

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**FINAL STATEMENT OF REASONS****CALIFORNIA CODE OF REGULATIONS**

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

Reporting Accidents Involving Listed Devices**MODIFICATIONS AND RESPONSE TO COMMENTS RESULTING FROM
THE 45-DAY PUBLIC COMMENT PERIOD**

There are no modifications to the information contained in the Initial Statement of Reasons except for the following non-substantive and sufficiently related modifications, which are the result of public comments.

Section 3005(a)

Subsection (a) provides definitions for various terms used in Article 5.1, Accident Reports and Procedures. The “responsible agent” definition was modified by deleting the phrase “but is not limited to” and replacing the term “elevator service company” with “others designated by the device owner”. The purpose for the modification is to remove the implication that the elevator service company should in every occasion be the responsible agent for reporting accidents. It is necessary to negate the inference that the elevator service company is inherently the owner’s responsible agent.

In addition, the “incident” definition was modified by replacing the phrase “which has the potential to cause injury to the public” with “which reasonably and substantially appear to have an impact on the safety of the public or employees”. The modification provides clarity and is necessary to eliminate the ambiguity and subjectiveness perceived in the phrase “which has the potential”.

Furthermore, the last sentence in the definition of “Incident”, which reads, “Incidents do not include accidents covered in (b)(1) and (2)” was editorially corrected to read, “Incidents do not include accidents covered in subsection (b)”, since there is no subsection (b)(2).

Section 3005(b)

Subsection (b) requires that all accidents be reported where maintenance, operation, or use of an elevator results in injury requiring a certain degree of medical treatment. Subsection (b) was modified to require that all “known” accidents be reported where maintenance, operation, or use of an elevator results in injury requiring a certain degree of medical treatment. The purpose of the revision is to confine the scope of the reporting requirement by limiting the owner’s responsibility with respect accident reporting.

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.

MODIFICATIONS AND RESPONSE TO COMMENTS RESULTING FROM
THE 15-DAY NOTICE OF PROPOSED MODIFICATIONS

No further modifications to the information contained in the Initial Statement of Reasons are proposed as a result of the 15-day Notice of Proposed Modifications mailed on April 9, 2003.

Summary and Response to Written Comments:

Mr. Davis L. Turner, Principal, Davis L. Turner & Associates, by letter dated April 24, 2003.

Comment:

Mr. Turner indicated that the proposal is unworkable and unnecessary. Mr. Turner also felt that the initial meeting convened to consider the proposal was not representative of the industry. Mr. Turner stated that the information gathered from reporting accidents could likely be misinformation that could result in unnecessary and ineffective measures. Mr. Turner stated that the recent amendment to the Labor Code, whereby the Division must adopt the most recent edition of the ASME A17.1 safety code for elevators and escalators, already calls for reporting and record keeping of "incidents", and that the proposal is redundant because reporting employee-related accidents is already required in Section 342 of the Division regulations.

Mr. Turner stated that the cost estimate in the Initial Statement of Reasons is not indicative of the additional manpower that will be required by the Division to investigate accidents and maintain records. Mr. Turner believes that the estimated cost for Division personnel to investigate an accident is more than the \$100.00 indicated and that further investigation of the cost associated with the proposal is necessary. Furthermore, Mr. Turner does not agree with the statement in the Cost Estimate indicating there would not be a significant cost to businesses. Mr. Turner stated that building owners would bear the burden of additional costs of investigations conducted by the City of Los Angeles, Department of Building and Safety.

Mr. Turner contends that the information required to be reported in Section 3005(e) can only be provided by parties qualified to assess the injuries and forensic specialists. Mr. Turner indicated that the reporting requirements are conflicting and not realistic.

Mr. Turner provided opinions on the principles of safety and unsafe acts and their affect on data collected. Mr. Turner also commented that if, given the recent amendments to the Labor Code, there later was a need, and the Division had the necessary resources, accident/incident reporting procedures could be developed with input from an appropriate representative group.

Response:

The Board disagrees with Mr. Turner's comment that this rulemaking action is unworkable and unnecessary. The Board agrees with Mr. Turner's statement that reporting employee-related accidents is already required in Section 342 of the Division regulations, as was stated in the Notice of Proposed Rulemaking Action published in the November 29, 2002 California Regulatory Notice Register. Existing Title 8 Elevator Safety Orders do not, however, contain requirements for the reporting or investigation of accidents involving members of the general public. The Board believes that data collected from these accidents, when required, could reveal relevant information, such as equipment failure or mechanical malfunction that may have caused the accident. The information would also be useful to the Division when the Division evaluates the serviceability and mechanical condition of the device during the yearly inspection required for the owner to obtain the permit needed to operate the device. In addition, the information could also reveal detrimental trends in the function and operation of the device that could be corrected to prevent such accidents from occurring.

The Board also disagrees with Mr. Turner's concern of a cost impact to both businesses and the Division. The Board believes that the Division has the necessary resources available to fulfill its obligation within the regulation. Moreover, reporting these accidents would not burden the owners since they are already required to report accidents to their insurance company if the accident results in injuries that require a physician.

With regard to Mr. Turner's reference to an incident reporting requirement contained in Rule 8.6.1.4 of ASME A17.1 – 2000, Board staff consulted with the Division regarding this reference and found that this section applies only to maintenance records of the device, and not accident reporting.

Finally, the Board recognizes that Mr. Turner's comments are not specifically directed to the modifications made to the initial proposal as outlined in the 15-Day Notice of Proposed Modifications, but rather, to the initial proposal itself. In accordance with Government Code Section 11346.45, Mr. Turner was afforded the opportunity to direct his comments/concerns to the Board regarding the initial proposal, commencing on November 29, 2002 with the publication of the Notice of Proposed Rulemaking Action, and concluding on January 16, 2003 at the Public Hearing held in Los Angeles, CA.

Therefore, for the aforementioned reasons, the Board has determined that no further modifications to the proposal are necessary. The Board thanks Mr. Turner for his comments and participation in the Board's rulemaking process.

ADDITIONAL DOCUMENTS RELIED UPON

None.

ADDITIONAL DOCUMENTS INCORPORATED BY REFERENCE

None.

DETERMINATION OF MANDATE

These regulations do not impose a mandate on local agencies or school districts as indicated in the Initial Statement of Reasons.

ALTERNATIVES CONSIDERED

The Board invited interested persons to present statements or arguments with respect to alternatives to the proposed regulation. No alternative considered by the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the adopted action.