

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833
(916) 274-5721
FAX (916) 274-5743
Website address www.dir.ca.gov/oshsb

**NOTICE OF PROPOSED MODIFICATIONS TO**

**Title 8: Chapter 4, Subchapter 6, New Article 5.1, and
New Section 3005 of the Elevator Safety Orders**

Reporting Accidents Involving Listed Devices

Pursuant to Government Code Section 11346.8(c), the Occupational Safety and Health Standards Board (Standards Board) gives notice of the opportunity to submit written comments on the above-named regulations in which further modifications are being considered as a result of public comments and/or Board staff evaluation.

On January 16, 2003, the Standards Board held a Public Hearing to consider revisions to Title 8, California Code of Regulations, New Article 5.1 and New Section 3005 of the Elevator Safety Orders. The Standards Board received oral comments on the proposed revisions. The regulations have been further modified as a result of the comments and Board consideration.

A copy of the full text of the regulation as originally proposed, and a copy of the modified text clearly indicating the further modifications, is attached for your information. In addition, a summary of all oral comments regarding the original proposal and staff responses is included.

Any written comments on these modifications must be received by 5:00 p.m. on April 28, 2003 at the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, California 95833. These regulations will be scheduled for adoption at a future business meeting of the Standards Board.

The Standards Board's rulemaking files on the proposed action are open to public inspection Monday through Friday, from 8:00 a.m. to 4:30 p.m., at the Standards Board's office at 2520 Venture Oaks Way, Suite 350, Sacramento, California 95833.

Inquiries concerning the proposed changes may be directed to the Acting Executive Officer, Marley Hart at (916) 274-5721.

**OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD**

Date: April 9, 2003

Marley Hart, Acting Executive Officer

REGULATIONS AS ORIGINALLY PROPOSED

STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

PROPOSED STATE STANDARD,
TITLE 8, CHAPTER 4

Add new Article 5.1 and Section 3005 as follows:

Article 5.1. Accident Reports and Procedures

§ 3005. Reporting Accidents Involving Listed Devices.

(a) Scope. This Article applies to all devices listed in Section 3000(c). For the purposes of this Article:

The device owner's "responsible agent" may include, but is not limited to, the building/site manager or elevator service company.

"Immediately" means as soon as practically possible, but not longer than 8 hours after the owner/responsible agent knows, or with diligent inquiry would have known, of the death or serious injury. If the owner/responsible agent can demonstrate that exigent circumstances exist, the time frame for the report may be made no longer than 24 hours after the incident.

"Incident" means any event, failure, or malfunction of a listed device, which has the potential to cause injury to the public or results in an injury requiring only ordinary first aid. Incidents do not include accidents covered in (b)(1) and (2).

"Serious injury" means any injury, which requires inpatient hospitalization for a period in excess of 24 hours for other than medical observation or in which a person suffers a loss of any member of the body, any serious degree of permanent disfigurement, or a broken bone.

(b) All accidents where maintenance, operation, or use of a listed device results in injury to any person(s) which requires medical treatment beyond ordinary first aid shall be reported in writing within five days of the accident to the Elevator Unit Headquarters Office in Anaheim.

(1) All serious injuries or deaths resulting from the maintenance, operation, or use of a listed device shall be reported immediately by the owner/responsible agent via telephone to the Elevator Unit Headquarters Office in Anaheim.

(c) If a death or serious injury results, the owner/responsible agent shall preserve all equipment and site conditions for investigation by the Division.

(1) Upon receiving a report of an accident from an owner/responsible agent, the Division shall determine whether further preservation of the equipment or site conditions is necessary and shall inform the owner/responsible agent of its determination.

(2) If the Division determines that continued preservation is necessary, the Division shall make a reasonable effort to initiate the accident investigation within 24 hours of receipt of the report from the owner/responsible agent.

(3) Upon initiating the accident investigation, the Division shall provide the owner/responsible agent with instructions on how long the equipment or site conditions shall continue to be preserved.

(d) Any state, county, or local fire or law enforcement agency responding to an accident involving a listed device where the accident results in a serious injury or death shall immediately notify the Elevator Unit Headquarters Office in Anaheim.

STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

PROPOSED STATE STANDARD,
TITLE 8, CHAPTER 4

(e) All accident reports, whether by telephone or in writing, shall include the following information if available:

- (1) The date, time, and location of the accident.
- (2) The name, address and telephone number of the owner of the device.
- (3) The name and telephone number of the person reporting the accident.
- (4) The names, addresses, and telephone numbers of all persons involved in the accident.
- (5) The names, addresses, and phone numbers of all witnesses and the contact person at the accident site.

(6) A description of the injury(ies) and treatment provided to the injured party(ies) involved in the accident.

(7) A detailed description of the accident.

(f) All Incidents shall be documented to include a description of the incident and the date on which the incident occurred. The documentation shall be kept in the elevator machine room or similar area adjacent to the device and shall be available for review by the Division during the Division's annual inspection of the device.

NOTE: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code.

PROPOSED MODIFICATIONS

(Modifications are indicated by bold, double underline for new language and bold, strikeout for deleted language.)

(Only modified pages are included.)

**STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD**

PROPOSED STATE STANDARD,
TITLE 8, CHAPTER 4

Add new Article 5.1 and Section 3005 as follows:

Article 5.1. Accident Reports and Procedures

§ 3005. Reporting Accidents Involving Listed Devices.

(a) Scope. This Article applies to all devices listed in Section 3000(c). For the purposes of this Article:

The device owner's "responsible agent" may include, ~~but is not limited to,~~ the building/site manager or ~~elevator service company~~ **others designated by the device owner.**

"Immediately" means as soon as practically possible, but not longer than 8 hours after the owner/responsible agent knows, or with diligent inquiry would have known, of the death or serious injury. If the owner/responsible agent can demonstrate that exigent circumstances exist, the time frame for the report may be made no longer than 24 hours after the incident.

"Incident" means any event, failure, or malfunction of a listed device, which **has the potential to cause injury to reasonably and substantially appear to have an impact on the safety of** the public **or employees** or results in an injury requiring only ordinary first aid. Incidents do not include accidents covered in subsection (b)(1) and (2).

"Serious injury" means any injury, which requires inpatient hospitalization for a period in excess of 24 hours for other than medical observation or in which a person suffers a loss of any member of the body, any serious degree of permanent disfigurement, or a broken bone.

(b) All **known** accidents where maintenance, operation, or use of a listed device results in injury to any person(s) which requires medical treatment beyond ordinary first aid shall be reported in writing within five days of the accident to the Elevator Unit Headquarters Office in Anaheim.

(1) All **known** serious injuries or deaths resulting from the maintenance, operation, or use of a listed device shall be reported immediately by the owner/responsible agent via telephone to the Elevator Unit Headquarters Office in Anaheim.

(c) If a death or serious injury results, the owner/responsible agent shall preserve all equipment and site conditions for investigation by the Division.

(1) Upon receiving a report of an accident from an owner/responsible agent, the Division shall determine whether further preservation of the equipment or site conditions is necessary and shall inform the owner/responsible agent of its determination.

(2) If the Division determines that continued preservation is necessary, the Division shall make a reasonable effort to initiate the accident investigation within 24 hours of receipt of the report from the owner/responsible agent.

(3) Upon initiating the accident investigation, the Division shall provide the owner/responsible agent with instructions on how long the equipment or site conditions shall continue to be preserved.

SUMMARY AND RESPONSE TO COMMENTS

SUMMARY AND RESPONSE TO ORAL AND WRITTEN COMMENTS

I. Written Comments

No written comments were received.

II. Oral Comments

Oral comments received at the January 16, 2003 Public Hearing in Los Angeles, California.

Ms. Leslie Criswill, Aster & Hadden LLP representing Otis Elevator Company.

Comment:

Ms. Criswill asked if the proposal distinguishes between an “incident” and an “accident”, and stated that by definition, an “accident” requires a specific notification to the Division, whereas an “incident” requires that some documentation be placed in the machine room. Ms. Criswill also asked who is responsible for placing the documentation in the machine room. Ms. Criswill stated that the term “responsible agent” could, by definition, include the elevator maintenance company and argued that elevator contractors should not bear the responsibility of notifying the Division when it should be owner’s responsibility.

Response:

Mr. James Meyer, DOSH Engineer Services, affirmed that the proposal distinguishes an “incident” vs. “accident” and that it is the owner’s responsibility to place the documentation in the machine room and/or notify the Division.

In response to Ms. Criswill’s concerns, it is proposed to delete the reference to “elevator service company” from the definition of “responsible agent” and add “others designated by the device owner”.

The Board thanks Ms. Criswill for her comments and for her participation in the Board’s rulemaking process.

Mr. Woody Wright, County of Los Angeles

Comment:

Mr. Wright, stating that his comments are his own personal opinions and not that of his employer, agrees with the proposal because collecting data on incidences, equipment malfunctions and failures is problematic. Mr. Wright stated that this was the case after the Northridge earthquake, since response from the elevator contractors was voluntary. Mr. Wright stated that he thought that only about fifty percent of the companies responded and asked Board Member Art Murray if this estimation was accurate.

Response:

Mr. Murray responded that he wasn't sure but that he believed the response (from companies) was low.

Comment:

Mr. Wright stated that he considers the phrase "which has the potential to cause injury" in the definition of the term "Incident" to be arbitrary and fails to see any provisions on penalties for not complying with the reporting requirements. Mr. Wright also stated that the phrase "inpatient hospitalization for a period in excess of 24 hours for other than medical observation" contained in the definition of "serious injury" would cause difficulties with the reporting time frame requirements. Mr. Wright stated that it is impossible to know how long the injured party would be hospitalized while still having to comply with the 8-hour reporting requirement. Mr. Wright made other comments with regard to the implementation of Senate Bill 1886 that were not within the scope of the proposal.

Response:

In response to Mr. Wright's concern regarding the phrase "which has the potential to cause injury", which is contained in the definition of "incident", it is proposed to revise the phrase to read, "which reasonably and substantially appear to have an impact on the safety of the public or employees".

The Board does not concur, however, with the comment that no penalties exist for not complying with the proposal. The Division applies the general rules, practices and procedures for failure to comply with the Elevator Safety Orders, which could result in the denial, suspension or revocation of any license, permit, or other authorization issued by the Division, including proceedings involving orders prohibiting use.

Further, the Board does not concur with the comment regarding the definition for "serious injury" and the use of the term "inpatient hospitalization". The definition for "serious injury" and the term "inpatient hospitalization" are accepted and established terminology evident in Section 342 of the Regulations of the Division of Occupational Safety and Health and Section 330 of the Regulations of the Director of Industrial Relations. Moreover, the 8-hour reporting requirement for all serious injuries begins once the owner/responsible agent knows, or with diligent inquiry would have known, of the injury.

The Board thanks Mr. Wright for his comments and for his participation in the Board's rulemaking process.

Dialog between Mr. Jere Ingram, Board Chairman and Mr. James Meyer, DOSH Engineer Services

Comment:

Mr. Ingram stated that the proposal doesn't apply just to employees of building, building owners, and employees of the elevator contractor. It is conceivable that the building owner could have an accident in his building and not know about the accident until the owner is sued because the injured party walked out of the building. Mr. Ingram asked Mr. Meyer what the odds were of complying with this regulation and how the Division proposes to remedy this situation. Mr. Ingram also stated that he wants assurance that provisions are in the regulation so that the employer would not be accountable for injuries that the employer doesn't know about.

Response:

Mr. Meyer confirmed Mr. Ingram's statement that the proposal doesn't apply just to employees of building, building owners, and employees of the elevator contractor. In response to Mr. Ingram's concerns regarding injuries of which the employer may not be aware, it is proposed to clarify the requirement on reporting accidents by specifying that all "known" accidents are to be reported.