

October 7, 2025

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

Subject: **TEMPORARY VARIANCE APPLICATION
DRAGADOS REPRESENTED BY OGLEETREE DEAKINS**

This is a temporary variance ("TV") application from Dragados ("Applicant"), 1701 S. Figueroa, Wilmington, CA, 90744. Applicant's representatives are attorney Kevin Bland, Ogleetree, Deakins, 695 Town Center Drive, Suite 1500, Costa Mesa, CA, 92626 and consultant Dan Leacox, Leacox & Associates, 4005 Manzanita Blvd. Suite 6-246, Carmichael, CA, 95608. The affected worksite is 1701 S. Figueroa, Wilmington, CA, 90744.

The Applicant has a permanent variance application (PV 23-v-580) pending before the OSHSB for variance from the Construction Safety Orders ("CSOs") specified in Item A of this application. Both applications seek variance to allow use of a construction personnel hoist ("CPH") with single-press button controls (aka "automatic controls") in lieu of manual constant-contact controls and to allow operation without a dedicated operator or attendant continually stationed inside the elevator car. The worksite is a tunnel accessed by the CPH.

Important Background (See Attachment 3, February 4, 2025, Declaration of Ryan Swift)

The need for this TV arises from the CPH having automatic instead of constant-contact controls in the car. Dragados purchased the Alimak Scando 650 25/32 CPH in December 2019 with automatic controls suited to the explosion proof circuitry required in a tunnel classified as "gassy". At that time, the OSHSB had approved numerous substantially similar PV applications. Both board and division staff always recommended approval. Both recommend approval of the pending PV application.

Dragados first filed for PV in June 2020 (PV 20-V-210). In June 2021, DOSH issued a permit to operate the CPH as installed. In April 2022, the first PV application was denied. In November 2023, Dragados refiled with additional information. In January 2024, the tunnel was reclassified as "potentially gassy" making the explosion proof circuitry unnecessary unless the tunnel is again classified "gassy".

DOSH renewed the operating permit three times (2022-2024), each time with the same automatic controls. The fact of automatic controls in the car has been overlooked from the beginning. According to statements obtained by the OSHSB hearing officer for 23-V-580, DOSH inspection reports indicate the CPH has constant pressure controls.

A. Specification of the Title 8 Safety Orders from which the employer seeks a variance.

Applicant requests a TV from the same CSOs from which permanent variance has been sought in PV application 23-V-580. (See Attachment 5, Dragados Application for PV).

Title 8 sections 1604.24(a)(2) and 8495(b)(1)

Sections 1604(a)(2) and 8495(b)(1) both require operators of CPHs to apply constant pressure or contact to the controls for the hoist car to move. If the operator removes pressure or contact, the hoist car stops immediately. The applicant requests a variance from these sections to allow use of a CPH with automatic controls.

Title 8 section 1604.26(c)

Section 1604.26(c) requires CPHs to be operated by an authorized operator in the hoist car. It also allows the authorized operator to be stationed at the CPH driving machine if a regular attendant is in the hoist car in communication with the operator and the hoist car is equipped with constant pressure controls (similar to section 1604.24(a)(2) and 8495(b)(1)). The applicant requires a variance from section 1604.26(c) because it does not plan on having authorized, dedicated operators, or attendants stationed inside the hoist car.

B. A statement by the employer, and/or a statement by qualified persons to the extent the employer has relied on them, that the employer is unable to comply with the Title 8 Safety Order, or portion thereof, and a detailed statement of the reasons therefore.

The need for this TV arises from the CPH having automatic instead of constant-contact controls in the car. It has been permitted that way since June 2021. Conversion to constant pressure controls is possible but not compatible with explosion proof circuitry and automatic controls at the top and bottom landings.

Explosion proof circuitry is required in a tunnel classified as "gassy". The tunnel was classified as "gassy" until January 2024. It could be classified "gassy" again.

Automatic controls at the top and bottom landings are not required by the CSOs. However, they are highly desirable features that provide for a level of safety superior to the level obtained by compliance with the CSOs. The DOSH Elevator Unit recommends them. In its briefing to the OSHSB regarding the PV application, the EU recommended this condition:

"21.b. Keyed, spring-return , momentary, switches shall be provided at the top and bottom landings for calling the elevator to that landing and for dispatching the elevator to the other landing (call and send operation)."

In his declaration dated July 18, 2025 (Attachment 5), consultant CPH Matt Finnerty made these detailed statements:

“The CPH has automatic controls suited to explosion proof circuitry required in a tunnel classified as “gassy”. The automatic controls are buttons located in the car and at the top and bottom landings.”

“The automatic controls can be converted to constant pressure controls (aka, ‘dead man switch’). However, the dead man switch is not compatible with automatic controls anywhere in the system. Hence, the only means of operating the car would be located in the car. For example, the combinations of a dead man switch in the car and automatic control buttons at the top and bottom landings is not an option”

“Further, the conversion to a dead man switch compromises the explosion proof circuitry of this CPH. This is neither safe nor compliant in a tunnel classified ‘gassy’.”

C. A statement of the steps the employer has taken and will take, with specific dates, to protect employees against the hazard covered by the Title 8 Safety Order.

If this TV application is approved, applicant will utilize the same means of safety proposed to the OSHSB in 23-V-580.

In addition, this CPH complies with ASME A 17.1-2004 Section 2.26 to address 15 of the 17 safety characteristics identified by the DOSH Elevator Unit in its March 25, 2025, memorandum to the OSHSB regarding File No. 23-V-580. These include Section 2.26.1.6 which provides for automatic leveling to maintain the car level with the landing during loading and unloading.

One of the 17 safety characters concerned platform guards required for passenger elevators by Section 2.15.9 to protect against shear and fall hazards should doors open with the car platform higher than the landing. This is not required by CSO Section 1604. However, the risk of such a gap is reduced by automatic controls with automatic leveling as compared to the constant pressure controls required by the CSOs. Also, the car doors on this CPH open vertically with one door going down to serve as a platform guard.

The final safety characteristic provides for emergency operation in a building filled with occupants. Among other things, it provides for operation by first responders while preventing operation by building occupants. Applicant’s CPH presents much different emergency scenarios provided for in the CSOs.

Two notable safety features not presently required are automatic controls at the landing and explosion proof circuitry. However, these are safety features Dragados has provided and will continue to provide unless forced to convert to constant pressure controls.

D. The employer's schedule for compliance, including what steps the employer has taken and will take (with specified dates) to come into compliance with the Title 8 Safety Order

Applicant has two paths to compliance. In most cases, it could be assumed that compliance with the CSOs provides for greater safety than the state of non-compliance for which applicant seeks temporary variance. Not so in the case. This CPH is more safe with automatic instead of contact pressure controls in the car.

Compliance Path One

The optimum path to compliance is OSHSB approval of the PV application. Of course, this can't be promised. Nevertheless, Dragados has addressed all concerns and staff continue to recommend approval. The OSHSB held a second hearing on the matter on September 18, 2025, in Truckee, California. The soonest the PV could be approved would be October 18, 2025, but that appears unlikely.

Compliance Path Two

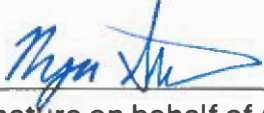
Conversion to constant pressure controls is possible but not compatible with explosion proof circuitry and automatic controls at the top and bottom landings. Both are highly desirable safety features. The constant pressure controls will be required should the tunnel be classified once again as "gassy". Automatic controls at the top and bottom landings were recommended by the DOSH Elevator Unit in it's briefing to the OSHSB regarding the PV application. Applicant is seeking information from the manufacturer to determine the time it would for conversion to constant pressure controls. Regardless of the time, this is a very undesirable path to compliance, particularly before the board has decided to approve or disapprove the PV. The possibility of converting to constant pressure controls, then getting approval for automatic controls, then converting back to automatic controls is something to be avoided, particularly in light of the reduction in safety while operating with constant pressure controls. If the OSHSB denies the PV, the applicant will have no choice but to convert the controls.

E. A certification that the employer has informed the employer's employees of the application. A description of how employees have been informed shall be contained in the certification. The information to employees shall also inform them of their right to petition the Division for a hearing concerning the variance.

ATTACHMENT 1 of this application is a NOTICE TO EMPLOYEES that clearly informs affected employees of their right to petition the Division for a hearing concerning the variance.

ATTACHMENT 2 of this application is the required APPLICANT CERTIFICATION OF NOTICE TO EMPLOYEES signed by the Applicant. It certifies that the Applicant has informed affected employees and employee representatives regarding this application for temporary variance and describes the manner in which they were so notified. Specifically, it certifies

(1) that the application was provided under cover of the NOTICE TO EMPLOYEES, and (2) that the notice and application were distributed in the same manner that all required safety notices are provided to affected employees and employee representatives.



Signature on behalf of Applicant-Employer

October 7, 2025

Date

Ryan Swift

Signer's name typed or printed

Safety Manager

Signer's Title

APPLICATION FOR TEMPORARY VARIANCE

ATTACHMENT 1

NOTICE TO EMPLOYEES

Dragados has applied for a Temporary Variance from Cal/OSHA regulations concerning the controls and operation of the Alimak Scando 650 25/32 construction personnel hoist at 1701 S. Figueroa, Wilmington, CA, 90744. The application explains the nature and conditions of the variance being sought. See your shift safety representative if you would like to review the application and associated documents.

YOU HAVE A RIGHT TO PETITION THE DIVISION OF OCCUPATIONAL SAFETY AND HEALTH FOR A HEARING CONCERNING THE DIVISION'S GRANTING A VARIANCE.

Any employee or employee representative requesting a hearing must make a written request to the Chief, Division of Occupational Safety and Health, 1515 Clay Street, Ste. 1901, Oakland, California 94612, within five (5) business days of the issuance of this Order. Such written request may be made by fax at 510-286-7037.

APPLICATION FOR TEMPORARY VARIANCE

ATTACHMENT 2

APPLICANT CERTIFICATION OF NOTICE TO EMPLOYEES

The Applicant certifies that it has informed affected employees and employee representatives regarding this application for temporary variance.

The application was provided under cover of the attached NOTICE TO EMPLOYEES. The notice clearly informs employees of their right to petition the Division for a hearing concerning the variance. This notice and application were distributed in the same manner that all required safety notices are provided to affected employees and employee representatives.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Applicant's signature (Use **BLUE**
INK)

Ryan Swift
Signer's name typed or printed

Wilmington, CA
City and state where signed

October 7, 2025
Date

Safety Manager
(Optional) Signer's Title

APPLICATION FOR TEMPORARY VARIANCE

ATTACHMENT 3

FEBRUARY 14, 2025. DECLARATION OF RYAN SWIFT

APPLICATION FOR TEMPORARY VARIANCE

ATTACHMENT 4

SEPTEMBER 10, 2025, DECLARATION OF MATT FINNERTY

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ATTACHMENT 5

DRAGADOS APPLICATION FOR PERMANENT VARIANCE (23-V-580)