hazard; and

(C) Whenever the employer is made aware of a new or previously unrecognized hazard.

4.2.1.2 Title 8, section 3203, subdivision (a)(5), investigating occupational injury or occupational illness

Section 3203, subdivision (a)(5) requires employers to implement procedures to investigate occupational illnesses. If an employer learns of an employee (or employees) who has or is suspected to have COVID-19, the employer must investigate to determine if the transmission was work related and, if it was work-related, how it was transmitted in the workplace.

Section 3203, subdivision (a)(5) reads as follows: Include a procedure to investigate occupational injury or occupational illness.

4.2.1.3 Title 8, section 3203, subdivision (a)(6), correcting unsafe or unhealthy conditions, work practices, and work procedures

Section 3203, subdivision (a)(6) requires employers to implement methods and/or procedures for correcting unsafe or unhealthy conditions, work practices, and work procedures in a timely manner. It requires employers to take measures to effectively reduce COVID-19-transmission hazards that exist in their workplaces as identified through implementation of subdivisions (a)(4) and (a)(5).

However, section 3203, subdivision (a)(6) does not specify how employers are to correct unsafe workplaces (*i.e.*, engineering controls, administrative controls, personal protective equipment (PPE)). Instead, it puts the responsibility on employers, given their intimate knowledge of the hazards at issue and the workings of the place of employment, to devise such methods or procedures.

Section 3203, subdivision (a)(6) reads as follows:

Include methods and/or procedures for correcting unsafe or unhealthy conditions, work practices and work procedures in a timely manner based on the severity of the hazard:

- (A) When observed or discovered; and,
- (B) When an imminent hazard exists which cannot be immediately abated without endangering employee(s) and/or property, remove all exposed personnel from the area except those necessary to correct the existing condition. Employees necessary to correct the hazardous condition shall be provided the necessary safeguards.

4.2.1.4 Title 8, section 3203, subdivision (a)(7), providing training and instruction

Subdivision (a)(7) requires employers to train their employees on workplace hazards and their prevention. Due to the widespread transmission of COVID-19 in California, employers must train employees on the transmission hazards of COVID-19 in their workplace, what measures the employer has implemented to reduce the hazard, and what actions employees need to take to help reduce transmission.

Section 3203, subdivision (a)(7) reads, in pertinent part, as follows:

Provide training and instruction:

- (A) When the program is first established;

- (B) To all new employees;
- (C) To all employees given new job assignments for which training has not previously been received;

(D) Whenever new substances, processes, procedures or equipment are introduced to the workplace and represent a new hazard;

(E) Whenever the employer is made aware of a new or previously unrecognized hazard; and,

(F) For supervisors to familiarize themselves with the safety and health hazards to which employees under their immediate direction and control may be exposed.

4.3 Title 8, section 5141. Control of Harmful Exposure to Employees

Section 5141 requires employers to control harmful exposures to employees. Under section 5140, harmful exposure is defined as:

An exposure to dusts, fumes, mists, vapors, or gases:

(a) In excess of any permissible limit prescribed by Section 5155; or

(b) Of such a nature by inhalation as to result in, or have a probability to result in, injury, illness, disease, impairment, or loss of function.

Exposure to COVID-19 is a harmful exposure, as exposure to aerosols (in the breath of infected persons) containing SARS-CoV-2 has a probability to result in illness, disease, impairment, or loss of function.

4.3.1 Title 8 subsection 5141, subdivision (a), Engineering Controls

Section 5141, subdivision (a) requires employers to control harmful exposures using feasible engineering controls. Although section 5141 does not specify the controls that must be implemented for any particular hazard, examples of engineering controls for COVID-19 include physical barriers, ventilation, air filtration, source controls (universal masking), etc.

Subsection 5141, subdivision (a) reads, in pertinent part, as follows:

Engineering Controls. Harmful exposures shall be prevented by engineering controls whenever feasible.

4.3.2 Title 8, section 5141, subdivision (b), Administrative Controls

Section 5141, subdivision (b) requires employers to use practicable administrative controls when engineering controls are not feasible or do not fully

prevent harmful exposure. While not specified in the rule, examples of administrative controls to help prevent transmission of COVID-19 include remote work, physical distancing, changing schedules, reducing the number of persons in spaces, etc.

Section 5141, subdivision (b) reads as follows:

Administrative Controls. Whenever engineering controls are not feasible or do not achieve full compliance, administrative controls shall be implemented if practicable.

4.3.3 Title 8, section 5141, subdivision (c), Control by Respiratory Protective Equipment

Section 5141, subdivision (c) requires employers to use respiratory protective equipment to prevent harmful exposures when engineering controls and administrative controls are not sufficient to prevent harmful exposures. Given the nature of COVID-19, all California employers unable to control COVID-19 with engineering and administrative controls would need to provide respiratory protection in order to comply with section 5141, subdivision (c) during the current pandemic, but that is not possible due to current respirator supply constraints.

Section 5141, subdivision (c) reads as follows:

Control by Respiratory Protective Equipment. Respiratory protective equipment, in accordance with Section 5144, shall be used to prevent harmful exposures as follows:

- (1) During the time period necessary to install or implement feasible engineering controls;
- (2) Where feasible engineering controls and administrative controls fail to achieve full compliance; and
- (3) In emergencies.

4.4 Title 8, section 5144. Respiratory Protection

Similar to section 5141, subdivision (c), section 5144 requires respirators be used to protect the health of employees when effective engineering controls to prevent harmful atmospheres are not feasible. Again, compliance with this section for all California workplaces where there are COVID-19 transmission hazards despite

engineering and administrative controls has not been possible during the current pandemic due to respirator supply constraints.

Section 5144 reads, in pertinent part, as follows:

§ 5144. Respiratory Protection.

(a) Permissible practice.

(1) In the control of those occupational diseases caused by breathing air contaminated with harmful dusts, fogs, fumes, mists, gases, smokes, sprays, or vapors, the primary objective shall be to prevent atmospheric contamination. This shall be accomplished as far as feasible by accepted engineering control measures (for example, enclosure or confinement of the operation, general and local ventilation, and substitution of less toxic materials). When effective engineering controls are not feasible, or while they are being instituted, appropriate respirators shall be used pursuant to this section.

(2) Respirators shall be provided by the employer when such equipment is necessary to protect the health of the employee. The employer shall provide the respirators which are applicable and suitable for the purpose intended. The employer shall be responsible for the establishment and maintenance of a respiratory protection program which shall include the requirements outlined in subsection (c).

(d) Selection of respirators. This subsection requires the employer to evaluate respiratory hazard(s) in the workplace, identify relevant workplace and user factors, and base respirator selection on these factors...

(1) General requirements.

(A) The employer shall select and provide an appropriate respirator based on the respiratory hazard(s) to which the worker is exposed and workplace and user factors that affect respirator performance and reliability.

(B) The employer shall select a NIOSH-certified respirator. The respirator shall be used in compliance with the conditions of its certification.

(C) The employer shall identify and evaluate the respiratory hazard(s) in the workplace; this evaluation shall include a reasonable estimate of employee exposures to respiratory hazard(s) and an identification of the contaminant's chemical state and physical form. Where the employer cannot identify or reasonably estimate the employee exposure, the employer shall consider the atmosphere to be IDLH.

(D) The employer shall select respirators from a sufficient number of respirator models and sizes so that the respirator is acceptable to, and correctly fits, the user.

4.5 Title 8 section 3362. General Requirements (Sanitation)

Section 3362, subdivision (a) requires that workplaces be kept clean and in sanitary condition. It also requires that buildings be cleaned and maintained to prevent harmful exposures (defined in section 5140 – see part 4.3 above). Thus, under this rule, employers must perform workplace cleaning to prevent exposure to COVID-19. For example, SARS-CoV-2 can remain viable on surfaces and objects for up to seven days.⁶ There are products known to effectively disinfect surfaces from the virus. Thus, use of those products is required by this subdivision where there is a risk of surface contamination.

Section 3362, subdivision (b) requires cleaning and sweeping be done in a manner that does not create a harmful exposure to COVID-19. For example, dry sweeping of floors may aerosolize SARS-CoV-2 and thus is prohibited by this subsection where there is a likelihood of viral contamination.

⁶ Alex Chin, Julie Chu, Mahen Perera, Kenrie Hui, Hui-Ling Yen, Michael Chan, Malik Peiris, Leo Poon. Stability of SARS-CoV-2 in different environmental conditions. The Lancet Microbe. 2 April 2020. <https://www.thelancet.com/action/showPdf?pii=S2666-5247%2820%2930003-3>

However, like sections 3203 and 5141, section 3362 does not identify specific sanitation measures that must be taken to protect workers from COVID-19.

Section 3362, subdivisions (a) and (b) read as follows:

(a) To the extent that the nature of the work allows, workplaces, storerooms, personal service rooms and passageways shall be kept clean, orderly and in a sanitary condition. The interiors, exteriors and environs of buildings that contribute to a hazard to which these orders apply shall be cleaned and maintained in such conditions as will not give rise to harmful exposure, as defined in Section 5140.

(b) Cleaning and sweeping shall be done in such a manner as to minimize the contamination of the air and, insofar as is practicable, shall be performed at such time and in such a manner that will avoid harmful exposures as defined in Section 5140.

4.6 Title 8 section 3366. Washing Facilities

Section 3366, subdivision (a) requires that washing facilities be reasonably accessible to all employees. The section, however, does not specifically require measures to ensure that employees are able to maintain personal hygiene, such as the provision of hand sanitizer by the employer.

Section 3366, subdivision (a) reads as follows:

Washing facilities for maintaining personal cleanliness shall be provided in every place of employment. These facilities shall be reasonably accessible to all employees.

4.7 Title 8 section 3380. Personal Protective Devices

Section 3380 contains general requirements for PPE. Requirements of this section include that: PPE be labeled, be used in accordance with the manufacturer's instructions, be maintained in a safe and sanitary condition, and fit adequately. The section also requires employers to properly train employees on the use of PPE.

Section 3380, subdivision (f)(1) requires employers to assess the workplace for hazards and select the appropriate PPE. Subdivision (f)(2) requires written documentation that certifies that a workplace-hazard assessment has been performed. Subdivision (f)(4) requires the employer to provide training to employees on the proper use of required PPE.

These subdivisions, however, apply only to PPE required by sections 3381 (head protection), 3382 (eye protection), 3384 (hand protection), and 3385 (foot protection). As explained in parts 4.8 and 4.9 of this evaluation below, none of these sections require PPE to help prevent the transmission of COVID-19. Construction and mining employers are also exempt from section 3380, subdivision (f), which reads, in pertinent part, as follows:

Hazard assessment and equipment selection.

(1) The employer shall assess the workplace to determine if hazards are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). If such hazards are present, or likely to be present, the employer shall:

(A) Select, and have each affected employee use, the types of PPE that will protect the affected employee from the hazards identified in the hazard assessment;

(B) Communicate selection decisions to each affected employee; and,

(C) Select PPE that properly fits each affected employee.

(2) The employer shall verify that the required workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated; the person certifying that the evaluation has been performed; the date(s) of the hazard assessment; and, which identifies the document as a certification of hazard assessment.

(4) Training. The employer shall provide training to each employee who is required by this section to use PPE. Each such employee shall be trained to know at least the following:

- (A) When PPE is necessary;
- (B) What PPE is necessary;
- (C) How to properly don, doff, adjust, and wear PPE;
- (D) The limitations of the PPE; and,
- (E) The proper care, maintenance, useful life and disposal of the PPE.

(8) Subsections (f)(1) and (2) and (f)(4) through (7) of this section apply only to Sections 3381, 3382, 3384 and 3385 of these Orders. Subsections (f)(1) and (2) and (f)(4) through (7) of this section do not apply to Section 5144 of these Orders and Section 2940.6 of the High Voltage Electrical Safety Orders. Subsection (f) does not apply to workplace operations regulated by the Construction Safety Orders or the Mine Safety Orders.

4.8 Title 8 section 3382. Eye and Face Protection

Section 3382 contains requirements for the provision and use of eye and face protection. Section 3382, subdivision (a) requires eye and face protection only to protect against acute eye injuries. It does not require eye protection to prevent infectious diseases. COVID-19 is believed to be transmissible through the eyes, mouth, and nose, and eye and face protection may help prevent infections.⁷

Section 3382, subdivision (a) reads as follows:

Employees working in locations where there is a risk of receiving eye injuries such as punctures, abrasions, contusions, or burns as a result of contact with flying particles, hazardous substances, projections or injurious light rays which are inherent in the work or environment, shall be safeguarded by means of face or eye protection. Suitable screens or shields isolating the hazardous

⁷ Christian J. Kähler, Rainer Hain, Fundamental protective mechanisms of face masks against droplet infections, Journal of Aerosol Science, Volume 148, 2020.

<https://www.sciencedirect.com/science/article/pii/S0140673620311429>

exposure may be considered adequate safeguarding for nearby employees.

4.9 Title 8 section 3384. Hand Protection

Section 3384 contains requirements for the provision and use of hand protection. Section 3384, subdivision (a) requires hand protection from exposures to harmful substances that absorb through the skin, cuts or lacerations, abrasions, punctures, chemical burns, thermal burns, radioactive materials, and harmful temperature extremes.

Subdivision (a) does not require hand protection when the hands of employees may contact a surface contaminated with SARS-CoV-2 because SARS-CoV-2 does not penetrate the skin, but rather infects persons after they touch their eyes, nose, or mouth with contaminated hands.

Section 3384, subdivision (a) reads as follows:

Employers shall select, provide and require employees to use appropriate hand protection when employee's hands are exposed to hazards such as those from skin absorption of harmful substances, cuts or lacerations, abrasions, punctures, chemical burns, thermal burns, radioactive materials, and harmful temperature extremes.

4.10 Title 8 section 5193. Bloodborne Pathogens

Section 5193 applies to all occupational exposure to blood or "*other potentially infectious materials*" (the construction industry is exempted). Other potentially infectious materials" is defined in the regulation as follows:

"Other Potentially Infectious Materials" is defined, in pertinent part, as follows:

The following human body fluids: semen, vaginal secretions, cerebrospinal fluid, synovial fluid, pleural fluid, pericardial fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, any other body fluid that is visibly contaminated with blood such as saliva or vomitus, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids such as emergency response

Although SARS-CoV-2 is not likely transmitted through parenteral contact with blood and other potentially infectious materials,⁸ it is likely transmitted when infected blood or other potentially infectious materials are aerosolized and are inhaled or contact the eyes, nose, or mouth. This occurs most frequently in settings generally subject to section 5199, the Aerosol Transmissible Disease standard. For workplaces not covered by section 5199 where aerosolization of blood and other potentially infectious materials occurs (such as dentistry and other medical specialties that meet exemptions in 5199), section 5193 contains requirements to reduce the risk of COVID-19 transmission, including requirements for engineering controls, cleaning practices, personal hygiene practices, and personal protective equipment.

Some of the relevant requirements in section 5193 are the following:

(d)(1) ... Universal precautions shall be observed to prevent contact with blood or OPIM [*Other potentially infectious materials*]. Under circumstances in which differentiation between body fluid types is difficult or impossible, all body fluids shall be considered potentially infectious materials.

* * * *

(d)(2)(A) ... Engineering and work practice controls shall be used to eliminate or minimize employee exposure.

* * * *

(d)(3)(D) All procedures involving blood or OPIM shall be performed in such a manner as to minimize splashing, spraying, spattering, and generation of droplets of these substances.

* * * *

(d)(3)(H)(2)a. Contaminated Work Surfaces.

Contaminated work surfaces shall be cleaned and decontaminated with an appropriate disinfectant

⁸ National Institute of Environmental Health Sciences. Can SARS-CoV-2, the Virus that Causes COVID-19 Disease, Be Spread by Blood? 2020. https://tools.niehs.nih.gov/wetp/public/hasl_get_blob.cfm?ID=11981

immediately or as soon as feasible when:

- i. Surfaces become overtly contaminated;
- ii. There is a spill of blood or OPIM;
- iii. Procedures are completed; and
- iv. At the end of the work shift if the surface may have become contaminated since the last cleaning.

* * * *

(d)(3)(I) Hygiene.

1. Employers shall provide handwashing facilities which are readily accessible to employees.
2. When provision of handwashing facilities is not feasible, the employer shall provide either an appropriate antiseptic hand cleanser in conjunction with clean cloth/paper towels or antiseptic towelettes. When antiseptic hand cleansers or towelettes are used, hands shall be washed with soap and running water as soon as feasible.
3. Employers shall ensure that employees wash their hands immediately or as soon as feasible after removal of gloves or other personal protective equipment.
4. Employers shall ensure that employees wash hands and any other skin with soap and water, or flush mucous membranes with water immediately or as soon as feasible following contact of such body areas with blood or OPIM.

* * * *

(d)(4) Personal Protective Equipment.

(d)(4) (A) Provision. Where occupational exposure remains after institution of engineering and work practice controls, the employer shall provide, at no cost to the employee, appropriate personal protective equipment such as, but not limited to, gloves, gowns, laboratory coats, face shields or masks and eye protection, and mouthpieces, resuscitation bags, pocket masks, or other ventilation devices. Personal protective equipment will be considered "appropriate" only if it does not permit blood or OPIM to pass through to or reach the employee's work clothes, street clothes, undergarments, skin, eyes, mouth, or other mucous membranes under normal conditions of use and for the

duration of time which the protective equipment will be used.

* * * *

(d)(4)(G) Gloves. Gloves shall be worn when it can be reasonably anticipated that the employee may have hand contact with blood, OPIM, mucous membranes, and non-intact skin; when performing vascular access procedures except as specified in subsection (d)(4)(G)4.; and when handling or touching contaminated items or surfaces. These requirements are in addition to the provisions of Section 3384.

1. Disposable (single use) gloves such as surgical or examination gloves, shall be replaced as soon as practical when contaminated or as soon as feasible if they are torn, punctured, or when their ability to function as a barrier is compromised.

* * * *

(d)(4)(H) Masks, Eye Protection, Face Shields, and Respirators.

1. Masks in combination with eye protection devices, such as goggles or glasses with solid side shields, or chin-length face shields, shall be worn whenever splashes, spray, spatter, or droplets of blood or OPIM may be generated and eye, nose, or mouth contamination can be reasonably anticipated. These requirements are in addition to the provisions of Section 3382.

2. Where respiratory protection is used, the provisions of Sections 5144 and 5147 are required as applicable.

* * * *

(d)(4)(I) Gowns, Aprons, and Other Protective Body Clothing.

1. Appropriate protective clothing such as, but not limited to, gowns, aprons, lab coats, clinic jackets, or similar outer garments shall be worn in occupational exposure situations. The type and characteristics will depend upon the task and degree of exposure anticipated. These requirements are in addition to the provisions of Section 3383.

5.0 FEDERAL OSHA REGULATIONS

Federal OSHA standards contain many of the same requirements as Title 8. The foremost exceptions are:

- The IIPP, required by Title 8, has no similar federal regulatory mandate.
- The definition of “harmful exposure.” In Title 8, a *harmful exposure* is defined as exposure to any airborne substance that can cause injury, illness, disease, impairment, or loss of function. This includes SARS-CoV-2. The federal regulations do not have such a broad definition, and they limit regulation of harmful airborne exposures to specific substances listed in title 29 Code of Federal Regulations Subpart Z “Toxic and Hazardous Substances,” which does not include SARS-CoV-2. Thus, protections against SARS-CoV-2 are not required by those federal regulations.

However, while there is no federal regulation governing airborne exposure to substances such as SARS-CoV-2, federal OSHA does have the “General Duty Clause” in section 5(a)(1) of the Occupational Safety and Health Act of 1970. The clause states the following:

Each employer shall furnish to each of his [*sic*] employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;

The General Duty Clause is used by federal OSHA to address conditions that are not subject to other Federal OSHA regulations. As such, it can be used by Federal OHA to require employers to protect employees from harmful airborne pathogens, such as SARS-CoV-2.

Other federal regulations such as those governing respiratory protection, sanitation, washing facilities, personal protective equipment, and bloodborne pathogens are similar to their counterpart regulations in the California Code of Regulations, title 8, discussed above.

6.0 PETITIONERS AND THEIR BASIS FOR NEW REGULATIONS

Petitioners assert that without specific occupational health and safety regulation to protect workers from COVID-19, Californians will become sick and die

unnecessarily. They request regulatory protection for workers not currently protected by the Aerosol Transmissible Disease standard, title 8 section 5199 (“Non-5199 Workers”). Petitioners seek to add both an emergency regulation to immediately protect Non-5199 Workers from COVID-19, and a permanent regulation to protect Non-5199 Workers in the long-term from infectious diseases in general, including novel pathogens such as COVID-19.

Petitioners assert that an emergency regulation to protect Non-5199 Workers from COVID-19 must be issued as soon as possible and take immediate effect. They state that the California economy is in the process of opening back up, and employees currently working, or who will be returning to work in the future, need an emergency regulation now. Many more workers will be exposed to COVID-19 as the economy opens back up. Petitioners contend an emergency regulation is necessary, not only to protect the employees’ health and safety, but also the health and safety of their families and communities.

Petitioners assert that the COVID-19 pandemic is not diminishing and will persist for some time, and in the face of this public health emergency, clarity is required for both employers and employees. They state that the performance-based requirements of Title 8, section 3203, combined with a small number of other regulations, are not adequate in protecting employees from COVID-19.

Thus, Petitioners propose language for a draft emergency regulation to protect Non-5199 Workers standard from COVID-19 and ask the Standards Board to consider their draft as guidance in developing an emergency regulation. They also propose the adoption of a permanent regulation to protect employees from infectious diseases, including those caused by novel pathogens.

7.0 ANALYSIS OF THE PROPOSAL

Cal/OSHA agrees with Petitioners that COVID-19 is a workplace emergency. SARS-CoV-2 is a highly infectious, easily transmissible, and virulent pathogen. It has killed hundreds of workers in California and sickened thousands, and workers will continue to become ill and die until the pandemic subsides. COVID-19 is an occupational health emergency causing more deaths in less time than any other workplace crisis in the nearly fifty-year existence of Cal/OSHA. The COVID-19 public health crisis is exactly the type of catastrophe that the legislature intended an emergency regulation to address.

Cal/OSHA also agrees that an emergency regulation is warranted. Although section 5199 provides specific protections for novel pathogens such as COVID-19, it does not protect all workers. Many Non-5199 Workers are affected by major outbreaks of COVID-19 including workers in the following industries: meat and poultry processing, food processing, agriculture, garment manufacturing, warehousing, public transportation, and retail stores.

There is no existing Title 8 regulation that comprehensively addresses an employer's responsibility to protect Non-5199 Workers from infectious diseases. While many of the regulations discussed above require employers to take steps to protect workers against COVID-19, these standards are not specific to infectious diseases, including COVID-19 and do not necessarily identify specific measures that must be taken to fight the spread of any infectious disease. In the absence of a specific set of mandatory infection-control requirements that employers clearly must implement, there is no assurance that all Non-5199 Workers will be protected from infectious diseases like COVID-19.

Guidance exists on how employers can protect workers from COVID-19. There are a large number of COVID-19 prevention guidelines from myriad government agencies (including federal OSHA and Cal/OSHA), universities, non-profit organizations, business associations, and others. And employers should follow these guidelines to protect Non-5199 Workers from COVID-19 in order to comply with general regulations such as sections 3203, 3362, 3366, 5141, 5144, But these standards themselves do not prescribe specific steps that employers must take to protect workers from COVID-19. Thus, while these general provisions provide Cal/OSHA a regulatory basis for requiring employers to take measures to protect workers from COVID-19, Cal/OSHA's enforcement efforts could be streamlined and strengthened through regulatory mandates specific to preventing the spread of infectious diseases. In addition, the PPE regulations (sections 3380 through 3385) do not apply to infectious-disease prevention and section 5193, which contains applicable PPE requirements, only applies to a very small number of Non-5199 Workplaces.

If COVID-19-specific protections similar to the guidelines were spelled out in the Title 8 standards, Cal/OSHA could more easily enforce requirements that would be specific, detailed, and more protective of workers. Given the unprecedented nature of the COVID-19 pandemic, a new standard that will enhance Cal/OSHA's

ability to protect workers is essential to keep workplaces safe. A specific COVID-19 emergency regulation in Title 8 would provide clear instructions to employers and employees on what needs to be done to protect workers from COVID-19, eliminating any confusion and enhancing compliance.

8.0 CONCLUSION

Pursuant to Labor Code section 147.1, Cal/OSHA has determined there is a necessity for an emergency regulation to protect all Non-5199 Workers from COVID-19. Due to the current COVID-19 pandemic, it is important that a regulation be promulgated as soon as possible to protect employees from exposure to the virus.

Cal/OSHA recommends that the Standards Board grant petition 583, and that an emergency regulation be promulgated to protect employees from exposure to COVID-19. In addition, Cal/OSHA recommends that an advisory committee be convened by Cal/OSHA after the COVID-19 pandemic subsides to determine whether a permanent regulation should be promulgated to protect Non-5199 Workers from infectious diseases, including novel pathogens.

cc: Susan Eckhardt
Chris Kirkham
Eric Berg



May 20, 2020

Occupational Safety and Health Standards Board
1017 L Street, PMB #254
Sacramento, CA 95814-3805
Attention: Executive Officer, Christina Shupe
By email:

Re: **Petition for an emergency temporary standard** to protect workers from Covid-19
Petition for a permanent standard to protect workers from infectious diseases
including novel pathogens

Dear Members of the OSH Standards Board:

On behalf of all workers not currently protected by the Aerosolized Transmissible Disease (ATD) standard, 8 CCR 5199, and in consultation with labor and community organizations throughout California, this petition for two standards is submitted by the Labor & Employment Committee of National Lawyers Guild and Worksafe. We are seeking regulatory protection for those currently working as "essential" workers; those who are working although not deemed essential workers; those working because they must work to support their families; those working because if they refuse unsafe work they will suffer retaliation – permanently lose their jobs and may not be eligible for unemployment insurance; and those who will fearfully be returning to work as the economy opens up.

Since 1937 the National Lawyers Guild has provided legal support to movements for social change, principally on a volunteer basis. The Labor & Employment Committee (L&EC) focuses on struggles for economic and social justice. In the 1930s the Guild focused on workers' rights supporting New Deal legislation to assist working people and the unemployed; in the 1950s the Guild defended labor leaders and others attacked for their progressive political views. Then and now, the Guild L&EC actively supports progressive labor and employment law struggles. The L&EC is comprised of close to 1,000 labor and employment attorneys across the country.

Worksafe is California's only statewide nonprofit focused on ensuring the occupational safety and health (OSH) rights of vulnerable workers through policy advocacy, capacity and coalition building, and impact litigation. We are a leader in engaging and convening worker advocates, legal aid organizations, academic institutions, and government agencies to prevent workplace injury, illness, and death by bringing justice to the workplace. We achieve this by focusing our efforts on the low-income, immigrant, and workers of color who bear a disproportionate burden of exposure to workplace hazards.

With respect to the request for an emergency temporary standard to protect employees in any facility, service category, or operation who may be exposed to SARS-CoV-2 [Covid-19], and who are not within the scope of 8 CCR 5199 or 5199.1, time is of the essence. An emergency temporary standard is necessary for the immediate protection of the public peace, health, or safety within the meaning of Article IV of the California Constitution and as such, must be issued as soon as possible and take immediate effect. Such will protect the lives not only of employees who in the course of their employment may be exposed to Covid-19, a deadly infectious pathogen, but also protect the lives of their families and those in the communities in which they live.

Without specific occupational health and safety measures to protect essential workers, to protect workers currently working but not necessarily deemed essential workers, and to protect those who will in the future return to work to revitalize the economy of the State of California, **Californians will die unnecessarily.**

With respect to the request for a permanent standard to protect workers from infectious diseases including novel pathogens, this petition is submitted pursuant to Labor Code Section 142.2. Petitioners also reference Labor Code Section 142.3(c) which requires standards to include specific warnings to ensure that employees are apprised of all hazards to which they are exposed. It also requires suitable protective equipment and procedures necessary to control those hazards. Medical monitoring is also prescribed where appropriate.

With respect to the request for both the emergency regulation to protect workers from Covid-19 and the permanent regulation to protect workers from infectious diseases, Labor Code Section 144.6 requires that in promulgating standards dealing with toxic materials or harmful physical agents, which petitioners contend applies to Covid-19 and infectious diseases:

the board shall adopt that standard which most adequately assures, to the extent feasible, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to a hazard regulated by such standard for the period of his working life. Development of standards under this section shall be based upon research, demonstrations,

experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the reasonableness of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

We respectfully ask the Board to consider the enclosed draft of an emergency temporary standard as guidance. We understand that the Board will apply its expertise in developing the emergency temporary standard and this is offered simply as a compilation of best practices that have been developed by a number of different worker representatives. We hope this draft will be of assistance in moving forward with the temporary standard with all deliberate speed given the ongoing pandemic conditions impacting the state's workers, employers, and economy.

The Covid-19 pandemic is not going away anytime soon. And other novel pathogens may threaten this state and the world in the future. As more and more workers are brought back, their lives and livelihoods are pitted against each other. In order to protect the lives and health of workers and their families, in the face of this public health emergency, clarity is required.

The draft we share is a hybrid of a performance-based and specification-based standard. The performance-based dictates of 8 CCR 3203 combined with a small number of more specific standards have not been adequate. Lives are being lost and will continue to be lost without consistent rules as a starting point for our state's workplaces that allow employers some flexibility with respect to individual needs in their places of employment.

In brief, the proposed regulation is divided into subsections that parallel the framework of the Injury and Illness Prevention Program (8 CCR 3203), and add specifics that are helpful:

- a. Requires minimizing the risk of transmission of Covid-19 to employees from other employees or from the public. Requires:
 1. Identification of a competent employer representative to develop and administer a written Compliance Action Plan to protect employees (sets timelines and requires employer to share with workers / unions)
 2. Procedures to identify and evaluate Covid-19 workplace hazards
 3. Procedures to control the hazard (engineering controls, work practices, PPE, etc.)
 4. Identification of job categories, tasks, procedures where employees exposed
 5. Procedures to respond to three categories of employees
 - A. Employee who has been diagnosed with Covid-19
 - B. Employee who has symptoms of Covid-19

- C. Employee who has been exposed to a person who has been diagnosed with Covid-19
 - b. Job Hazard Analysis to identify modes of transmission and adopt and implement feasible preventive measures to minimize transmission risk, including but not limited to:
 - 1. Specific measures to assure social distancing
 - 2. Ventilation systems to reduce airborne exposure to Covid-19
 - 3. Personal hygiene and workplace maintenance measures to reduce exposure to Covid-19
 - 4. PPE, including appropriate respirators with appropriate training and fit testing
 - c. Employee training
 - d. Recordkeeping per 8 CCR 3203(b)

Thank you in advance for your prompt attention to our request for an emergency temporary standard, and for a timely response to our request for a permanent standard to protect workers from infectious disease including novel pathogens. We look forward to continuing to work with the Board on this matter in order to protect the health and safety of all Californians during the Covid-19 pandemic and in anticipation of future pandemics.

Sincerely,

/s

Frances C. Schreiber
Labor & Employment Committee of the
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DRAFT of Emergency Temporary Standard to Protect Workers from Covid-19

(a) Every employer shall minimize the risk of transmission of Covid-19 during work among employees who may be exposed to other employees or the public with Covid-19 or who may expose other employees. The procedures shall include the following elements:

(1) Identification of a person or persons as a “competent person” with authority and responsibility for the establishment, implementation and maintenance of effective written infection control procedures to control the risk of transmission of Covid-19, to wit, a **Compliance Action Plan**. The **Compliance Action Plan** shall be prepared or updated within 10 business days of any new state or local law, regulation or order, including any guidance document issued by DOSH or CDPH. A competent person shall have the authority to perform this function and shall be knowledgeable in infection control principles as they apply specifically to the facility, service or operation. When a competent person is not on site, there shall be a designated competent site representative with full authority to act on his or her behalf. The name, position, and contact information for the competent person and any competent site representative shall be posted at the site of each work operation covered by this subsection. The written **Compliance Action Plan** shall be made available for inspection and copying by any employee or employee representative within five business days of a written request, at no cost to the employee or representative.

(2) Procedures for identifying and evaluating workplace hazards that may expose any employee to Covid-19. Procedures shall include, but not be limited to, scheduled periodic inspections to identify and evaluate hazards.

(3) Methods and/or procedures for controlling employee exposure and correcting unsafe or unhealthy conditions. These shall include engineering controls, work practices and procedures, and personal protective equipment [PPE], including respiratory protection, as required by Title 8 California Code of Regulations.

(4) Procedures to respond to:

(A) an employee report that he or she has been diagnosed by a physician with Covid-19. Such procedures shall include, but not be limited to:

- (i) immediately sending employee home or instructing the employee who is already at home to stay home, until a medical provider authorized return to work;
- (ii) implementing work policies that do not penalize workers for missing work as a result of being diagnosed by a physician with Covid-19;
- (iii) written notice within 24 hours to all employees who may have been exposed to the employee with a physician confirmed diagnosis of Covid-19. Employees to be notified shall include those who may have worked during the same shift or on an adjacent shift in the same or adjacent work areas of, or may have shared equipment with, the diagnosed employee. Employees to be notified shall also include individuals who may have been close contacts: to wit, have been within 6 feet of the diagnosed employee for more than 10 minutes during the period when the employee was potentially contagious, which is from 48 hours before symptoms first appeared, or from the date of their positive lab test if they did not have symptoms.
- (iv) filing a report with the Division of Occupational Safety and Health by telephone, email, or via a specified online mechanism, within one business day of the

employer obtaining knowledge of the diagnosis, whether or not it is work-related as defined in 8 CCR 14300.5. Each report of diagnosis shall indicate the social security number of the diagnosed employee.

(v) filing a report or amended report with the Division of Occupational Safety and Health by telephone, email, or via a specified online mechanism, immediately upon the employer obtaining knowledge of the hospitalization or death of an employee, whether or not it is work-related as defined in 8 CCR 14300.5. Each report of hospitalization or death shall indicate the social security number of the diagnosed employee.

(vi) filing a report with the local county, and where applicable city, health authorities, within one business day of the employer obtaining knowledge of the diagnosis. Each report of diagnosis shall indicate the social security number of the diagnosed employee; the employer name and address, EIN, and Contractors' State License Board number if applicable; the diagnosed employee's work assignments, actual work locations and job sites, and actual work periods beginning two weeks prior to the date of the physician's diagnosis; and

(vii) procedures immediately to close and deep clean all areas, surfaces and equipment that may have been in contact with the diagnosed employee.

(B) an employee report of symptoms of Covid-19. Such procedures shall include, but not be limited to:

(i) encouraging sick workers to go or stay home by implementing work policies that do not penalize workers for missing work; and

(ii) immediately sending employees with acute respiratory illness symptoms home or to medical care.

(C) an employee report that he or she has been exposed to a person who has been diagnosed by a physician with Covid-19 or has learned from his or her employer pursuant to subsection (A) that he or she has been exposed to an employee who has been diagnosed by a physician with Covid-19. Such procedures shall include, but not be limited to,

(i) immediately sending such employee to home quarantine, and

(ii) implementing work policies that do not penalize workers for missing work as a result of being quarantined.

(b) Employers shall conduct a Job Hazard Analysis to identify any potential modes of Covid-19 transmissions and adopt and implement feasible preventive measures to eliminate or minimize the risk of transmission. The competent person shall provide a written list of these measures to each employee. These measures shall include, but not be limited to, the following:

(1) Identification in writing of the job categories, tasks or procedures in which employees may have occupational exposure to Covid-19.

(2) Implementing measures to assure social distancing including but not limited to:

(A) changing work stations, work area arrangements, and work flow or pace of work to ensure physical distancing of 6 feet, at a minimum, at all times:

(i) among employees at all work stations,

(ii) among employees in all other work areas,

- (iii) among employees in areas not utilized for work such as areas for breaks and meals, and
- (iv) between employees and the public, including but not limited to:
 - (a) use of barriers between employees and the public;
 - (b) limiting the number of the public in the facility, marking distances in areas where the public may congregate;
 - (c) ensuring that where employees interact with customers at less than 6 feet, employees are provided with access to N-95 respirators (or filtering facepieces) and face shields;
- (B) ensuring seating in areas where employees may take a break or eat meals face forward so that employees are not facing each other;
- (C) ensuring limits are set for employees to occupy common areas such as locker or break rooms, dining facilities, training or conference rooms, so that all present can maintain a social distance of 6 feet;
- (D) scheduling shifts and breaks to assure distancing in non-work areas;
- (3) Installing ventilation systems designed to reduce employee exposure to the airborne virus;
- (4) Implementing measures to assure personal hygiene including but not limited to:
 - (A) providing hand sanitizer that is at least 60% alcohol in multiple locations,
 - (B) providing time and materials and accessible locations for regular hand washing,
 - (C) adjusting operating procedures such as pace of work to assure that work assignments and requirements do not interfere with hygiene measures;
- (5) Immediate cleaning of all shared materials before another employee handles that material, and regularly scheduled frequent cleaning and disinfection of areas and surfaces that may become contaminated and pose an infection risk to employees, including but not limited to:
 - (A) work areas accessible surfaces, vehicles, equipment and tools,
 - (B) shared non-work areas where employees congregate, including but not limited to: break, lunch, locker and rest rooms,
 - (C) high-touch surfaces throughout the workplace including but not limited to: doorknobs, stair railings, access keypads, light switches, shared items such as common water sources, microwaves, etc.,
- (6) implementing other procedures to minimize the likelihood the public may contaminate workers, such as providing employees with personal protective equipment, including but not limited to:
 - (A) hand protection so employees do not handle items already handled by the public;
 - (B) requiring members of the public to cover their nose and mouth with face coverings while in the facility to minimize the transmission of airborne pathogens to employees.
- (c) Employers shall provide employees with the tools, operating equipment and PPE necessary to comply fully with public health orders, regulations and laws. These shall be provided by the employer to employees at no cost. PPE shall be assessed and certified as required by 8 CCR 3380.f.1 and f.2 for the hazard of exposure to Covid-19 risk, and employees shall be trained on the proper use of PPE required for potential exposure to Covid-19. Employees who provide their own PPE that meets or exceeds the PPE required by the Division shall not suffer any adverse action by the employer. All employees who are directed by their employer to wear compliant PPE shall be provided with a medical evaluation to assure

compliance with 5144.e. Employee respiratory protection designed to protect employees exposed to airborne pathogen hazards shall comply with 8 CCR 5144, including but not limited to subsections 5144.a.2, b, c, d, e, h, k, l and m, including filtering facepieces as defined in 5144.b.

(d) Employers shall train employees regarding and assure compliance with the **Compliance Action Plan**, and provide each employee with a copy of the Plan and the full list of compliance measures which apply to the employee's specific operations, jobs and tasks, including the names of and how to contact persons responsible for implementation of the plan. Training shall occur upon initial assignment, when site conditions change, and when hazards are newly introduced or newly recognized. Training shall be appropriate in content and vocabulary for the educational level, literacy, and language of employees.

(e) In addition to any specific recordkeeping or reporting requirements set forth in this regulation or state and local laws, regulations and orders, employers shall maintain records of the **Compliance Action Plan** according to the recordkeeping requirements in 8 CCR 3203 (b).

Occupational Safety and Health Standards Board

Business Meeting
Variance Consent Calendar

**CONSENT CALENDAR—PROPOSED VARIANCE DECISIONS
SEPTEMBER 17, 2020, MONTHLY BUSINESS MEETING
OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD**

A. PMI Brandon LLC—HEARD AUGUST 26, 2020

OSHSB FILE NUMBER	APPLICANT NAME	SAFETY ORDERS	PROPOSED DECISION
13-V-164M1	PMI Brandon LLC	Elevator	GRANT

B. 350 Bush Street Owner, LLC —HEARD AUGUST 26, 2020

OSHSB FILE NUMBER	APPLICANT NAME	SAFETY ORDERS	PROPOSED DECISION
15-V-169M1	350 Bush Street Owner, LLC	Elevator	GRANT

C. SCG Grove 221, LLC —HEARD AUGUST 26, 2020

OSHSB FILE NUMBER	APPLICANT NAME	SAFETY ORDERS	PROPOSED DECISION
17-V-273M1	SCG Grove 221, LLC	Elevator	GRANT

D. Planetary Ventures—HEARD AUGUST 26, 2020

OSHSB FILE NUMBER	APPLICANT NAME	SAFETY ORDERS	PROPOSED DECISION
18-V-213M1	Planetary Ventures	Elevator	GRANT

E. NASH Holland 1721 Webster Investors--HEARD AUGUST 26, 2020

OSHSB FILE NUMBER	APPLICANT NAME	SAFETY ORDERS	PROPOSED DECISION
18-V-403M1	NASH Holland 1721 Webster Investors	Elevator	GRANT

F. 1169 Market Street, LP —HEARD AUGUST 26, 2020

OSHSB FILE NUMBER	APPLICANT NAME	SAFETY ORDERS	PROPOSED DECISION
19-V-354M1	1169 Market Street, LP	Elevator	GRANT

G. 1169 Market Street, LP —HEARD AUGUST 26, 2020

OSHSB FILE NUMBER	APPLICANT NAME	SAFETY ORDERS	PROPOSED DECISION
19-V-367M1	1169 Market Street, LP	Elevator	GRANT

H. Real Social Good Inv LLC—HEARD AUGUST 26, 2020

OSHSB FILE NUMBER	APPLICANT NAME	SAFETY ORDERS	PROPOSED DECISION
20-V-044M1	Real Social Good Inv LLC	Elevator	GRANT

I. Real Social Good Inv LLC —HEARD AUGUST 26, 2020

OSHSB FILE NUMBER	APPLICANT NAME	SAFETY ORDERS	PROPOSED DECISION
20-V-049M1	Real Social Good Inv LLC	Elevator	GRANT

J. Real Social Good Inv LLC —HEARD AUGUST 26, 2020

OSHSB FILE NUMBER	APPLICANT NAME	SAFETY ORDERS	PROPOSED DECISION
20-V-050M1	Real Social Good Inv LLC	Elevator	GRANT

K. SCHINDLER SLEEP MODE ESCALATORS —HEARD AUGUST 26, 2020

OSHSB FILE NUMBER	APPLICANT NAME	SAFETY ORDERS	PROPOSED DECISION
20-V-097	Los Angeles World Airports	Elevator	GRANT

L. SCHINDLER MODEL 3300 ELEVATORS with variant Gov. Ropes & Sheaves (GROUP IV) — HEARD AUGUST 26, 2020

OSHSB FILE NUMBER	APPLICANT NAME	SAFETY ORDERS	PROPOSED DECISION
20-V-146	CSU East Bay Foundation, Inc.	Elevator	GRANT
20-V-257	The Press Owner, LLC	Elevator	GRANT

M. OTIS ELEVATOR (GROUP IV) GEN2(O) AND/OR GEN2L ALTERATIONS — HEARD AUGUST 26, 2020

OSHSB FILE NUMBER	APPLICANT NAME	SAFETY ORDERS	PROPOSED DECISION
20-V-188	Tan Plaza Continental, LLC	Elevator	GRANT

N. SCHINDLER MODEL 3300 ELEVATORS (GROUP IV) — HEARD AUGUST 26, 2020

OSHSB FILE NUMBER	APPLICANT NAME	SAFETY ORDERS	PROPOSED DECISION
20-V-193	The Little Hill LLC	Elevator	GRANT

O. KONE MONOSPACE 500 ELEVATORS — HEARD AUGUST 26, 2020

OSHSB FILE NUMBER	APPLICANT NAME	SAFETY ORDERS	PROPOSED DECISION
20-V-217	Hartnell Community College	Elevator	GRANT
20-V-218	Hartnell Community College	Elevator	GRANT
20-V-233	ACEF Martin-Folsom, LLC	Elevator	GRANT
20-V-242	924 Catalina, LLC	Elevator	GRANT
20-V-259	The Herald-Placentia Owner, LLC	Elevator	GRANT

P. Kirby Lane LLC —HEARD AUGUST 26, 2020

OSHSB FILE NUMBER	APPLICANT NAME	SAFETY ORDERS	PROPOSED DECISION
20-V-227	Kirby Lane LLC	Elevator	GRANT

Q. OTIS GEN2S ELEVATORS (GROUP IV) —HEARD AUGUST 26, 2020

OSHSB FILE NUMBER	APPLICANT NAME	SAFETY ORDERS	PROPOSED DECISION
20-V-232	HD Reliant Mayfair, LLC	Elevator	GRANT
20-V-234	178 Euclid Investments, LLC	Elevator	GRANT
20-V-235	401 Ocean Ave., LLC	Elevator	GRANT
20-V-236	635 Union Properties, LLC	Elevator	GRANT
20-V-237	Hiro Apartments, LP	Elevator	GRANT
20-V-238	Marmar Bedford, LLC	Elevator	GRANT
20-V-239	Mercy Housing California 59, L.P.	Elevator	GRANT
20-V-246	LI Investments Properties, LLC	Elevator	GRANT
20-V-247	California State University - Chico	Elevator	GRANT
20-V-254	CHF-Davis I, LLC	Elevator	GRANT
20-V-260	CCT Melrose Holdings, LLC	Elevator	GRANT
20-V-261	Florence Towne LP	Elevator	GRANT
20-V-262	JSF Maywood Avenue CMPI, LLC	Elevator	GRANT

R. OTIS E2 Controller w/variant Railing and Gov.(GROUP IV) —HEARD AUGUST 26, 2020

OSHSB FILE NUMBER	APPLICANT NAME	SAFETY ORDERS	PROPOSED DECISION
20-V-240	Otis Property Owner, LLC	Elevator	GRANT

S. OTIS ELEVATORS (GROUP IV) Gen2(O) and/or Gen2L Elevators [w/variant Governor Rope/Sheave] —HEARD AUGUST 26, 2020

OSHSB FILE NUMBER	APPLICANT NAME	SAFETY ORDERS	PROPOSED DECISION
20-V-241	Otis Property Owner, LLC	Elevator	GRANT
20-V-258	California State University - Chico	Elevator	GRANT

T. 1374 W 35th LLC—HEARD AUGUST 26, 2020

OSHSB FILE NUMBER	APPLICANT NAME	SAFETY ORDERS	PROPOSED DECISION
20-V-250	1374 W 35 th LLC	Elevator	GRANT

U. THYSSENKRUPP ELEVATORS (GROUP IV; WIRE ROPES AND SHEAVES) HEARD AUGUST 26, 2020

OSHSB FILE NUMBER	APPLICANT NAME	SAFETY ORDERS	PROPOSED DECISION
20-V-251	SM Cloverfield Investors, LLC	Elevator	GRANT
20-V-252	SM Cloverfield Investors, LLC	Elevator	GRANT
20-V-253	BMB Commercial Corp.	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:)
)
PMI Brandon LLC)
)
_____)

OSHSB FILE No. 13-V-164M1
Proposed Decision Dated: September 1, 2020

DECISION

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

DAVID THOMAS, Chairman

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

BARBARA BURGEL, Member

Date of Adoption: September 17, 2020

DAVID HARRISON, Member

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

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: PMI Brandon LLC	OSHSB File No.: 13-V-164M1 <u>PROPOSED DECISION</u> Hearing Date: August 26, 2020
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A. Subject Matter and Jurisdiction:

1. The above named 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. The subject permanent variance file, and preexisting variance holder of record therein, are as follows:

Preexisting OSHSB File No.	Preexisting Variance Holder of Record
13-V-164	Riverview Capital Investment, LLC

- 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 August 26, 2020, in Sacramento, California, via teleconference, by Occupational Safety and Health Standards Board (“Board”), with Hearing Officer Christina Shupe, 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, Wolter Geesink with Otis Elevator Company, and Dan Leacox of Leacox & Associates, appeared on behalf of the Applicant; Mark Wickens 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: modification of permanent variance application per Section A table as Exhibit PD-1, Notice of Hearing as Exhibit PD-2, Board staff Pending Application Review of Application Memo as PD-3, Division evaluation as PD-4, Review Draft 1 Proposed Decision as PD-5, and official notice taken of the Board’s rulemaking records and variance decisions concerning the safety order

provisions from which variance has been requested. On August 26, 2020, 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 variance holder specified within Board records for each elevator the subject of previously granted Permanent Variance No. 13-V-164.
 2. Application Section 3, declared to be wholly truthful under penalty of perjury by Application signatory, states that the person or entity named in Application Section 1, PMI Brandon LLC, became the owner of the conveyance(s) subject to the existing variance referenced in Application Section 2, as the term conveyance owner is defined per California Code of Regulations, Title 8, Section 403(o).
 3. The Division has evaluated the request for modification of person or entity of record holding Permanent Variance No. 13-V-164, 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. 13-V-164.
 4. The Board finds the Application Section 3, declaratory statements of the Applicant signatory 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, in substantial part, grant of preexisting Permanent Variance No. 13-V-164 was based.
 5. The Board finds the current person or entity having custody of each elevator the subject of Permanent Variance No. 13-V-164, to be in fact:

PMI Brandon LLC

E. Decision and Order:

1. Variance application 13-V-164M1 is conditionally GRANTED, as specified below, such that, within Board records, the person or entity holding Permanent Variance No. 13-V-164, and Permanent Variance No. 13-V-164M1, shall be:

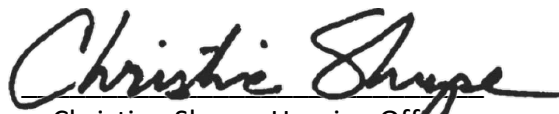
PMI Brandon LLC

2. Permanent Variance No. 13-V-164, only being modified as 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. 13-V-164M1.

3. 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.
4. 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 or per duly adopted superseding procedural rules.

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: September 1, 2020


Christina Shupe, 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:)
)
350 Bush Street Owner, LLC)
)
_____)

OSHSB FILE No. 15-V-169M1
Proposed Decision Dated: September 1, 2020

DECISION

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

DAVID THOMAS, Chairman

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

BARBARA BURGEL, Member

Date of Adoption: September 17, 2020

DAVID HARRISON, Member

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

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: 350 Bush Street Owner, LLC	OSHSB File No.: 15-V-169M1 <u>PROPOSED DECISION</u> Hearing Date: August 26, 2020
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A. Subject Matter and Jurisdiction:

1. The above named 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. The subject permanent variance file, and preexisting variance holder of record therein, are as follows:

Preexisting OSHSB File No.	Preexisting Variance Holder of Record
15-V-169	Lincoln Property Company

- 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 August 26, 2020, in Sacramento, California, via teleconference, by Occupational Safety and Health Standards Board (“Board”), with Hearing Officer Christina Shupe, 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, Wolter Geesink with Otis Elevator Company, and Dan Leacox of Leacox & Associates, appeared on behalf of the Applicant; Mark Wickens 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: modification of permanent variance application per Section A table as Exhibit PD-1, Notice of Hearing as Exhibit PD-2, Board staff Pending Application Review of Application Memo as PD-3, Division evaluation as PD-4, Review Draft 1 Proposed Decision as PD-5, and official notice taken of the Board’s rulemaking records and variance decisions concerning the safety order

provisions from which variance has been requested. On August 26, 2020, 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 variance holder specified within Board records for each elevator the subject of previously granted Permanent Variance No. 15-V-169.
2. Application Section 3, declared to be wholly truthful under penalty of perjury by Application signatory, states that the person or entity named in Application Section 1, 350 Bush Street Owner, LLC¹, became the owner of the conveyance(s) subject to the existing variance referenced in Application Section 2, as the term conveyance owner is defined per California Code of Regulations, Title 8, Section 403(o).
3. The Division has evaluated the request for modification of person or entity of record holding Permanent Variance No. 15-V-169, 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. 15-V-169.
4. The Board finds the Application Section 3, declaratory statements of the Applicant signatory 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, in substantial part, grant of preexisting Permanent Variance No. 15-V-169 was based.
5. The Board finds the current person or entity having custody of each elevator the subject of Permanent Variance No. 15-V-169, to be in fact:

350 Bush Street Owner, LLC

E. Decision and Order:

1. Variance application 15-V-169M1 is conditionally GRANTED, as specified below, such that, within Board records, the person or entity holding Permanent Variance No. 15-V-169, and Permanent Variance No. 15-V-169M1, shall be:

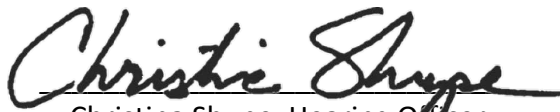
350 Bush Street Owner, LLC

^{1 1} On June 29, 2020, Applicant filed an amended application changing the name of the applicant from "350 Bush Street Owner, Inc." to "Bush Street Owner, LLC". That amendment to the name of applicant is granted.

2. Permanent Variance No. 15-V-169, only being modified as 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. 15-V-169M1.
3. 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.
4. 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 or per duly adopted superseding procedural rules.

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: September 1, 2020


Christina Shupe, 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:)
)
SCG Grove 221, LLC)
)
_____)

OSHSB FILE No. 17-V-273M1
Proposed Decision Dated: September 1, 2020

DECISION

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

DAVID THOMAS, Chairman

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

BARBARA BURGEL, Member

Date of Adoption: September 17, 2020

DAVID HARRISON, Member

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

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: SCG Grove 221, LLC	OSHSB File No.: 17-V-273M1 <u>Proposed Decision</u> Hearing Date: August 26, 2020
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A. Subject Matter and Jurisdiction:

1. 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 and preexisting variance holder of record:

Preexisting OSHSB File No.	Preexisting Variance Holder of Record	Preexisting Variance Address of Record	Preexisting Quantity of Elevators the Subject of Variance
17-V-273	221 North Mathilda, LLC	221 North Mathilda, Sunnyvale, CA	4

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 August 26, 2020, in Sacramento, California, via teleconference, by Occupational Safety and Health Standards Board ("Board"), with Hearing Officer Christina Shupe, 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, Jennifer Linares of Schindler Elevator Corp, appeared on behalf of the Applicant; Mark Wickens 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.
3. Documentary and oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence: the subject modification of permanent variance application captioned above as Exhibit PD-1, Notice of Hearing as Exhibit PD-2, Board staff Pending Application(s) for Permanent Variance Opinion

Letter as PD-3, Division evaluation as PD-4, Review Draft 1 Proposed Decision as PD-5, and official notice taken of the Board's files, records, recordings and decisions concerning the Elevator Safety Order requirements from which variance shall issue. On August 26, 2020, the hearing and record closed, and the matter was taken under submission by the Hearing Officer.

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

1. The Applicant requests modification of Board records to change from "221 North Mathilda, LLC" to "SCG Grove 221, LLC", the variance holder of record of previously granted Permanent Variance No. 17-V-273, as modified by application for OSHSB file No. 17-V-273M1.
2. 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 17-V-273.
3. Application Section 3, declared to be wholly truthful under penalty of perjury by the applicant signatory, states facts upon which to reasonably find that presently SCG Grove 221, LLC, is in managing control of the property at the variance location of record in OSHSB File No. 17-V-273.
4. 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 17-V-273 is in effect, has been changed as follows:

Preexisting OSHSB File No.	Preexisting Address	New Address
17-V-273	221 North Mathilda, Sunnyvale, CA	230 Sobrante Way Sunnyvale, CA Elevators G1 & G2
17-V-273	221 North Mathilda, Sunnyvale, CA	223 N. Mathilda Avenue Sunnyvale, CA Elevators B3 & B4

5. The Division has evaluated the request for modification (see Exhibit PD-4), 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. 17-V-273.

6. The Board finds the above subparts D.3 and D.4 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 No. 17-V-273 was, in part, based.
7. The Board finds the correct addresses by which to designate the location of each elevator the subject of Permanent Variance No. 17-V-273, to be:

230 Sobrante Way, Sunnyvale, CA
Elevators G1 & G2

223 N. Mathilda Avenue, Sunnyvale, CA
Elevators B3 & B4

E. Decision and Order:

1. Each elevator subject to Permanent Variance Nos. 17-V-273 and 17-V-273M1 are also modified as to the variance holder of record, such that henceforth the holder of the permanent variance issued in OSHSB File. No. 17-V-273, and modified per File No. 17-V-273M1, shall be:

SCG Grove 221, LLC

Permanent Variance Application No. 17-V-273M1 is conditionally GRANTED, thereby modifying Board records, such that, without change in variance location, each elevator being the subject of Permanent Variance Nos. 17-V-273, and 17-V-273M1, shall have the following address designations:

230 Sobrante Way, Sunnyvale, CA
Elevators G1 & G2

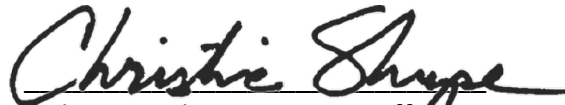
223 N. Mathilda Avenue, Sunnyvale, CA
Elevators B3 & B4

2. Permanent Variance No. 17-V-273, being only modified as to the subject location address and variance holder of record 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. 17-V-273M1.

Proposed Variance Decision
OSHSB Variance File No. 17-V-273M1
Hearing Date: August 26, 2020

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: September 1, 2020


Christina Shupe, 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	)	OSHSB FILE No. 18-V-213M1
Permanent Variance by:	)	Proposed Decision Dated: September 1, 2020
	)	
Planetary Ventures	)	
	)	
	)	DECISION

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

DAVID THOMAS, Chairman

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Date of Adoption: September 17, 2020

BARBARA BURGEL, Member

DAVID HARRISON, Member

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

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: Planetary Ventures	OSHSB File No.: 18-V-213M1 <u>PROPOSED DECISION</u> Hearing Date: August 26, 2020
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- 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
18-V-213	Planetary Ventures	100 Lomax Ln. Bldg. G-3 Mountain View, 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 August 26, 2020, in Sacramento, California, via teleconference, by Occupational Safety and Health Standards Board (“Board”), with Hearing Officer Christina Shupe, 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, Daniel May, with KONE, Inc., appeared on behalf of the Applicant, Mark Wickens 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: the subject modification of permanent variance application captioned above as Exhibit PD-1, Notice of Hearing as Exhibit PD-2, Board staff Pending Application(s) for Permanent Variance Opinion Letter as PD-3, Division evaluation as PD-4, Review Draft 1 Proposed Decision as PD-5, and official notice taken of the Board’s files, records, recordings and decisions concerning the

Elevator Safety Order requirements from which variance shall issue. On August 26, 2020, 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 18-V-213.
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 18-V-213 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. 18-V-213.
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 18-V-213 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. 18-V-213, to be:

300 Bay View Drive
Bldg G-3
Mountain View, CA

E. Decision and Order:

1. Permanent Variance Application No. 18-V-213M1 is conditionally GRANTED, thereby modifying Board records, such that, without change in variance location, each elevator

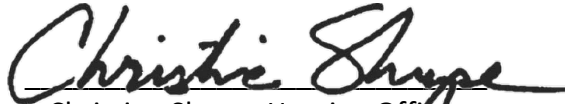
being the subject of Permanent Variance Nos. 18-V-213, and 18-V-213M1, shall have the following address designation:

300 Bay View Drive
Bldg G-3
Mountain View, CA

2. Permanent Variance No. 18-V-213, 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. 18-V-213M1.

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: September 1, 2020


Christina Shupe, 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:)) NASH Holland 1721 Webster) Investors))) _____)	OSHSB FILE No. 18-V-403M1 Proposed Decision Dated: September 1, 2020 DECISION
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The Occupational Safety and Health Standards Board hereby adopts the attached PROPOSED DECISION by Christina Shupe, Hearing Officer.

DAVID THOMAS, Chairman

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

BARBARA BURGEL, Member

Date of Adoption: September 17, 2020

DAVID HARRISON, Member

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

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: NASH Holland 1721 Webster Investors	OSHSB File No.: 18-V-403M1 <u>PROPOSED DECISION</u> Hearing Date: August 26, 2020
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- 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
18-V-403	NASH - Holland 1721 Webster Investors	1721 Webster Oakland, 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 August 26, 2020, in Sacramento, California, via teleconference, by Occupational Safety and Health Standards Board (“Board”), with Hearing Officer Christina Shupe, 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, Wolter Geesink with Otis Elevator Company, and Dan Leacox of Leacox & Associates, appeared on behalf of the Applicant; Mark Wickens 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.
3. Documentary and oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence: the subject modification of permanent variance application captioned above as Exhibit PD-1, Notice of Hearing as Exhibit PD-2, Board staff Pending Application(s) for Permanent Variance Opinion Letter as PD-3, Division evaluation as PD-4, Review Draft 1 Proposed Decision as PD-5, and official notice taken of the Board’s rulemaking records and variance decisions concerning the safety order provisions from which variance has been requested. On August 26, 2020,

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 18-V-403.
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 18-V-403 is in effect, in fact is more completely, and correctly the different address information 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. 18-V-403.
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 18-V-403 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. 18-V-403, to be:

1717 Webster St
Oakland, CA

E. Decision and Order:

1. Permanent Variance Application No. 18-V-403M1 is conditionally GRANTED, thereby modifying Board records, such that, without change in variance location, each elevator being the subject of Permanent Variance Nos. 18-V-403, and 18-V-403M1, shall have the following address designation:

1717 Webster St
Oakland, CA

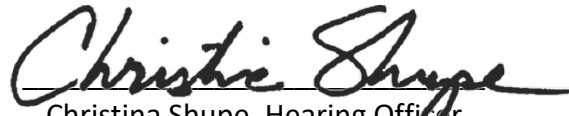
2. Permanent Variance No. 18-V-403, being only modified as to the subject location address specified in above Decision and Order Section 1, is otherwise unchanged and

Proposed Variance Decision
OSHSB File No. 18-V-403M1
Hearing Date: August 26, 2020

remaining in full force and effect, as hereby incorporated by reference into this Decision and Order of Permanent Variance No. 18-V-403M1.

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: September 1, 2020


Christina Shupe, 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:)
)
1169 Market Street, LP)
)
_____)

OSHSB FILE No. 19-V-354M1
Proposed Decision Dated: September 1, 2020

DECISION

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

DAVID THOMAS, Chairman

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

BARBARA BURGEL, Member

Date of Adoption: September 17, 2020

DAVID HARRISON, Member

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

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: 1169 Market Street, LP	OSHSB File No.: 19-V-354M1 <u>PROPOSED DECISION</u> Hearing Date: August 26, 2020
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- 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
19-V-354	1169 Market Street, LP	1169 Market Street 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 August 26, 2020, in Sacramento, California, via teleconference, by Occupational Safety and Health Standards Board (“Board”), with Hearing Officer Christina Shupe, 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, Wolter Geesink with Otis Elevator Company, and Dan Leacox of Leacox & Associates, appeared on behalf of the Applicant; Mark Wickens 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.
3. Documentary and oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence: the subject modification of permanent variance application captioned above as Exhibit PD-1, Notice of Hearing as Exhibit PD-2, Board staff Pending Application(s) for Permanent Variance Opinion Letter as PD-3, Division evaluation as PD-4, Review Draft 1 Proposed Decision as PD-5, and official notice taken of the Board’s rulemaking records and variance decisions concerning the safety order provisions from which variance has been requested. On August 26, 2020,

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 19-V-354.
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 19-V-354 is in effect, in fact is more completely, and correctly the different address information 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. 19-V-354.
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 19-V-354 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. 19-V-354, to be:

Trinity Place Phase IV
1177 Market St.
San Francisco, CA

E. Decision and Order:

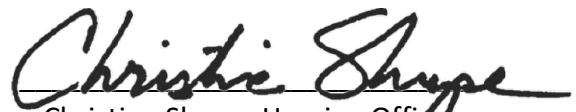
1. Permanent Variance Application No. 19-V-354M1 is conditionally GRANTED, thereby modifying Board records, such that, without change in variance location, each elevator being the subject of Permanent Variance Nos. 19-V-354, and 19-V-354M1, shall have the following address designation:

Trinity Place Phase IV
1177 Market St.
San Francisco, CA

2. Permanent Variance No. 19-V-354, 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. 19-V-354M1.

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: September 1, 2020


Christina Shupe, 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:)
)
1169 Market Street, LP)
)
_____)

OSHSB FILE No. 19-V-367M1
Proposed Decision Dated: September 1, 2020

DECISION

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

DAVID THOMAS, Chairman

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

BARBARA BURGEL, Member

Date of Adoption: September 17, 2020

DAVID HARRISON, Member

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

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: 1169 Market Street, LP	OSHSB File No.: 19-V-367M1 <u>PROPOSED DECISION</u> Hearing Date: August 26, 2020
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- 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
19-V-367	1169 Market Street, LP	1169 Market Street 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 August 26, 2020, in Sacramento, California, via teleconference, by Occupational Safety and Health Standards Board (“Board”), with Hearing Officer Christina Shupe, 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, Wolter Geesink with Otis Elevator Company, and Dan Leacox of Leacox & Associates, appeared on behalf of the Applicant; Mark Wickens 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.
3. Documentary and oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence: the subject modification of permanent variance application captioned above as Exhibit PD-1, Notice of Hearing as Exhibit PD-2, Board staff Pending Application(s) for Permanent Variance Opinion Letter as PD-3, Division evaluation as PD-4, Review Draft 1 Proposed Decision as PD-5, and official notice taken of the Board’s rulemaking records and variance decisions concerning the safety order provisions from which variance has been requested. On August 26, 2020,

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 19-V-367.
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 19-V-367 is in effect, in fact is more completely, and correctly the different address information 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. 19-V-367.
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 19-V-367 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. 19-V-367, to be:

Trinity Place Phase IV
1177 Market St.
San Francisco, CA

E. Decision and Order:

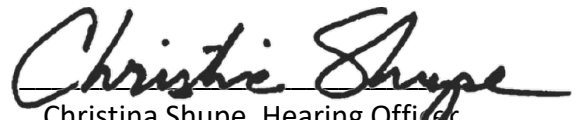
1. Permanent Variance Application No. 19-V-367M1 is conditionally GRANTED, thereby modifying Board records, such that, without change in variance location, each elevator being the subject of Permanent Variance Nos. 19-V-367, and 19-V-367M1, shall have the following address designation:

Trinity Place Phase IV
1177 Market St.
San Francisco, CA

2. Permanent Variance No. 19-V-367, 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. 19-V-367M1.

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: September 1, 2020


Christina Shupe, 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:)
)
Real Social Good Inv LLC)
)
_____)

OSHSB FILE No. 20-V-044M1
Proposed Decision Dated: September 1, 2020

DECISION

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

DAVID THOMAS, Chairman

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

BARBARA BURGEL, Member

Date of Adoption: September 17, 2020

DAVID HARRISON, Member

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

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: Real Social Good Inv LLC	OSHSB File No.: 20-V-044M1 <u>PROPOSED DECISION</u> Hearing Date: August 26, 2020
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- 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
20-V-044	Real Social Good Inv LLC	1302 El Camino Real Palo Alto, 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 August 26, 2020, in Sacramento, California, via teleconference, by Occupational Safety and Health Standards Board (“Board”), with Hearing Officer Christina Shupe, 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, Wolter Geesink with Otis Elevator Company, and Dan Leacox of Leacox & Associates, appeared on behalf of the Applicant; Mark Wickens 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.
3. Documentary and oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence: the subject modification of permanent variance application captioned above as Exhibit PD-1, Notice of Hearing as Exhibit PD-2, Board staff Pending Application(s) for Permanent Variance Opinion Letter as PD-3, Division evaluation as PD-4, Review Draft 1 Proposed Decision as PD-5, and official notice taken of the Board’s rulemaking records and variance decisions concerning the safety order provisions from which variance has been requested. On August 26, 2020,

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 20-V-044.
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 20-V-044 is in effect, in fact is more completely, and correctly the different address information 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. 20-V-044.
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 20-V-044 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. 20-V-044, to be:

1302 El Camino Real
Menlo Park, CA

E. Decision and Order:

1. Permanent Variance Application No. 20-V-044M1 is conditionally GRANTED, thereby modifying Board records, such that, without change in variance location, each elevator being the subject of Permanent Variance Nos. 20-V-044, and 20-V-044M1, shall have the following address designation:

1302 El Camino Real
Menlo Park, CA

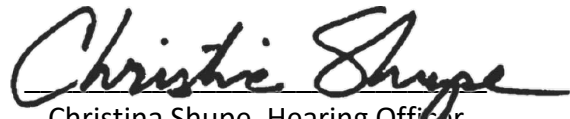
2. Permanent Variance No. 20-V-044, being only modified as to the subject location address specified in above Decision and Order Section 1, is otherwise unchanged and

Proposed Variance Decision
OSHSB File No. 20-V-044M1
Hearing Date: August 26, 2020

remaining in full force and effect, as hereby incorporated by reference into this Decision and Order of Permanent Variance No. 20-V-044M1.

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: September 1, 2020


Christina Shupe, 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:)
)
Real Social Good Inv LLC)
)
_____)

OSHSB FILE No. 20-V-049M1
Proposed Decision Dated: September 1, 2020

DECISION

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

DAVID THOMAS, Chairman

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

BARBARA BURGEL, Member

Date of Adoption: September 17, 2020

DAVID HARRISON, Member

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

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: Real Social Good Inv LLC	OSHSB File No.: 20-V-049M1 <u>PROPOSED DECISION</u> Hearing Date: August 26, 2020
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- 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
20-V-049	Real Social Good Inv LLC	550 Oak Grove Avenue Palo Alto, 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 August 26, 2020, in Sacramento, California, via teleconference, by Occupational Safety and Health Standards Board (“Board”), with Hearing Officer Christina Shupe, 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, Wolter Geesink with Otis Elevator Company, and Dan Leacox of Leacox & Associates, appeared on behalf of the Applicant; Mark Wickens 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.
3. Documentary and oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence: the subject modification of permanent variance application captioned above as Exhibit PD-1, Notice of Hearing as Exhibit PD-2, Board staff Pending Application(s) for Permanent Variance Opinion Letter as PD-3, Division evaluation as PD-4, Review Draft 1 Proposed Decision as PD-5, and official notice taken of the Board’s rulemaking records and variance decisions concerning the safety order provisions from which variance has been requested. On August 26, 2020,

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 20-V-049.
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 20-V-049 is in effect, in fact is more completely, and correctly the different address information 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. 20-V-049.
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 20-V-049 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. 20-V-049, to be:

550 Oak Grove Avenue
Menlo Park, CA

E. Decision and Order:

1. Permanent Variance Application No. 20-V-049M1 is conditionally GRANTED, thereby modifying Board records, such that, without change in variance location, each elevator being the subject of Permanent Variance Nos. 20-V-049, and 20-V-049M1, shall have the following address designation:

550 Oak Grove Avenue
Menlo Park, CA

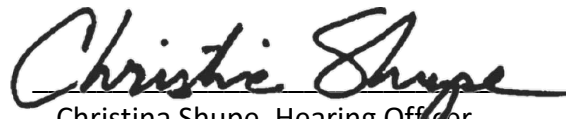
2. Permanent Variance No. 20-V-049, being only modified as to the subject location address specified in above Decision and Order Section 1, is otherwise unchanged and

Proposed Variance Decision
OSHSB File No. 20-V-049M1
Hearing Date: August 26, 2020

remaining in full force and effect, as hereby incorporated by reference into this Decision and Order of Permanent Variance No. 20-V-049M1.

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: September 1, 2020


Christina Shupe, 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:)
)
Real Social Good Inv LLC)
)
_____)

OSHSB FILE No. 20-V-050M1
Proposed Decision Dated: September 1, 2020

DECISION

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

DAVID THOMAS, Chairman

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

BARBARA BURGEL, Member

Date of Adoption: September 17, 2020

DAVID HARRISON, Member

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

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: Real Social Good Inv LLC	OSHSB File No.: 20-V-050M1 <u>PROPOSED DECISION</u> Hearing Date: August 26, 2020
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- 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
20-V-050	Real Social Good Inv LLC	1300 El Camino Real Palo Alto, 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 August 26, 2020, in Sacramento, California, via teleconference, by Occupational Safety and Health Standards Board (“Board”), with Hearing Officer Christina Shupe, 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, Wolter Geesink with Otis Elevator Company, and Dan Leacox of Leacox & Associates, appeared on behalf of the Applicant; Mark Wickens 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.
3. Documentary and oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence: the subject modification of permanent variance application captioned above as Exhibit PD-1, Notice of Hearing as Exhibit PD-2, Board staff Pending Application(s) for Permanent Variance Opinion Letter as PD-3, Division evaluation as PD-4, Review Draft 1 Proposed Decision as PD-5, and official notice taken of the Board’s rulemaking records and variance decisions concerning the safety order provisions from which variance has been requested. On August 26, 2020,

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 20-V-050.
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 20-V-050 is in effect, in fact is more completely, and correctly the different address information 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. 20-V-050.
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 20-V-050 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. 20-V-050, to be:

1300 El Camino Real
Menlo Park, CA

E. Decision and Order:

1. Permanent Variance Application No. 20-V-050M1 is conditionally GRANTED, thereby modifying Board records, such that, without change in variance location, each elevator being the subject of Permanent Variance Nos. 20-V-050, and 20-V-050M1, shall have the following address designation:

1300 El Camino Real
Menlo Park, CA

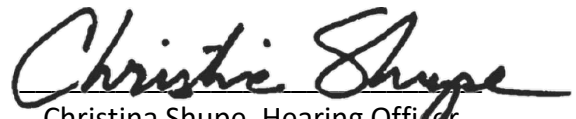
2. Permanent Variance No. 20-V-050, being only modified as to the subject location address specified in above Decision and Order Section 1, is otherwise unchanged and

Proposed Variance Decision
OSHSB File No. 20-V-050M1
Hearing Date: August 26, 2020

remaining in full force and effect, as hereby incorporated by reference into this Decision and Order of Permanent Variance No. 20-V-050M1.

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: September 1, 2020


Christina Shupe, 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 Sleep Mode Escalators)
)
)

OSHSB FILE No.: see grid in Item A of
Proposed Decision Dated: September 1, 2020

DECISION

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

DAVID THOMAS, Chairman

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

BARBARA BURGEL, Member

Date of Adoption: September 17, 2020

DAVID HARRISON, Member

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.

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

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: Schindler Sleep Mode Escalators	OSHSB File Nos.: Per Section A table, below <u>PROPOSED DECISION</u> Hearing Date: August 26, 2020
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A. Subject Matter and Jurisdiction:

1. 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 Escalators
20-V-097	Los Angeles World Airports	American Airlines Terminal 4.5 500 World Way Los Angeles, CA	8

2. This proceeding is conducted in accordance with Labor Code Section 143, and California Code of Regulations, Title 8, Section 401, et. seq.
3. The safety orders at issue are California Code of Regulations, Title 8, Section 3141.11, incorporated ASME A17.1-2004, Sections 6.1.4.1., and 6.1.6.4,

B. Process and Procedure:

1. This hearing was held on August 26, 2020, in Sacramento, California, via teleconference, by Occupational Safety and Health Standards Board ("Board"), with Hearing Officer Christina Shupe, 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, Jennifer Linares, with Schindler Elevator Corporation, appeared on behalf of the Applicants; Mark Wickens 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. Oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence: Application for Permanent Variance as Exhibit PD-1, Notice of Hearing as Exhibit PD-2, Board staff Pending Application Memorandum as PD-3, Division Review of Application as PD-4, Review Draft 1 Proposed Decision as PD-5, and 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 August 26, 2020, 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:
1. Applicant proposes to install new escalators that include a "sleep mode" capability that will cause the escalator to run at a reduced speed when not in use to conserve energy. This arrangement does not comply with the Elevator Safety Orders that prohibit the intentional variation of an escalator's speed after start-up, and thus variance is requested from California Code of Regulations, Title 8, Elevator Safety Orders, Group IV, Section 3141.11, incorporated ASME A17.1-2004, Sections 6.1.4.1 regarding limits of escalator speed, and A17.1-2004, Section 6.1.6.4, regarding handrail speed. The Division has identified another closely related Section 3141.11 incorporated ASME requirement from which variance would be needed, in order to for the escalator system to operate as proposed—ASME A17-1-2004, Section 6.1.4.1, regarding escalator speed after start-up.
 2. ASME A17.1-2004, Section 6.1.4.1, states:

"6.1.4.1 Limits of Speed. The rated speed shall be not more than 0.5 m/s (100 ft/min), measured along the centerline of the steps in the direction of travel. The speed attained by an escalator after start-up shall not be intentionally varied."
 3. A purpose of this regulation is to ensure that the speed of the escalator during normal operation is kept constant to prevent passengers from losing their balance.
 4. The Applicant contends that equivalent safety is achieved through the use of a controller that is capable of varying the escalator drive motor speed in conjunction with dual redundant sensors strategically placed at each end of the unit to detect passenger traffic. When the sensors indicate a lack of traffic approaching the escalator, for a specified amount of time not less than three times the amount of time to transfer a passenger between landings, the control system will initiate the "sleep mode" function, decelerating the escalator to a "crawling speed", no less than 0.05 m/s (10 ft./min). If passenger traffic is detected while the escalator is in "Sleep

Mode,” a signal will be sent to the controller to “wake up” resulting in the escalator accelerating to normal operating speed within 1.5 seconds at a rate no greater than 1ft/sec².

5. Per Applicant, the sensors used to detect passenger traffic would provide coverage able to detect passengers at a distance greater than a walking person could travel in 2 seconds, which will ensure the escalator is running at normal speed prior to passenger boarding.
6. Applicant proposes that if passenger traffic is detected approaching the escalator opposite the motion of the escalator steps while in “sleep mode”, an alarm will sound and the escalator will exit “sleep mode” and accelerate until it reaches normal operating speed at a rate no greater than 1ft/sec². This arrangement is intended to discourage passengers from entering the escalator opposite the motion of the steps while at reduced speed.
7. As proposed, the sensors used to detect passenger traffic are to be installed and arranged in a double redundant, fail-safe fashion with two sensors installed at each end of the escalator providing the same coverage field. This arrangement is intended to allow for passenger traffic detection in the case of any single sensor failure and provide for signal comparison by the controller to detect sensor failure. In the event of a detected failure of any one of the passenger traffic sensors, “sleep mode” would be disabled and the escalator would remain at normal operating speed until all sensors have resumed normal function. In addition, the passenger traffic sensors are to be wired to the escalator controller in a fail-safe manner that prevents “sleep mode” activation if the wiring is cut or disconnected.
8. The Division notes in its Review of Application (Exhibit PD-4) that the Applicant proposed “sleep mode” function meets the requirements of ASME A17.1-2010, Section 6.1.4.1 regarding the varying the speed of an escalator after start-up. For this reason among others identified within the its Review of Application, the Division advises that equivalent or superior safety will be provided by grant of permanent variance in this matter, as conditionally limited per the below Decision and Order.
9. ASME A17.1-2010, Section 6.1.4.1.2, states:

“Variation of the escalator speed after start-up shall be permitted provided the escalator installation conforms to all of the following:

- (a) *The acceleration and deceleration rates shall not exceed 0.3 m/s² (1.0 ft/sec²).*

- (b) The rated speed is not exceeded.*
 - (c) The minimum speed shall be not less than 0.05 m/s (10 ft/min).*
 - (d) The speed shall not automatically vary during inspection operation.*
 - (e) Passenger detection means shall be provided at both landings of the escalator such that*
 - (1) detection of any approaching passenger shall cause the escalator to accelerate to or maintain the full escalator speed conforming to 6.1.4.1.2(a) through (d)*
 - (2) detection of any approaching passenger shall occur sufficiently in advance of boarding to cause the escalator to attain full operating speed before a passenger walking at normal speed [1.35 m/s (270 ft/min)] reaches the combplate*
 - (3) passenger detection means shall remain active at the egress landing to detect any passenger approaching against the direction of escalator travel and shall cause the escalator to accelerate to full rated speed and sound the alarm (see 6.1.6.3.1) at the approaching landing before the passenger reaches the combplate*
 - (f) Automatic deceleration shall not occur before a period of time has elapsed since the last passenger detection that is greater than 3 times the amount of time necessary to transfer a passenger between landings.*
 - (g) Means shall be provided to detect failure of the passenger detection means and shall cause the escalator to operate at full rated speed only."*
10. The Division states correctly in its Review of Application, that Applicant's proposed "sleep mode" function is materially similar to other installations for which a permanent variance has been granted (OSHSB File No. 14-V-129). In these previous variance decisions it was concluded that a variance was required from ASME A17.1-2004, section 6.1.6.4 regarding handrail speed monitoring, and the concluding conditional grant of variance provided for the disabling of the handrail-speed monitoring device while the escalator is operating in slow speed "sleep mode."

11. ASME A17.1-2004, Section 6.1.6.4, states:

“Handrail Speed Monitoring Device. A handrail speed monitoring device shall be provided that will cause the activation of the alarm required by 6.1.6.3.1(b) without any intentional delay, whenever the speed of either handrail deviates from the step speed by 15% or more. The device shall also cause electric power to be removed from the driving-machine motor and brake when the speed deviation of 15% or more is continuous within a 2 s to 6 s range. The device shall be of the manual-reset type.”

12. The Division advises that the proposed “sleep mode” system incorporating the proposed hand rail speed control specifications, subject to all conditions and limitations of the below Decision and Order will provide for safety equivalence.
13. The proposed “sleep mode” system functions and devices are materially comparable to other installations for which permanent variance previously has been granted by the Board (e.g. OSHSB File No. 13-V-153, 15-V-236, 16-V-069), absent, to the Division’s reported knowledge, adverse effect upon passenger or workplace safety or health.
14. Both Division and Board staff recommend that conditionally limited grant of permanent variance in this matter, per the below Decision and Order, will provide for passenger safety and occupational safety and health equivalent or superior to that would otherwise prevail per the subject Elevator Safety Order requirements.

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:

The Application of each above Section A table identified Applicant, is conditionally GRANTED as specified below, and to the limited extent, as of the date the Board adopts this Proposed Decision, the respective Section A table specified quantity of Schindler escalators, at the specified location, shall have permanent variance from the following subparts of ASME A17.1-2004, Sections 6.1.4.1., and 6.1.6.4, subject to each and all of the following requirements and limitations:

1. The Applicant may intentionally vary the escalator speed and install proximity sensors for traffic detection subject to the following:

- (a) The rate of acceleration and deceleration shall not exceed 0.3 m/s^2 (1 ft/sec^2) when transitioning between speeds.
- (b) Failure of a single proximity sensor including its associated circuitry, shall cause the escalator to revert to its normal operating speed at an acceleration of not more than 0.3 m/s^2 (1 ft/sec^2).
- (c) Automatic deceleration shall not occur before a period of time of not less than three times the time it takes a passenger to ride from one landing to the other at normal speed has elapsed.
- (d) Detection of any passenger shall cause the escalator to reach full speed before a passenger, walking at 4.5 ft/sec , reaches the comb plate.
- (e) The passenger detection means shall detect a person within a sufficient distance along all possible paths to the escalator that do not require climbing over barriers or escalator handrails to assure that the escalator attains full operating speed before a person walking at 4.5 ft/sec reaches the escalator comb plate. The minimum detection distance shall be calculated according to the following formula or alternatively according to Exhibit 1 (Detection Distance Sleep Mode Operation) attached hereto and incorporated herein by this reference:

$$d = (V_f - V_s) \times (V_w / a) \text{ where}$$

d = detection distance (ft)

V_f = normal speed (ft/min) [not to exceed 100 ft/min]

V_s = slow "sleep" speed (ft/min) [not less than 10 ft/min]

V_w = passenger walking speed (4.5 ft/sec)

a = acceleration/deceleration rate (ft/sec²)[not to exceed 1 ft/sec²]

- (f) Detection of any passenger approaching against the direction of escalator travel shall cause the escalator to reach full speed before a passenger, walking at 4.5 ft/sec, reaches the comb plate and shall cause the escalator alarm to sound. The sounding of the alarm may include a 3 to 5 second alarm or three 1 second alarm soundings.
- (g) The minimum speed of the escalator shall not be less than 0.05 m/s (10 ft/min). The "sleep mode" functionality shall not affect the escalator inspection operation. The speed of the escalator shall not vary during Inspection Mode.
- (h) There shall be two means of detecting passengers at each end of the escalator for redundancy and for detection of failure in the passenger detection means.
- (i) The passenger sensors (detectors) at each end of the escalator must be verified by the control system for proper operation in the following manner:
 - 1. If any of the passenger detection sensors remains tripped for at least 5 minutes but no more than 10 minutes, then the control system shall generate a fault to indicate which sensor is faulted while causing the escalator to exit the Sleep Mode and remain at the normal run speed until the faulted sensor begins to function properly.
 - 2. If one of the paired sensors at either end of the escalator does not trip while the other paired sensor trips at least five times but no more than ten times, the control system shall generate a fault to indicate which sensor is faulted while causing the escalator to exit the Sleep Mode and remain at the normal run speed until the faulted sensor begins to function properly.
- (j) The handrail speed monitoring device required by Section 6.1.6.4 may be disabled while the escalator is operating in the slow speed (Sleep Mode) condition.

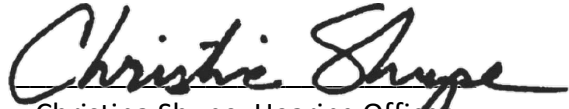
Proposed Variance Decision
Schindler Sleep Mode Escalators
Hearing Date: August 26, 2020

2. The Applicant shall have the controller schematic diagrams available in the control space together with a written explanation of the operation of the controller.
3. An annual test shall be conducted by a Certified Competent Conveyance Mechanic (CCCM) employed by a Certified Qualified Conveyance Company (CQCC) which maintains and services the escalators, to demonstrate that the escalator is transitioning between "Normal Mode" and "Sleep Mode" and back in conformance with the terms of this variance. The instrumentation used shall be capable of allowing the CCCM to determine the acceleration and deceleration rates of the escalator.
4. The results of each annual test required by Condition No. 3 shall be submitted to the appropriate Elevator Unit District Office in tabular and graphic form (speed vs. time).
5. Whenever practicable, as determined by the Applicant and subject to the concurrence of the Division, the variable speed system is to be installed without the installation of new bollards or other such new structures, if the bollards or other structures would impede passenger movement at the destination end of the escalator. If new bollards or other such structures of that sort are constructed in connection with the variable speed system, the Applicant will take all practicable steps to minimize the impact of same on the movement of passengers at the destination end of the escalator.
6. Any Certified Qualified Conveyance Company (CQCC; elevator contractor) performing inspection, maintenance, servicing or testing of the escalators shall be provided a copy of the variance decision.
7. The Division shall be notified when the escalator is ready for inspection, and the escalator shall be inspected by the Division and a "Permit to Operate" issued before the escalator may be placed in service.
8. 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.
9. 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, Section 411, et. seq.

Proposed Variance Decision
Schindler Sleep Mode Escalators
Hearing Date: August 26, 2020

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: September 1, 2020


Christina Shupe, Hearing Officer

Detection Distance Sleep Mode Operation																				
Accurate when applied to escalators with a rated speed of																				100
																				ft./min.
Acceleration Rate (ft./sec. ²)	1.00	0.95	0.90	0.85	0.80	0.75	0.70	0.65	0.60	0.55	0.50	0.45	0.40	0.35	0.30	0.25	0.20	0.15	0.10	0.05
	6.76	7.12	7.52	7.96	8.45	9.02	9.66	10.41	11.27	12.30	13.53	15.03	16.91	19.32	22.55	27.05	33.82	45.09	67.64	135.27
	6.39	6.72	7.10	7.52	7.98	8.52	9.13	9.83	10.65	11.61	12.78	14.20	15.97	18.25	21.29	25.55	31.94	42.59	63.88	127.76
	6.01	6.33	6.68	7.07	7.52	8.02	8.59	9.25	10.02	10.93	12.02	13.36	15.03	17.18	20.04	24.05	30.06	40.08	60.12	120.24
	5.64	5.93	6.26	6.63	7.05	7.52	8.05	8.67	9.39	10.25	11.27	12.53	14.09	16.10	18.79	22.55	28.18	37.58	56.36	112.73
	5.26	5.54	5.85	6.19	6.58	7.01	7.52	8.09	8.77	9.56	10.52	11.69	13.15	15.03	17.54	21.04	26.30	35.07	52.61	105.21
	4.88	5.14	5.43	5.75	6.11	6.51	6.98	7.52	8.14	8.88	9.77	10.86	12.21	13.96	16.28	19.54	24.42	32.57	48.85	97.70
	4.51	4.75	5.01	5.30	5.64	6.01	6.44	6.94	7.52	8.20	9.02	10.02	11.27	12.88	15.03	18.04	22.55	30.06	45.09	90.18
	4.13	4.35	4.59	4.86	5.17	5.51	5.90	6.36	6.89	7.52	8.27	9.19	10.33	11.81	13.78	16.53	20.67	27.56	41.33	82.67
	3.76	3.96	4.18	4.42	4.70	5.01	5.37	5.78	6.26	6.83	7.52	8.35	9.39	10.74	12.53	15.03	18.79	25.05	37.58	75.15
	3.38	3.56	3.76	3.98	4.23	4.51	4.83	5.20	5.64	6.15	6.76	7.52	8.45	9.66	11.27	13.53	16.91	22.55	33.82	67.64
	3.01	3.16	3.34	3.54	3.76	4.01	4.29	4.62	5.01	5.47	6.01	6.68	7.52	8.59	10.02	12.02	15.03	20.04	30.06	60.12
	2.63	2.77	2.92	3.09	3.29	3.51	3.76	4.05	4.38	4.78	5.26	5.85	6.58	7.52	8.77	10.52	13.15	17.54	26.30	52.61
	2.25	2.37	2.51	2.65	2.82	3.01	3.22	3.47	3.76	4.10	4.51	5.01	5.64	6.44	7.52	9.02	11.27	15.03	22.55	45.09
	1.88	1.98	2.09	2.21	2.35	2.51	2.68	2.89	3.13	3.42	3.76	4.18	4.70	5.37	6.26	7.52	9.39	12.53	18.79	37.58
	1.50	1.58	1.67	1.77	1.88	2.00	2.15	2.31	2.51	2.73	3.01	3.34	3.76	4.29	5.01	6.01	7.52	10.02	15.03	30.06
	1.13	1.19	1.25	1.33	1.41	1.50	1.61	1.73	1.88	2.05	2.25	2.51	2.82	3.22	3.76	4.51	5.64	7.52	11.27	22.55
	0.75	0.79	0.84	0.88	0.94	1.00	1.07	1.16	1.25	1.37	1.50	1.67	1.88	2.15	2.51	3.01	3.76	5.01	7.52	15.03
	0.38	0.40	0.42	0.44	0.47	0.50	0.54	0.58	0.63	0.68	0.75	0.84	0.94	1.07	1.25	1.50	1.88	2.51	3.76	7.52
	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

$$d = (V_f - V_s) \times (V_w / a)$$

d = Detection Distance (ft.)

V_f = Escalator Rated Speed (ft./min.)

V_s = Slow Speed ["Sleep Mode" Speed] (ft./min.)

V_w = Passenger Walking Speed (ft./sec.)

a = Acceleration/Deceleration Rate (ft./sec.²)
1 ft./min. = **0.0167** ft./sec.

4.5

EXHIBIT 1

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 grid in Item A of
Proposed Decision Dated: September 1, 2020

DECISION

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

DAVID THOMAS, Chairman

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

BARBARA BURGEL, Member

Date of Adoption: September 17, 2020

DAVID HARRISON, Member

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.

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

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: Schindler Model 3300 Elevators with variant Gov. Ropes & Sheaves (Group IV)	OSHSB File Nos.: Per Section A table, below <u>PROPOSED DECISION</u> Hearing Date: August 26, 2020
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A. Subject Matter and Jurisdiction:

1. 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
20-V-146	CSU East Bay Foundation, Inc.	Library Building 25800 Carlos Bee Blvd. Hayward, CA	2
20-V-257	The Press Owner, LLC	1376 Sunflower Ave. Costa Mesa, CA	2

2. This proceeding is conducted in accordance with Labor Code Section 143, and California Code of Regulations, Title 8, Section 401, et. seq.
3. The safety orders at issue are set out in below Section C.1—C.4.

B. Process and Procedure:

1. This hearing was held on August 26, 2020, in Sacramento, California, via teleconference, by Occupational Safety and Health Standards Board ("Board"), with Hearing Officer Christina Shupe, 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, Jennifer Linares, with the Schindler Elevator Corporation, appeared on behalf of each Applicant; Mark Wickens appeared on behalf of the Division of

Proposed Variance Decision

Schindler Model 3300 Elevators w/variant Gov. Rope & Sheaves

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Occupational Safety and Health (“Division”); and Michael Nelmidia appeared on behalf of Board staff, in a technical advisory role apart from the Board.

3. Oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence: each respective permanent variance application per Section A table as Exhibit PD-1, Notice of Hearing as Exhibit PD-2, Board staff Pending Application Memorandum as PD-3, Division Review of Application as PD-4, Review Draft 1 Proposed Decision as PD-5, and 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 August 26, 2020, 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:

Subsection 8.4.10.1.1(a)(2)(b)--Seismic Reset Switch Placement in Machine Room

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.

Proposed Variance Decision

Schindler Model 3300 Elevators w/variant Gov. Rope & Sheaves

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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

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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 A17.1-2004, 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

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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 insetting 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:

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- 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.

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- 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,

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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.).

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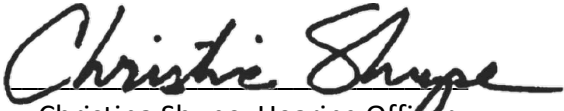
Schindler Model 3300 Elevators w/variant Gov. Rope & Sheaves

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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: September 1, 2020


Christina Shupe, 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

Proposed Variance Decision

Schindler Model 3300 Elevators w/variant Gov. Rope & Sheaves

Hearing Date: August 26, 2020

- 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 Elevator (Group IV))
Gen2(O) and/or Gen2L Alterations)
)
_____)

OSHSB FILE No.: see grid in Item A of
Proposed Decision Dated: September 1, 2020

DECISION

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

DAVID THOMAS, Chairman

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

BARBARA BURGEL, Member

Date of Adoption: September 17, 2020

DAVID HARRISON, Member

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.

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

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 Elevator (Group IV) Gen2(O) and/or Gen2L Alterations	OSHSB File Nos.: Per Section A.1 table <u>PROPOSED DECISION</u> Hearing Date: August 26, 2020
--	---

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, or applied to modify such variances, 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
20-V-188	Tan Plaza Continental, LLC	580 Arastradero Road Palo Alto, CA	2

2. The subject regulatory requirements are as enumerated per the below Decision and Order.

B. Jurisdiction:

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

C. Procedural:

1. This hearing was held on August 26, 2020, in Sacramento, California, via teleconference, by Occupational Safety and Health Standards Board ("Board"), with Hearing Officer Christina Shupe, 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, Wolter Geesink, with Otis Elevator, and Dan Leacox of Leacox & Associates, appeared on behalf of each Applicant; Mark Wickens 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.

Proposed Variance Decision

Otis Elevator, Group IV, Gen2(O) and/or Gen2L Alterations

Hearing date: August 26, 2020

3. Oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence: each permanent variance application per Section A.1 table as Exhibit PD-1; Notice of Hearing as Exhibit PD-2; each respective Board staff Pending Application Memorandum as PD-3; Division evaluation as PD-4; Review Draft 1 Proposed Decision as PD-5; and 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 August 26, 2020, the record closed, and the matter was taken under submission by the Hearing Officer.

D. Findings and Basis:

1. Each Applicant intends to alter elevators at the locations, and in the numbers, stated in the Section A.1 table such that each elevator becomes (or incorporates features of) an Otis Gen2(O) and/or Otis Gen2L elevator.
2. The belts and connections that each Applicant intends to install are the same as are used on new Otis Gen2(O)/Gen2L installations.
3. The alterations will be performed after May 1, 2008, and the contracts for the alterations were or will be signed on or after May 1, 2008, making those alterations subject to the Group IV Elevator Safety Orders.
4. 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, regarding OSHSB File No. 08-V-247; (b) Item D.3 of the Proposed Decision adopted by the Board on July 16, 2009, regarding OSHSB File No. 09-V-042; (c) Item D.4 of the Proposed Decision adopted by the Board on September 16, 2010, regarding OSHSB File No. 10-V-029; and (d) Items D.4, D.5, and D.7 of the proposed decision adopted by the Board on July 18, 2013, regarding OSHSB File No. 12-V-146.

E. 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.

Proposed Variance Decision

Otis Elevator, Group IV, Gen2(O) and/or Gen2L Alterations

Hearing date: August 26, 2020

F. Decision and Order:

Each permanent variance application that is the subject of this proceeding is conditionally GRANTED, as specified below, to the extent that, as of the date the Board adopts this Proposed Decision, each Section A.1 table listed Applicant, at the specified variance location, and as to specified number of conveyances, shall have a permanent variance regarding switches, suspension rope and connection retrofits, (so long as the elevators are Gen2 (O) or Gen2L 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). The variance shall be from California Code of Regulations, Title 8, Sections 3141 and 3141.2(a), and shall only be to the extent necessary to allow variances from the following provisions of ASME A17.1-2004 made applicable by those Title 8 provisions:

- Sections 8.7.1.1(b), 8.7.2.21.1, and 8.7.2.25.1(c) (to the extent necessary to permit variance from the ASME A17.1-2004 provisions listed in the next bullet point);
- 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), 2.20.1 (only to the extent necessary to permit the use of Otis Gen2 flat coated steel suspension belts [the belts proposed for use on these Gen2(O) and/or Gen2L elevators] in lieu of conventional steel suspension ropes), 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) (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 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)].

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 elevator 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.

Proposed Variance Decision

Otis Elevator, Group IV, Gen2(O) and/or Gen2L Alterations

Hearing date: August 26, 2020

- 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 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.
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; and

Proposed Variance Decision

Otis Elevator, Group IV, Gen2(O) and/or Gen2L Alterations

Hearing date: August 26, 2020

- 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 panels 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.

Proposed Variance Decision

Otis Elevator, Group IV, Gen2(O) and/or Gen2L Alterations

Hearing date: August 26, 2020

- 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 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).
- 12. Each elevator shall be serviced, maintained, adjusted, tested, and inspected by Certified Competent Conveyance Mechanics who have been trained, and are competent, to perform those tasks on the Gen2(O) and/or Gen2L elevator system the Applicant proposes to use, in accordance with the written procedures and criteria required by Condition No. 4 and all other terms and conditions of this permanent variance.
 - 13. Any Certified Qualified Conveyance Company performing inspections, maintenance, servicing, or testing of the elevators shall be provided a copy of this variance decision.
 - 14. The Division shall be notified when the elevator is ready for inspection. No elevator shall be placed in service prior to it being inspected and issued a Permit to Operate by the Division
 - 15. Each Applicant shall be subject to the suspension means replacement reporting condition stated in Addendum 2; that condition is incorporated herein by this reference.
 - 16. Each 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.
 - 17. 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

Proposed Variance Decision

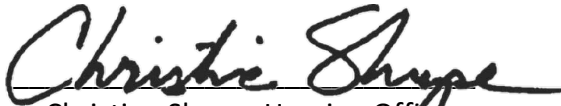
Otis Elevator, Group IV, Gen2(O) and/or Gen2L Alterations

Hearing date: August 26, 2020

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: September 1, 2020


Christina Shupe, 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.

Proposed Variance Decision

Otis Elevator, Group IV, Gen2(O) and/or Gen2L Alterations

Hearing date: August 26, 2020

- 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:)
)
Schindler Model 3300 Elevators)
(Group IV))
)
)
_____)

OSHSB FILE No.: see grid in Item A of
Proposed Decision Dated: September 1, 2020

DECISION

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

DAVID THOMAS, Chairman

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

BARBARA BURGEL, Member

Date of Adoption: September 17, 2020

DAVID HARRISON, Member

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.

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

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: Schindler Model 3300 Elevators (Group IV)	OSHSB File Nos.: Per Section A table, below <u>PROPOSED DECISION</u> Hearing Date: August 26, 2020
--	--

A. Subject Matter and Jurisdiction:

1. 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
20-V-193	The Little Hill LLC	10300 San Pablo Blvd. El Cerrito, CA	1

2. This proceeding is conducted in accordance with Labor Code Section 143, and California Code of Regulations, Title 8, Section 401, et. seq.
3. The safety orders at issue are set out in below Section C.1—C.4.

B. Process and Procedure:

1. This hearing was held on August 26, 2020, in Sacramento, California, via teleconference, by Occupational Safety and Health Standards Board ("Board"), with Hearing Officer Christina Shupe, 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, Jennifer Linares, with the Schindler Elevator Company, appeared on behalf of each Applicant; Mark Wickens 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. Oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence: each respective permanent variance applications per Section A table as Exhibit PD-1, Notice of Hearing as Exhibit PD-2, Board staff Pending

Application Memorandum as PD-3, Division Review of Application as PD-4, Review Draft 1 Proposed Decision as PD-5, and 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 August 26, 2020, 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:

Subsection 8.4.10.1.1(a)(2)(b)--Seismic Reset Switch Placement in Machine Room

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

Official Notice and Incorporation by Reference—OSHSB File No. 15-V-349:

5. 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:

6. 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 the 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.

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:

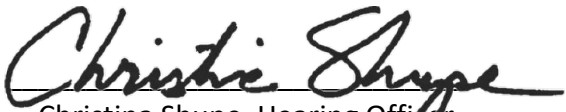
CAUTION
STAY INSIDE RAILING
NO LEANING BEYOND RAILING
NO STEPPING ON, OR BEYOND, RAILING

- 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 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. 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.
- 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.

Proposed Variance Decision
Schindler Model 3300 Elevators (Group IV)
Hearing Date: August 26, 2020

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: September 1, 2020


Christina Shupe, 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:)
)
)
KONE Monospace 500 Elevators (Group IV))
)
_____)

OSHSB FILE No.: see grid in Item A of
Proposed Decision Dated: September 1, 2020

DECISION

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

DAVID THOMAS, Chairman

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

BARBARA BURGEL, Member

Date of Adoption: September 17, 2020

DAVID HARRISON, Member

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.

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

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.: Per Section A.1 Grid Below <u>PROPOSED DECISION</u> Hearing Date: August 26, 2020
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A. Subject Matter:

1. 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
20-V-217	Hartnell Community College	411 Central Ave. Building D Salinas, CA	1
20-V-218	Hartnell Community College	411 Central Ave. Building E Salinas, CA	1
20-V-233	ACEF Martin-Folsom, LLC	6620 Folsom Blvd. Sacramento, CA	6
20-V-242	924 Catalina, LLC	924 S. Catalina St. Los Angeles, CA	1
20-V-259	The Herald-Placentia Owner, LLC	150 E. Crowther Ave., Placentia, CA	2

2. 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 August 26, 2020, in Sacramento, California, via teleconference, by delegation of the Occupational Safety and Health Standards Board ("Board"), with Hearing Officer Christina Shupe, 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, Daniel May with KONE, Inc., appeared on behalf of each Applicant; Mark Wickens 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 capacity 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: permanent variance applications per Section A.1 table as Exhibit PD-1, Notice of Hearing as Exhibit PD-2, Board staff Pending Application Memorandum as PD-3, Division Review of Application as PD-4, Review Draft 1 Proposed Decision as PD-5, and official notice taken of the Board's rulemaking records and variance decisions concerning the safety order requirements from which variance is sought. Upon close of hearing on August 26, 2020, the 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

Proposed Variance Decision
KONE Monospace 500 Elevators
Hearing Date: August 26, 2020

such locations and numbers of Group IV KONE Monospace 500 elevators identified in each respective Application, subject to the following conditions:

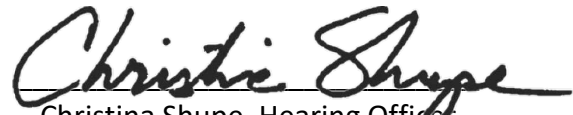
1. The diameter of the hoisting steel ropes shall be not less than 8 mm (0.315 in) diameter and the roping ratio shall be two to one (2:1).
2. The outer wires of the suspension ropes shall be not less than 0.51 mm (0.02 in.) in diameter.
3. The number of suspension ropes shall be not fewer than those 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.

Proposed Variance Decision
KONE Monospace 500 Elevators
Hearing Date: August 26, 2020

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: September 1, 2020


Christina Shupe, Hearing Officer

Appendix 1

	Monospace 500 Suspension Ropes Appendix 1 Table			
OSHSB File No.	Elevator ID	Minimum Quantity of Ropes (per Condition 3)	Maximum Speed in Feet per Minute (per Condition 6)	Maximum Suspended Load (per Condition 7)
20-V-217	1	6	150	10,497
20-V-218	1	6	150	10,497
20-V-233	1	8	150	13,997
20-V-233	2	8	150	13,997
20-V-233	3	8	150	13,997
20-V-233	4	8	150	13,997
20-V-233	5	8	150	13,997
20-V-233	6	8	150	13,997
20-V-242	1	8	350	11,706
20-V-259	1	7	200	11,556
20-V-259	P1	7	350	10,243

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 by:

Kirby Lane LLC

) OSHSB FILE No. 20-V-227

) Proposed Decision Dated: September 1, 2020

)
)
) DECISION

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

DAVID THOMAS, Chairman

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

BARBARA BURGEL, Member

Date of Adoption: September 17, 2020

DAVID HARRISON, Member

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

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: Kirby Lane LLC	OSHSB File No.: 20-V-227 PROPOSED DECISION Hearing Date: August 26, 2020
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A. Procedural Matters:

1. Kirby Lane 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:

423 Pacific Coast Hwy, Unit 1
Redondo Beach, 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 August 26, 2020, in Sacramento, California, via teleconference, by delegation of the Occupational Safety and Health Standards Board ("Board"), with Hearing Officer Christina Shupe, 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. At the hearing, Melissa Neylon with Arrowlift of California, appeared on behalf of the Applicant, Mark Wickens appeared on behalf of the Division of Occupational Safety and Health ("Division"), and Michael Nelmida appeared on behalf of Board staff acting in a technical advisory role apart from the Board.
5. At the hearing, oral evidence was received and by stipulation of all parties, documents were accepted into evidence: subject Application for Permanent Variance, as Exhibit PD-1, Notice of Hearing in this matter as PD-2, Board staff Pending Application for Permanent Variance memorandum as PD-3, Division evaluation as PD-4, Review-Draft-1 Proposed Decision as PD-5; and official notice taken of the Board's rulemaking records and variance decision concerning the Elevator Safety Order requirements at issue. On August 26, 2020, at close of hearing, the record closed and the matter was taken under submission on behalf of the Board.

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 below cited permanent variance file decisions—the Board finds the following:

1. The Applicant proposes to install one (1) vertical platform (wheelchair) lift at a location having the address of:

423 Pacific Coast Hwy, Unit 1
Redondo Beach, CA

2. The subject vertical lift is proposed to be a Symmetry Model VPC ELP-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.
3. 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.).
4. Permanent variances regarding the extended travel of vertical platform lifts, of similar configuration to that of the subject proposed model, have been previously granted, absent subsequent harm attributable to such variance being reported by Division. (E.g. OSHSB File Nos. 13-V-260, 15-V-097, 17-V-270, 18-V-278, 19-V-256).
5. With respect to the equivalence or superior of safety, conditions and limitations of the Decision and Order are in material conformity with findings and conditions of prior Board permanent variance decisions, including the above cited.
6. Per its written Review of Application for Permanent Variance, Exhibit PD-4, it is the informed opinion of Division that equivalent safety (at minimum) will be achieved upon grant of presently requested permanent variance, subject to conditions and limitations incorporated into the below Decision and Order. Per its written review memorandum (Exhibit PD-3), Board staff concurs with Division in recommending that such conditional grant will provide for safety equivalence.

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 for 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 Kirby Lane LLC, OSHSB File No. 20-V-227, is conditionally GRANTED to the limited extent, upon the Board's adoption of this Proposed Decision, Kirby Lane 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 it restricts the vertical rise of a wheelchair lift to a maximum of 12 feet, with respect to one (1) Symmetry Model VPC ELP-168 Vertical Platform Lift, to be located at:

423 Pacific Coast Hwy, Unit 1
Redondo Beach, CA

The above referenced vertical platform lift shall be subject to the following further conditions and limitations:

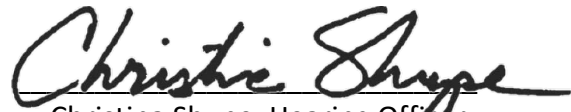
1. This lift may travel up to 168 inches, unless the manufacturer's instructions provide for a lesser vertical travel limit, or lesser total elevation change, in which case, travel shall be limited to the lesser limit or elevation change.
2. The wheelchair lift shall be installed and operated in accordance with the manufacturer's instructions, unless the provisions of this variance or applicable provisions of the law provide 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 accordance with Title 8, Division 1, Chapter 3.5, rules and procedures.

Proposed Variance Decision
OSHSB File No. 20-V-227
Hearing Date: August 26, 2020

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: September 1, 2020


Christina Shupe, 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 Gen2S Elevators (Group IV))
)
)
_____)

OSHSB FILE No.: see grid in Item A of
Proposed Decision Dated: September 1, 2020

DECISION

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

DAVID THOMAS, Chairman

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

BARBARA BURGEL, Member

Date of Adoption: September 17, 2020

DAVID HARRISON, Member

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.

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

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 Gen2S Elevators (Group IV)	OSHSB File Nos.: Per Section A table, below <u>PROPOSED DECISION</u> Hearing Date: August 26, 2020
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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
20-V-232	HD Reliant Mayfair, LLC	Mayfair El Cerrito 11600 San Pablo Avenue El Cerrito, CA	2
20-V-234	178 Euclid Investments, LLC	178 S. Euclid Ave. Pasadena, CA	1
20-V-235	401 Ocean Ave., LLC	401 Ocean Ave. Santa Monica, CA	1
20-V-236	635 Union Properties, LLC	Union Court 645 E. Union Street Pasadena, CA	1
20-V-237	Hiro Apartments, LP	759 W. Middlefield Rd. Mountain View, CA	3
20-V-238	Marmar Bedford, LLC	1226 S. Bedford St. Los Angeles, CA	1
20-V-239	Mercy Housing California 59, L.P.	Casa de la Mision 3001 24th Street San Francisco, CA	1
20-V-246	LI Investments Properties, LLC	12444 W Chandler Blvd. Los Angeles, CA	2

Proposed Variance Decision
Otis Gen2S Elevators (Group IV)
Hearing Date: August 26, 2020

20-V-247	California State University - Chico	CSU Chico Siskiyou II Science 31 Ivy Street Chico, CA	1
20-V-254	CHF-Davis I, LLC	UC Davis Student Housing West Village 2228 Tilia Street Davis, CA	9
20-V-260	CCT Melrose Holdings, LLC	647 N. Beachwood Dr. Los Angeles, CA	1
20-V-261	Florence Towne LP	410 E. Florence Ave. Los Angeles, CA	1
20-V-262	JSF Maywood Avenue CMPI, LLC	6241 Maywood Ave. Huntington Park, CA	2

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 August 26, 2020, in Sacramento, California, via teleconference, by Occupational Safety and Health Standards Board ("Board"), with Hearing Officer Christina Shupe, 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.
3. At the hearing, Dan Leacox of Leacox & Associates, and Wolter Geesink with Otis Elevator, appeared on behalf of each Applicant; Mark Wickens 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: each respective permanent variance applications per Section A table as Exhibit PD-1; Notice of Hearing as Exhibit PD-2; Board staff Pending Application Memorandum as PD-3; Division Review of Application as PD-4; Review

Proposed Variance Decision
Otis Gen2S Elevators (Group IV)
Hearing Date: August 26, 2020

Draft 1 Proposed Decision as PD-5; and official notice 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 August 26, 2020, 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 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 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).

These variances apply to the locations and numbers of elevators stated in the Section A table (so long as the elevators are 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 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.

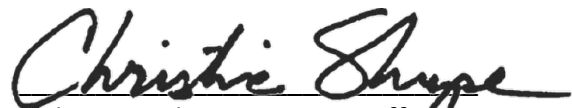
- b. The velocity encoder shall be coupled to the driving machine motor shaft. The “C” channel of the encoder shall be utilized for velocity measurements required by the speed reducing system. The signal from “C” channel of the encoder shall be verified with the “A” and “B” channels for failure. If a 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.

Proposed Variance Decision
Otis Gen2S Elevators (Group IV)
Hearing Date: August 26, 2020

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 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: September 1, 2020


Christina Shupe, 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.

Proposed Variance Decision
Otis Gen2S Elevators (Group IV)
Hearing Date: August 26, 2020

- 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 E2 Controller w/variant Railing and Gov.)
(Group IV))
)
)
_____)

OSHSB FILE No.: see grid in Item A of
Proposed Decision Dated: September 1, 2020

DECISION

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

DAVID THOMAS, Chairman

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

BARBARA BURGEL, Member

Date of Adoption: September 17, 2020

DAVID HARRISON, Member

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.

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

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 Railing and Gov. (Group IV)	OSHSB File Nos.: Per Section A.1 table below <u>PROPOSED DECISION</u> Hearing Date: August 26, 2020
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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 a conveyance, or conveyances, in the listed quantity, at the listed location:

Variance No.	Applicant Name	Variance Location Address	No. of Elevators
20-V-240	Otis Property Owner, LLC	30 Otis Street San Francisco, CA	3

2. The subject safety order requirements are specified in the portion of the below Decision and Order, preceding the variance conditions.
3. 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:

1. This hearing was held on August 26, 2020, in Sacramento, California, via teleconference, by Occupational Safety and Health Standards Board ("Board"), with Hearing Officer Christina Shupe, 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, Dan Leacox of Leacox & Associates, and Wolter Geesink with Otis Elevator, appeared on behalf of each Applicant; Mark Wickens 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.
3. Oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence: permanent variance applications per Section A.1 table as

Proposed Variance Decision

Otis E2 Controller w/variant Railing and Gov. (Group IV)

Hearing Date: August 26, 2020

Exhibit PD-1, Notice of Hearing as Exhibit PD-2, Board staff Pending Application for Permanent Variance Opinion Letter as PD-3, Division evaluation as PD-4, Review Draft 1 Proposed Decision as PD-5, and official notice taken of the Board's files, records, recordings and decisions concerning Otis elevators. At close of hearing on August 26, 2020, 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.

Proposed Variance Decision

Otis E2 Controller w/variant Railing and Gov. (Group IV)

Hearing Date: August 26, 2020

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

Proposed Variance Decision

Otis E2 Controller w/variant Railing and Gov. (Group IV)

Hearing Date: August 26, 2020

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**

Proposed Variance Decision

Otis E2 Controller w/variant Railing and Gov. (Group IV)

Hearing Date: August 26, 2020

- 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.

Proposed Variance Decision

Otis E2 Controller w/variant Railing and Gov. (Group IV)

Hearing Date: August 26, 2020

- 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.

Proposed Variance Decision

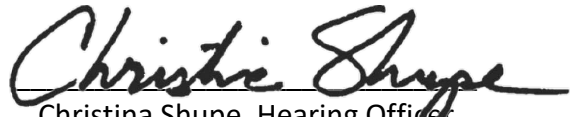
Otis E2 Controller w/variant Railing and Gov. (Group IV)

Hearing Date: August 26, 2020

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: September 1, 2020


Christina Shupe, 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 Elevator (Group IV))
Gen2(O) and or Gen2L Elevators)
[w/variant Governor Rope/Sheave])
_____)

OSHSB FILE No.: see grid in Item A of
Proposed Decision Dated: September 1, 2020

DECISION

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

DAVID THOMAS, Chairman

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

BARBARA BURGEL, Member

Date of Adoption: September 17, 2020

DAVID HARRISON, Member

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.

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

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 Elevator (Group IV) Gen2(O) and/or Gen2L Elevators [w/variant Governor Rope/Sheave]	OSHSB File Nos.: Per Section A.1 table PROPOSED DECISION Hearing Date: August 26, 2020
--	--

A. Subject Matter:

1. 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 Elevators
20-V-241	Otis Property Owner, LLC	30 Otis Street San Francisco, CA	2
20-V-258	California State University - Chico	CSU - Chico Siskiyou II Science 31 Ivy Street Chico, CA	1

2. The safety orders at issue are stated in the portion of Section F that precedes the variance conditions.

B. Jurisdiction:

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

C. Procedural:

1. This hearing was held on August 26, 2020, in Sacramento, California, via teleconference, by Occupational Safety and Health Standards Board ("Board") with Hearing Officer Christina Shupe, 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.

Proposed Variance Decision

Otis Gen2(O) and/or Gen2L Elevators, w/ Variant Governor, [w/variant Governor Rope/Sheave]

Hearing Date: August 26, 2020

2. At the hearing, Dan Leacox of Leacox & Associates, and Wolter Geesink with Otis Elevator Company, appeared on behalf of each Applicant; Mark Wickens appeared on behalf of the Division of Occupational Safety and Health (“Division”); and Michael Nelmida appeared on behalf of Board staff in a technical advisory role apart from the Board.
3. Oral evidence was received at the hearing, and by stipulation of all parties, documents were admitted into evidence: each respective permanent variance applications per Section A.1 table as Exhibit PD-1, Notice of Hearing as Exhibit PD-2, Board staff Pending Application Memorandum as PD-3, Division Review of Application as PD-4, Review Draft 1 Proposed Decision as PD-5, and official notice taken of the Board’s rulemaking recordings and variance decisions concerning the safety order requirements at issue. At close of hearing on August 26, 2020, the record was closed, and the matter taken under submission by the Hearing Officer.

D. Findings:

1. Each Applicant intends to utilize Otis Gen2(O) and/or Otis Gen2L elevators, with further variance as to governor sheave and rope diameter, at the location and in the numbers stated in the Section A.1 table (as used in this Proposed Decision, the term “Gen2(O)” refers to the original type of Gen2 elevator, as distinguished from other types with such designations as “Gen2L” or “Gen2S” or “Gen2 at 150”).
2. The installation contract for these elevators was, 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 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.
4. Regarding requested variance in governor sheave diameter, and governor rope diameter, in variance from Title 8, Section 3141, incorporated ASME A17.1-2004, Section 2.18.7.4, and Section 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.

Proposed Variance Decision

Otis Gen2(O) and/or Gen2L Elevators, w/ Variant Governor, [w/variant Governor Rope/Sheave]

Hearing Date: August 26, 2020

5. Both Board staff and Division safety engineers, 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.

E. 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.

F. Decision and Order:

Each permanent variance application that is the subject of this proceeding is conditionally GRANTED, as below specified, and to the extent that, as of the date the Board adopts this Proposed Decision, each Applicant listed in the Section A.1 table of this Proposed Decision shall have a permanent variance from California Code of Regulations, Title 8, Section 3141 [ASME A17.1-2004, 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), 2.20.1, 2.20.2.1(b), 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, (only to the extent necessary to permit the use of Otis Gen2 flat coated steel suspension belts [the belts proposed for use on these Gen2(O) and/or Gen2L elevators] in lieu of conventional steel suspension ropes); 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); 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)], regarding car top railings, switches, and suspension ropes and connections; Section 2.18.7.4, with respect to conditioned variance in governor sheave diameter; and Section 2.18.5.1, with respect to below conditioned variance in governor rope diameter—for the location and number of elevators listed in the Section A.1 table (so long as the elevators are Gen2(O) or Gen2L Group IV devices that are designed, equipped, and installed in accordance with, and are otherwise consistent with, the representations made in the Otis Master Files [referred to in previous

Proposed Variance Decision

Otis Gen2(O) and/or Gen2L Elevators, w/ Variant Governor, [w/variant Governor Rope/Sheave]

Hearing Date: August 26, 2020

Proposed Decisions as the “Gen2 Master File” or “Gen2S Master File”] maintained by the Board, as that file was constituted at the time of this hearing), subject to the following conditions:

The variance shall be subject to 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.

Proposed Variance Decision

Otis Gen2(O) and/or Gen2L Elevators, w/ Variant Governor, [w/variant Governor Rope/Sheave]

Hearing Date: August 26, 2020

4. 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 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.

Proposed Variance Decision

Otis Gen2(O) and/or Gen2L Elevators, w/ Variant Governor, [w/variant Governor Rope/Sheave]

Hearing Date: August 26, 2020

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.

Proposed Variance Decision

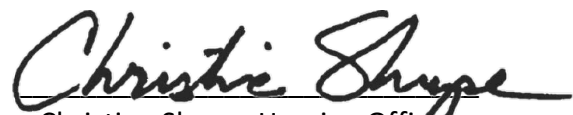
Otis Gen2(O) and/or Gen2L Elevators, w/ Variant Governor, [w/variant Governor Rope/Sheave]

Hearing Date: August 26, 2020

- 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. 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 Gen2(O) and/or Gen2L 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 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; 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 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: September 1, 2020


Christina Shupe, Hearing Officer

Proposed Variance Decision

Otis Gen2(O) and/or Gen2L Elevators, w/ Variant Governor, [w/variant Governor Rope/Sheave]

Hearing Date: August 26, 2020

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

Proposed Variance Decision

Otis Gen2(O) and/or Gen2L Elevators, w/ Variant Governor, [w/variant Governor Rope/Sheave]

Hearing Date: August 26, 2020

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:

1374 W 35th LLC

) OSHSB FILE No. 20-V-250
) Proposed Decision Dated: September 1, 2020
)

)
)
) DECISION
)

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

DAVID THOMAS, Chairman

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

BARBARA BURGEL, Member

Date of Adoption: September 17, 2020

DAVID HARRISON, Member

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

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: 1374 W 35th LLC	OSHSB File No.: 20-V-250 Proposed Decision Hearing Date: August 26, 2020
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A. Procedural Matters

1. 1374 W 35th 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:

1374 W 35th St.
Los Angeles, 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 August 26, 2020, in Sacramento, California, via teleconference, by delegation of the Occupational Safety and Health Standards Board ("Board"), with Hearing Officer Christina Shupe, 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. At the hearing, Brian Coffman with Dock Pros., Inc. appeared on behalf of Applicant, Mark Wickens appeared on behalf of the Division of Occupational Safety and Health ("Division"); and Michael Nelmda appeared on behalf of Board staff acting in a technical advisory role apart from the Board.
5. At the hearing, oral evidence was received and by stipulation of all parties, documents were accepted into evidence: subject Application for Permanent Variance as Exhibit PD-1, Notice of Hearing in this matter as PD-2, Board staff Pending Application Memorandum as PD-3, Division Review of Application as PD-4, Review-Draft-1 Proposed Decision as PD-5; and official notice taken of the Board's rulemaking records and variance decisions concerning the safety order requirements from which variance has been requested. On August 26, 2020, at close of hearing, the record closed and the matter was taken under submission on behalf of the Board.

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 (1) vertical platform (wheelchair) lift at a location having the address of:

1374 W 35th St.
Los Angeles, CA
2. Applicant requests variance solely from Title 8, Section 3142(a) and Section 3142.1.
3. The subject vertical lift is proposed to be a Savaria Model V-1504, 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. (e.g. OSHSB File Nos. 13-V-260, 15-V-097, 15-V-297, 17-V-198)
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 1374 W 35th LLC, OSHSB File No. 20-V-250, is conditionally GRANTED to the limited extent, upon the Board's adoption of this Proposed Decision, 1374 W 35th 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) Savaria Model V-1504 Vertical Platform Lift, to be located at:

1374 W 35th St.
Los Angeles, 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

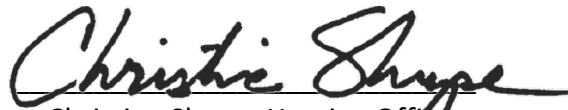
the routine preventive maintenance required by Section 3094.5(a)(1) shall be performed at least quarterly and shall include but not be limited to:

- (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: September 1, 2020


Christina Shupe, 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:)
)
ThyssenKrupp Elevators)
(Group IV; wire ropes and sheaves))
)
_____)

OSHSB FILE No.: see grid in Item A of
Proposed Decision Dated: September 1, 2020

DECISION

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

DAVID THOMAS, Chairman

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

BARBARA BURGEL, Member

Date of Adoption: September 17, 2020

DAVID HARRISON, Member

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.

NOLA KENNEDY, Member

CHRIS LASZCZ-DAVIS, Member

LAURA STOCK, Member

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: ThyssenKrupp Elevators (Group IV; wire ropes and sheaves)	OSHSB File Nos.: Per Section A.1 table <u>PROPOSED DECISION</u> Hearing Date: August 26, 2020
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A. Subject Matter:

1. Each below listed applicant ("Applicant") has applied for permanent variance from provisions California Code of Regulations, Title 8, Elevator Safety Orders, 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
20-V-251	SM Cloverfield Investors, LLC	2225 Broadway Santa Monica, CA	1
20-V-252	SM Cloverfield Investors, LLC	1450 Cloverfield Blvd. Santa Monica, CA	1
20-V-253	BMB Commercial Corp.	960 N. La Brea Ave. Los Angeles, CA	1

2. The subject safety orders requirements are specified in the prefatory part of the Section E, Decision and Order.

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 August 26, 2020, in Sacramento, California, via teleconference, by delegation of the Occupational Safety and Health Standards Board ("Board"), with Hearing Officer Christina Shupe, 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.
3. At the hearing, Andrew Ferris, with ThyssenKrupp Elevator appeared on behalf of each Applicant, Mark Wickens appeared on behalf of the Division of Occupational Safety and

Proposed Variance Decision

ThyssenKrupp Elevators (Group IV; wire ropes and sheaves)

Hearing Date: August 26, 2020

Health (“Division”), and Michael Nelmidia appeared on behalf of Board staff acting in a technical advisory role apart from the Board.

4. At the hearing, oral evidence was received and by stipulation of all parties, documents were accepted into evidence: each respective Section A.1 specified Application for Permanent Variance as Exhibit PD-1; Notice of Hearing in this matter as PD-2; Board staff Pending Application Memorandum as PD-3; Division Review of Application as PD-4; Review Draft 1 Proposed Decision as PD-5; and official notice taken of the Board’s files, records, recordings and decisions regarding conveyances. At the close of the hearing on August 26, 2020, the record was closed, and 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. Each Applicant intends to utilize ThyssenKrupp elevators in the numbers and at the locations stated in the above Section A.1 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 (ESO).
3. Each Applicant proposes to diverge from the safety orders by using:
 - a. 8x19 suspension ropes that are 8 mm in diameter (9.5 mm is the minimum diameter allowed by ASME A17.1-2004, Section 2.20.4) and that have outer wires that are 0.36 mm in diameter (0.56 mm is the minimum diameter allowed by ASME A17.1 2004, Section 2.20.4); and
 - b. Non-metallic deflector and idler sheaves (specifically, Schwartz Optamid-6 thermoplastic cast sheaves).
4. With respect to the ropes and outer wires, equivalent safety is to be provided by such measures as the following (some or all of which are intended to provide a factor of safety meeting or exceeding the safety factor required by ASME A17.1-2004, Table 2.20.3):
 - a. Using a designated number of suspension ropes per elevator, in accordance with each elevator’s capacity;
 - b. Providing a 2:1 roping ratio;
 - c. Installing a device known as a loadweigher (a rope tension monitoring system);
 - d. Limiting the car speed in accordance with ThyssenKrupp engineering data; and

Proposed Variance Decision

ThyssenKrupp Elevators (Group IV; wire ropes and sheaves)

Hearing Date: August 26, 2020

- e. Limiting the maximum suspended load of the elevator in accordance with the elevator's design and specifications.
5. In many prior ThyssenKrupp and KONE elevator variances, the Board has allowed the use of ropes and outer wires with diameters less than the minimums stated in ASME A17.1-2004, Section 2.20.4. In prior ThyssenKrupp variances of this nature, the Board has made findings of fact to the following effect:
- a. Each Applicant has adopted the assertion that "One rope manufacturer, with an estimated 20% of the Global market, has sold over 20 million meters of 8 mm rope with no indication of problems."
 - b. Tests performed on Drako brand 8 mm diameter rope generated data to the effect that "the breaking force applied in single bend for failure of the rope resulted in" forces of 7910 pounds to 9550 pounds for the Drako rope; the breaking force when new and when using production rope shackles was calculated as 9740 pounds for the Drako rope. As to Gustav Wolf brand 8 mm diameter wire rope (part number 80-056SC, 8X19 Warrington), test data include the following: cycling tests disclosed that the breaking force applied in single bend for failure of the rope resulted in a force of 8360 pounds, and that the breaking force when new was calculated at 9919 pounds using production rope shackles.
 - c. Division evaluations have stated that "ThyssenKrupp Elevator contends that the smaller diameter steel ropes are more pliable and less likely to kink thus reducing the probability of operational failures due to rope damage."
 - d. Each Applicant has asserted that the ropes proposed for use (both the Drako and the Gustav Wolf) have steel cores which augment the strength of the ropes so that the required factor of safety is achieved when 0.36 mm diameter outer wires are used.
 - e. Each Applicant has asserted that the factor of safety for the proposed suspension ropes is at least equivalent to the factor of safety for code-compliant suspension ropes, and neither the Division nor the Board staff presented any evidence or argument to the contrary.
6. With respect to the sheaves, the Board has made findings of fact to the following effect in prior, similar variance matters:
- a. Documentation has stated that similar Schwartz Optamid-6 thermoplastic cast sheaves "have been used successfully throughout the world since 1970."

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- b. Such sheaves have been used in ThyssenKrupp ISIS-1 and ISIS-2 elevator systems in California, starting with a temporary/experimental variance issued in 2004, and the Board staff is not aware of any service problems related to the thermoplastic sheaves.
 - c. Each Applicant has asserted that the proposed thermoplastic sheaves have advantages in these areas: noise reduction, reduction in vibration, resistance to rope lubricants and increased rope life.
 - d. Each Applicant has asserted that the factor of safety for the proposed non-metallic sheaves is at least equivalent to the factor of safety for code-compliant sheaves, and neither the Division nor the Board staff has presented any evidence or argument to the contrary.
- 7. The number of suspension ropes per Condition No. 3, the maximum rated speed per Condition No. 6, and the total suspended load per Condition No. 7 in the Decision and Order result from the details of the proposed installations.
 - 8. The Board incorporates by reference Section B.9, of the Proposed Decision adopted by the Board on September 25, 2014, in OSHSB File No. 14-V-117.
 - 9. Conditions set forth in the present Decision and Order are necessary and sufficient to provide for, at minimum, safety equivalent to that which would exist upon non-variant conformity with the ESO requirements from which variance is to be granted.
 - 10. Both Division and Board staff, by means of respective written submissions to the record (Exhibits PD-4, and PD-3), as well as consistent statements of position at hearing, have made clear their concurrence of opinion and recommending that grant of permanent variance, subject to the conditions and limitations incorporated into the present Decision and Order, will provide, at minimum, safety equivalent to that of non-variant compliance with the ESO requirements at issue.

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 conveyance and workplace safety

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and health to that which would prevail upon full compliance with the ESO requirements from which variance is being sought.

E. Decision and Order:

Each Application for Permanent Variance that is a subject of this proceeding, per Section A.1 table above, is conditionally GRANTED, as specified below, and to the extent, as of the date the Board adopts this Proposed Decision, the Applicant shall have permanent variances from California Code of Regulations, Title 8, Section 3141 [ASME A17.1-2004, Section 2.20.4 (insofar as it requires that the “minimum diameter of hoisting and counter-weight ropes shall be 9.5 mm (0.375 in.)” and that the outer wires of the ropes “shall be not less than 0.56mm (0.024 in.) in diameter”) and 2.24.2.1 (to the extent necessary to allow the Applicant to use the cast thermoplastic deflector and idler sheaves proposed in the subject permanent variance application)], for the locations and numbers of elevators set forth in the Section A.1 table, subject to the following conditions:

1. Variance is granted from the Title 8 and ASME provisions referred to in the prefatory portion of this Decision and Order only to the extent necessary to allow the Applicant to use suspension ropes specified in Condition No. 2 and the non-metallic sheaves specified in Condition No. 10.
2. The diameter of the hoisting steel ropes shall be not less than 8 mm, and the outer wires of the suspension rope shall be not less than 0.36 mm in diameter. The rope shall be Drako brand 250T 8 strand EHS rated or Gustav Wolf brand, part no. 80-056SC, 8x19 Warrington IWRC, steel rope.
3. The number of suspension ropes for each elevator shall be not less than the number of ropes stated in Appendix 1 attached hereto and incorporated herein by this reference. The roping ratio for each elevator shall be two to one (2:1).
4. The ropes shall be inspected annually for wire damage (rouge, valley break, etc.) in accordance with the manufacturer’s recommendation for 8 mm steel wire rope.
5. The rope inspection log shall be maintained and shall be available in the elevator control room at all times.
6. The elevator rated speed shall not exceed the rated speed specified in Appendix 1, attached hereto, and incorporated herein by this reference.
7. The total suspended load for each elevator shall not exceed the total load stated in Appendix 1, attached hereto, and incorporated herein by this reference.

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8. The Applicant shall provide and install a Rope Tension Monitoring System (RTMS) on each suspension rope. The RTMS shall monitor the tension in each suspension rope and immediately cut off power to the elevator machine and brakes if the differential between any single rope and the average tension in all ropes suspending the car exceeds $\pm 40\%$ for more than 3 seconds. The Applicant will take all reasonable steps to make sure that this system is set to operate if there is a " $\pm 40\%$ " tension discrepancy; however, no violation of this condition will be deemed to occur if, on a given occasion, the system goes into operation when the tension discrepancy is between " $\pm 40\%$ " and " $\pm 45\%$."
9. Any Certified Qualified Conveyance Company (CQCC; elevator contractor) performing inspection, maintenance, servicing or testing of the elevator shall be provided a copy of the variance decision. Before any CQCC works on any of these elevators, the Applicant will ensure that the CQCC has personnel who are trained and available to perform CQCC duties with respect to the RTMS referred to in Condition No. 8 and that such work is performed only by trained and qualified personnel.
10. If non-metallic deflector and/or idler sheave(s) are installed, they shall be a Schwartz thermoplastic cast polyamide 6 "Optamid". The ratio of the sheave diameter to the rope diameter (D/d ratio) shall be not less than 40:1.
11. The Division shall be notified when the elevator is ready for inspection, and the elevator shall not be put into service prior to having been inspected, and issued a Permit to Operate by the Division.
12. The Applicant shall be subject to the Suspension Means Replacement Reporting Condition stated in Appendix 2; that condition is incorporated herein by this reference.
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.

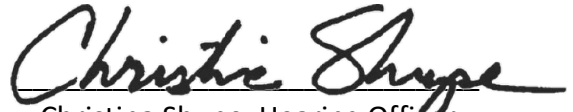
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Pursuant to California Code of Regulations, Title 8, Section 426(b), the above, duly completed Proposed Decision, is hereby submitted to the Occupational Safety and Health Standards Board for consideration of adoption.

Dated: September 1, 2020


Christina Shupe, Hearing Officer

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APPENDIX 1

OSHSB File Number	Car	Minimum Suspension Ropes per Elevator (per Condition No. 3)	Roping Ratio	Max. Rated Speed In Feet per Minute (per Condition No. 6)	Maximum Suspended Load per Elevator (+5%) (per Cond.No. 7)
20-V-251	3	6	2:1	150	6,624
20-V-252	1	6	2:1	150	6,624
20-V-253	4	6	2:1	150	7,244

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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.

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- 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 Section 2.a above.

Occupational Safety and Health Standards Board

Business Meeting

THERE WILL BE NO
WRITTEN LEGISLATIVE
UPDATE FOR THIS
MONTH'S MEETING

Occupational Safety and Health Standards Board

Business Meeting Executive Officer Report