

# **Division of Occupational Safety and Health**

## **INITIAL STATEMENT OF REASONS**

PROPOSED CHANGES TO REGULATIONS OF THE  
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH  
(Title 8, California Code of Regulations, Chapter 3.2, Subchapter 2)

Subject Matter of Proposed Regulations: Administration of Permanent Amusement Ride Program  
(Permanent Amusement Rides Administrative Regulations)

Sections Affected: Add Sections 344.5, 344.6, 344.7, 344.8, 344.9, 344.10, 344.11, 344.12, 344.13, 344.14, 344.15, 344.16, and 344.17.

### PROBLEM ADDRESSED BY PROPOSED ACTION

Pursuant to Labor Code sections 54, 55, 60.5 and 6308, the Division of Occupational Safety and Health ("the Division") of the Department of Industrial Relations is charged with the administration and enforcement of the California Occupational Safety and Health Act, commencing with Labor Code section 6300, as well as other provisions of law impacting upon the occupational safety and health of employees in the State of California.

Among the laws administered and enforced by the Division are the provisions of the Permanent Amusement Ride Safety Inspection Program (Labor Code § 7920 *et seq.*; hereinafter "the Act") governing the safe installation, repair, maintenance, use, operation, and inspection of permanent amusement rides.

Currently, there are no regulations to implement the Act. The Act creates a system for the inspection of permanent amusement rides and gives the Division regulatory authority to formulate and adopt regulations for the safe installation, repair, maintenance, use, operation, and inspection of permanent amusement rides. (Labor Code section 7923). The Division also has specific statutory authority to adopt regulations necessary for the administration of the Act. (Labor Code section 7928.)

This proposal ("the Proposed Regulations") contains the administrative regulations formulated by the Division pursuant to the Act. The Proposed Regulations would apply to permanent amusement rides, as defined, operated anywhere in the State of California. The specific terms of the Proposed Regulations are summarized as part of the discussion of the Specific Purpose and Factual Basis of the Proposed Regulations.

### SPECIFIC PURPOSE OF ADOPTION/ FACTUAL BASIS

#### Section 344.5 Application.

Section 344.5(a) establishes the scope for application of the Proposed Regulations. It would require

owners/operators of existing and new permanent amusement rides, to comply with both the Permanent Amusement Ride Administrative Regulations and the technical standards to be promulgated as Chapter 6.2 of Title 8.

Section 344.5(a) of the Proposed Regulations is necessary to inform owners and operators of permanent amusement rides that new requirements exist for the safe installation, repair, maintenance, use, operation, and inspection of permanent amusement rides, including aquatic devices.

Section 344.5(b) exempts specified equipment and facilities from application of the Proposed Regulations. It states that the Permanent Amusement Ride Administrative Regulations do not apply to the following:

- (1) Any playground operated by a school or local government if the playground is an incidental amenity and the operating entity is not primarily engaged in providing amusement, pleasure, thrills or excitement;
- (2) Museums or other institutions principally devoted to the exhibition of products of agriculture, industry, education, science, religion or the arts;
- (3) Skating rinks, arcades, laser or paint ball war games, indoor interactive arcade games, bowling alleys, miniature golf courses, mechanical bulls, inflatable rides, trampolines, ball crawls, exercise equipment, jet skis, paddle boats, air boats, helicopters, airplanesparasails, hot air balloons (tethered or untethered,) theaters, amphitheaters, batting cages, stationary spring-mounted fixtures, rider-propelled merry-go-rounds, games, slide shows, live-animal rides, or live-animal shows; or
- (4) Permanent amusement rides operated at a private event that is not open to the general public and not subject to a separate admission fee.

Proposed Section 344.5(b) is necessary to further define the scope of application of the Proposed Regulations. The rides and attractions exempted under Section 344.5(b) do not present the same hazards inherent in permanent rides covered by the Proposed Regulations. Moreover, consistent with AB 850's purpose of public protection, Section 344.5(b) also necessarily excludes rides and attractions that are not open to the general public.

#### Section 344.6. Definitions.

Proposed section 344.6 would define several terms used throughout the Proposed Regulations. For example:

##### (a) "As-Built document"

An "as-built document" is a document signed by a California-licensed engineer responsible for the construction of the permanent amusement ride. An as-built document states that the ride has been constructed according to plans, and notes and approves any variations from the plans.

"As-built document" is a term of art that appears in the inspection provisions of the Proposed

Regulations. Since the term might not be readily understood by all members of the regulated public, this definition is necessary to clarify what documents and information the Division will require in connection with certain of its inspections.

(b) "California-licensed engineer"

A "California-licensed engineer" is a professional engineer with a current, active certificate of registration issued by the California Board of Professional Engineers and Land Surveyors.

Only an engineer authorized by the California Board of Professional Engineers and Land Surveyors to practice in this State may sign an "as-built" document stating that a ride has been constructed in this state according to plans, or note and approve deviations. It is therefore necessary that the Proposed Regulations distinguish between a California-licensed engineer and a licensed engineer.

(c) "Licensed engineer"

A "licensed engineer" is a California-licensed engineer or a professional engineer licensed in another state in the United States.

Although this definition is already found in statute, the Division has included it in the Proposed Regulations for ease of reference, and to emphasize the distinction between an licensed engineer and a California-licensed engineer.

(d) "Major modification"

A "major modification" is any change in the structural attributes of a permanent amusement ride that materially alters either the performance of the ride or any safety-related system of the ride.

This definition is necessary to inform the permanent amusement ride owner/operator what types of changes are necessary to a permanent amusement ride would be considered major modifications necessitating a Division inspection.

(e) "New permanent amusement ride"

A "new permanent amusement ride" is a permanent amusement ride that is placed in operation and opened to the public for the first time on or after January 1, 2001.

This definition is necessary to clarify the application of relevant inspection requirements.

(f) "Operational inspection"

An "operational inspection" is an inspection that consists of inspecting the operation of a permanent amusement ride, examining its safety-related systems and procedures, and reviewing any other specific information that is substantially-related to the safe operation of the ride.

The Labor Code requires the Division to conduct an annual inspection of the operation of permanent

amusement rides. Section 344.6(e) is necessary to describe the scope of this annual inspection.

(g) "Owner" or "Operator"

An "owner" or "operator" is a person or entity who owns or controls or has the duty to control the operation of a permanent amusement ride. The terms include the State and every political subdivision of the State, including every state agency, and each county, city, district, and all public and quasi-public corporations and public agencies therein.

This definition is set forth in Labor Code section 7920, and has been incorporated into the Proposed Regulations for clarity and ease of reference.

(h) "Permanent amusement ride"

Except as otherwise provided, a "permanent amusement ride" is a mechanical device, aquatic device, or combination of devices of a permanent nature that carries or conveys passengers along, around, or over a fixed or restricted course for the purpose of giving its passengers amusement, pleasure, thrills, or excitement. "Permanent amusement ride" includes bungee-jumping services, but does not include dry slides, playground equipment, coin-operated devices or conveyances that operate directly on the ground.

This definition is set forth in Labor Code section 7920, and is incorporated into the Proposed Regulations for clarity and ease of reference.

(i) "Qualified safety inspector," or "QSI"

A "qualified safety inspector," or "QSI," is an individual certified by the Division pursuant to Section 344.9. A QSI may be a safety inspector employed by the owner or operator of a permanent amusement ride, an employee or agent of the insurance underwriter or insurance broker of a permanent amusement ride, an employee or agent of the manufacturer of a permanent amusement ride, an employee of the Division of Occupational Safety and Health, or an independent consultant or contractor.

This definition is found in Labor Code section 7921(c), and is incorporated in the Proposed Regulations for ease of reference.

(j) "Reportable injury"

A "reportable injury" is a serious injury requiring surgery or medical treatment other than ordinary first aid, including, but not limited to, loss of consciousness, concussion, bone fracture, protracted loss or impairment of function of any bodily member or organ, a wound requiring multiple sutures, or permanent disfigurement.

This definition is necessary to further define the term "reportable injury" so that owners and operators are aware what type of injuries trigger the reporting requirements set forth in the Proposed Regulations

(k) "Safety-Related Systems and Procedures"

"Safety-Related Systems and Procedures" are systems and procedures that materially affect safety or are designed or intended to increase the safety of a permanent amusement ride. The Proposed Regulations include specific examples of safety-related systems and procedures.

This definition is necessary to inform the owners/operators regarding the elements, systems, and components of safety-related systems and procedures that the Division will inspect as part of its inspection program, and that the QSI is required to inspect when the owner/operator applies for Certificate of Compliance.

(l) "Structural inspection"

A "structural inspection" is an inspection of a permanent amusement ride that includes examination of one or more of the ride's "structural attributes", such as its supports, foundations, bracing and ride-track elements.

This definition is necessary to identify the structural components that would be inspected by the Division or the QSI as part of the inspection procedures. The structural inspection is a detailed inspection conducted at least once each year. Such in-depth inspections are necessary to ensure the safety of each permanent amusement ride.

Section 344.7 Certificate of Compliance.

Labor Code section 7924 requires each owner of a permanent amusement ride to annually submit to the Division a certificate of compliance. By statute, the certificate of compliance must include specific identifying information, as well as a written declaration, executed by QSI, stating that he or she has inspected the permanent amusement ride within the preceding 12 months, and the ride materially conforms to applicable standards.

Proposed Section 344.7(a) implements this statutory requirement. It would require the owner/operator of a permanent amusement ride to submit to the Division a Certificate of Compliance, together with the required fee, if the owner/operator elects not to have a Division QSI perform the annual inspection required by section 344.8(c). A new Certificate of Compliance shall be submitted annually, and shall become due on a certain date each year thereafter, unless the owner/operator elects, in compliance with Section 344.8(c)(1) and (c)(2), to have a Division QSI conduct the annual inspection.

As indicated in the preceding paragraph, Section 344.7(a) is necessary to implement the Certificate of Compliance requirements specified in Labor Code section 7924. Section 344.7(a) is also necessary to assure a continuous and timely system of annual submittal of the Certificate of Compliance.

Proposed Section 344.7(b) would require owners and operators to include certain identifying information with the Certificate of Compliance for each permanent amusement ride. For example, the Certificate of Compliance must include the legal name and address of the owner (and of the operator, if different from those of the owner). In addition, the owner or operator must also furnish the name of each permanent amusement ride, the name of its manufacturer, and the address at which it is located. The Certificate of Compliance must also state the serial and model numbers of each ride, if these

numbers are available.

Most importantly, a Certificate of Compliance must include a written declaration stating that, within the preceding 12-month period, the permanent amusement ride was inspected by a QSI, and that the permanent amusement ride is in material conformance with applicable requirements. The written declaration shall be executed by a QSI under penalty of perjury.

Proposed Section 344.7(b) is necessary to provide accountability from the owner/operator, to confirm location and manufacturer of the permanent ride, and to provide certification of compliance consistent with the requirements of applicable regulations. Most of the substantive requirements of Section 344.7(b) arise in statute.

Proposed Section 344.7(c) permits the owner or operator of multiple permanent amusement rides at one address to submit a single Certificate of Compliance that provides the information required in Section 344.7(b) for all of the permanent amusement rides located at that address.

Section 344.7(c) is necessary to reduce the documentation required when more than one permanent amusement ride is in one location. It is also required by Labor Code section 7924(b).

Proposed Section 344.7(d) would require the Division to provide prompt written notification of its receipt of a Certificate of Compliance. The Division must also inform the owner/operator whether the Certificate of Compliance meets the requirements of this Article. If a Certificate of Compliance is determined to be deficient, the Division's written notification shall enumerate the deficiencies and the information required to correct such deficiencies.

Proposed Section 344.7(d) is necessary to provide a procedure for informing the owners/operators of the status of their Certificate of Compliance.

Proposed Section 344.7(e) would require permanent amusement ride owners/operators to make available all written notifications issued by the Division pursuant to Section (d), for public inspection during normal business hours at a readily-accessible location at the site where the permanent amusement ride is located.

Proposed Section 344.7(e) is necessary to provide the public with information on the status of the certificate of compliance of permanent amusement rides in operation.

Proposed Section 344.7(f) would prohibit persons from operating a permanent amusement ride unless the permanent amusement ride complies with all applicable regulations contained in this Article and Chapter 6.2.

Proposed Section 344.7(f) is necessary to ensure that permanent amusement rides in operation are those that comply with the requirements of this Article and regulations of Chapter 6.2.

Proposed Section 344.7(g) would prohibit an owner or operator who does not elect to have the Division conduct the annual inspection required by Section 344.8(c) from operating a permanent amusement ride with passengers unless a valid Certificate of Compliance has been submitted to the

Division.

Proposed Section 344.7(g) is necessary to ensure that only appropriately-certified amusement rides are operated in the state.

### 344.8 Inspections.

#### Initial Division Inspection of New Permanent Amusement Rides.

Proposed Section 344.8(a) would require the Division to conduct an operational inspection of each new permanent amusement ride. To ensure public safety, a Division QSI will conduct the inspection before the ride is placed in operation and opened to the public.

Proposed Section 344.8(a) is necessary to ensure that new permanent amusement rides are safe to operate before the rides are placed in service. The 30-day notification period is necessary to allow the Division time to schedule an inspection, so that the ride's opening is not delayed. The Division requires a copy of the as-built document to ensure that the document has been constructed according to specifications, or that any modifications have been engineer-approved.

Proposed Section 344.8(a)(1) would require the owner or operator of the ride to notify the Division, in writing, at least 30 days prior to opening the ride to the public. Such notification would indicate the location of the ride, the date the owner or operator intends to commence public operation, and the earliest date the ride will be ready for inspection by the Division. § 344.8(a)(2).

Proposed Section 344.8(a)(1) is necessary to permit the Division time to schedule the inspection. Proposed Section 344.8(a)(2) is necessary to enable the Division to plan the trip to the site, and plan for the inspection date

Proposed Section 344.8(a)(3) would require the Division to initiate the inspection before the date indicated by the operator for commencement of public operation of the ride, and to make a reasonable effort to complete the inspection prior to that date if the Division receives notification in compliance with 344.8(a)(1). If the Division is unable to complete the inspection within 30 days, through no act or omission of the owner or operator, the ride may be opened unless there is a substantial question as to its safety.

Proposed Section 344.8(a)(3) is necessary to inform the owners/operators of the Division's effort to accommodate the inspection prior to the ride public opening date. Also, Section 344.8(a)(3) helps to ensure that the business of the owners or operators will not be unnecessarily impacted if the Division is unable to perform a timely inspection.

Proposed Section 344.8(a)(4) would require the ride owner or operator to ensure that a representative is present to operate the ride and perform the tests requested by the Division QSI during the operational inspection.

Proposed Section 344.8(a)(4) is necessary to allow the Division QSI to inspect and observe the functional elements of the ride while conducting the operational inspection before the ride is declared

safe for public operation.

Proposed Section 344.8(a)(5) would require the owner or operator of the ride to make available to the Division, in conjunction with the inspection: (A) a written certification from a licensed engineer that the ride meets the design requirements set forth in Chapter 6.2; (B) an as-built document; and (C) a copy of the certificate of occupancy issued by the local building authority, if required.

Proposed Section 344.8(a)(5) is necessary to ensure that new permanent amusement rides are safe to operate as required by the Labor Code. Proposed Section 344.8 (b)(5) is also necessary to document that new permanent amusement rides are designed, manufactured, and installed according to the standards established by the permanent amusement ride industry and these regulations.

#### Division Major Modification Inspection

Proposed Section 344.8(b) would require an operational inspection after any major modification has been made to a permanent amusement ride. A Division QSI shall conduct the operational inspection before the ride is reopened to the public. Additionally:

- (1) The owner or operator of the ride shall provide the Division with at least 30 days advance written notice of the anticipated date of reopening the ride to the public following the major modification.
- (2) The advance written notice shall state the date the owner or operator intends to resume public operation, and the earliest date the ride will be ready for Division inspection.
- (3) If the Division receives notification in compliance with 344.8(b)(1), the Division shall initiate the inspection before the date indicated by the operator for reopening of the ride to the public, and shall make a reasonable effort to complete the inspection prior to that date. Again, if the Division is unable to complete the inspection within 30 days, through no act or omission of the owner or operator, the ride may be opened unless there is a substantial question as to its safety.
- (4) In conjunction with the Division's major modification inspection, the owner or operator of a permanent amusement ride shall make available to the Division the following:
  - (A) A written certification from a California-licensed engineer that the major modification of the ride meets the design requirements set forth in Chapter 6.2;
  - (B) An as-built document; and
  - (C) A copy of the certificate of occupancy issued by the local building authority, if the local building authority has such a requirement.

Proposed Section 344.8(b) is necessary to ensure that permanent amusement rides comply with the operational inspection requirements after undergoing a major modification before the ride is open to the public. It also establishes requirements with respect to procedures and documentation necessary for the inspection.

### Annual QSI Inspection.

Proposed Section 344.8(c) would require an annual QSI inspection of each permanent amusement ride at least once each year to be conducted by either a QSI selected by the owner/operator or by a Division QSI, at the election of the owner/operator.

Proposed Section 344.8(c) is necessary to ensure compliance with the inspection requirements and procedures implemented by AB 850.

Proposed Section 344.8(c)(1) would require an owner or operator who elects to have a Division QSI conduct the Annual QSI Inspection to submit a written request for the inspection.

Proposed Section 344.8(c)(1) is necessary to inform the Division of the owner's/operator's choice to have the Division conduct the Annual QSI Inspection.

Proposed Section 344.8(c)(2) would require that a written request, indicating that an annual QSI inspection be conducted by the Division, be submitted to the Division no later than 60 days prior to the date the Certificate of Compliance becomes due.

Proposed Section 344.8(c)(2) is necessary to allow the Division adequate time to plan and schedule its inspections.

Proposed Section 344.8(c)(3) would require that the annual QSI inspection include both a structural inspection and an operational inspection to ensure compliance with the Division's proposed Permanent Amusement Ride Technical Regulations.

Proposed Section 344.8(c)(3) is necessary to ensure the rides comply with the technical requirement of Chapter 6.2.

Proposed Section 344.8(c)(4) would require that a permanent amusement ride found to be unsafe as the result of an annual QSI Inspection be closed to the public and not be reopened to the public until all necessary repairs and modifications have been completed and certified as completed by QSI.

Proposed Section 344.8(c)(4) is necessary to ensure that only safe permanent amusement rides are permitted to operate as required by Labor Code section 7924(d).

### Annual Division Records Audit and Inspection.

Proposed Section 344.8(d) would require an annual audit, conducted by a Division QSI, on the records pertaining to each permanent amusement ride, including, but not limited to, records of accidents, records of employee training, and records of maintenance, repair, and inspection of the ride. A Division QSI shall conduct an operational inspection in conjunction with the annual records audit. The operational inspection shall consist of both an unannounced inspection during business hours to observe operation of the subject ride, as well as a pre-announced inspection.

Proposed Section 344.8(d)(1) is necessary to ensure owners/operators are maintaining required

records, and that the records are available for Division inspection, as required by Labor Code section 7924(f). Proposed Section 344.8(d)(2) is necessary to ensure that the owner or operator is operating the ride for the public in a safe manner. The underlying mandate and authority is found in Labor Code section 7924.

Proposed Section 344.8(d)(3) would exempt a permanent amusement ride from the annual records audit and inspection by the Division if the ride is located within a county or other political subdivision of the State that, as of April 1, 1998, has adopted the provisions of Chapter 66 (commencing with Section 6601.1) of the 1994 Uniform Building Code providing for the routine inspection of permanent amusement rides by counties and other political subdivisions of the State, provided that the Division determines that these inspections meet or exceed the inspection standards set forth in this Article.

Proposed Section 344.8(d)(3) is necessary to comply with Labor Code section 7932(a).

Proposed Section 344.8(d)(4) would require that if a county or other political subdivision suspends, revokes, or otherwise vacates its standards for permanent amusement rides, each permanent amusement ride located within that county or other political subdivision shall be subject to the inspection standards set forth in this Article.

Proposed Section 344.8(d)(4) is necessary to ensure the continuity of inspections and oversight of permanent amusement rides, as required in Labor Code section 7932(b), if the local entities mentioned above no longer assume such responsibility.

#### Discretionary Division Inspections.

Proposed Section 344.8(e) would permit an inspection, conducted by a Division QSI, of a permanent amusement ride to determine whether operation of the permanent amusement ride is safe. The Division shall determine the nature and scope of its inspection on a case-by-case basis, consistent with the information indicating the need for an inspection. The Division may initiate a discretionary inspection whenever it:

- (1) Receives notification, or otherwise learns, of an accident involving the permanent amusement ride required to be reported pursuant to Section 344.12;
- (2) Determines that a fraudulent certificate of compliance for the permanent amusement ride was submitted;
- (3) Determines, based on factors such as ride cycles or number of riders, that a permanent amusement ride has a disproportionately-high incidence of accidents when compared to other rides of similar type and design in the State of California; or
- (4) Receives a complaint or otherwise becomes aware of information, when the complaint or information reasonably appears to be reliable and credible, that one of the safety-related systems or structural components of a ride is unsafe, or that a particular practice associated with a ride is unsafe.

Proposed Section 344.8(e) is necessary to ensure that permanent amusement rides are inspected to

determine operational safety, at the Division's discretion, if the Division is aware of or receives certain negative information such as fraud, high incidence, or unsafe systems or components regarding the permanent amusement ride.

Conduct of Inspections.

Proposed Section 344.8(f) would require the Division to conduct the inspections with the least possible disruption to the normal operation of a permanent amusement ride consistent with an effective inspection.

Proposed Section 344.8(f) is necessary to minimize the disruption to normal operations, according to Labor Code section 7924(i), due to inspections conducted by the Division.

344.9. Order Prohibiting Operation.

Proposed Section 344.9 would permit the prohibition of the operation of a permanent amusement ride if, after inspection by a Division QSI, the Division determines that the ride, or any part thereof, presents an imminent hazard or is otherwise unsafe for patrons. The Division shall frame the scope of the prohibition with the narrowest scope reasonably necessary to ensure the protection of the public.

The Division shall not issue an Order Prohibiting Operation if the hazardous or unsafe condition can be corrected immediately and the operator, after being informed of the condition by the Division, immediately abates the hazardous or unsafe condition. Moreover, if an unsafe condition does not constitute an imminent hazard to patrons, the Division shall engage in an informal consultation with the owner or operator prior to issuing an order prohibiting operation. The purpose of the informal consultation shall be to gather information and resolve factual questions regarding the appropriateness of prohibiting operation.

If the Division decides to issue an order prohibiting operation, it shall notify the owner or operator in writing of the grounds for prohibition of operation and of the conditions in need of correction at the time it issues the Order Prohibiting Operation. Once the Division prohibits operation, the permanent amusement ride shall not be reopened to the public until the conditions cited in the Order Prohibiting Operation have been corrected and approved by an authorized Division representative.

Finally, the owner or operator may appeal any Order Prohibiting Operation. The Division shall conduct appeal proceedings in accordance with Labor Code section 6327.

Proposed Section 344.9 is necessary to ensure permanent amusement rides are not permitted to operate, as specified in Labor Code section 7924(d), if the Division determines an imminent hazard or an unsafe condition. It is also necessary to establish procedures for issuance of Order Prohibiting Operation by the Division and for the owner/operator action necessary to lift the Order Prohibiting Operation and appeal process.

Section 344.10. Certification of a QSI.

Proposed Section 344.10(a) would prohibit persons from performing the services of QSI for

permanent amusement rides unless the person possesses a current, valid QSI Certificate issued by the Division.

Proposed Section 344.10(a) is necessary to ensure that only qualified persons inspect permanent amusement rides, as mandated in Labor Code section 7921(c).

Proposed Section 344.10(b) would require applications for certification as QSI be made to the Division on a form prescribed by the Division, which shall require the applicant to provide his or her name, social security number, mailing address, daytime telephone number, two passport photographs, and information required to satisfy Section (c). All statements on the application shall be made under penalty of perjury. The application fee fixed by Section 344.16(a) shall accompany each application.

Proposed Section 344.10(b) is necessary to establish procedures for applying for certification as a qualified safety inspector, and to compile and authenticate personnel information on persons applying.

Proposed Section 344.10(c) would require that a candidate for certification as QSI shall either:

(1) Be a licensed engineer; or

(2) Do all of the following:

(A) Provide satisfactory evidence of completing a minimum of five years' experience in the amusement ride field, at least four years of which were involved in actual inspection of amusement rides for a manufacturer, government agency, amusement park, carnival or insurance underwriter. The remaining experience may involve any combination of amusement ride design, installation, maintenance or operation;

(B) Produce a valid certificate of completion from an approved QSI Certification course evidencing at least 80 hours of formal education in amusement ride safety. An applicant may substitute a certificate of completion from an acceptable NDT training course for up to 16 hours of amusement ride safety education. For purposes of this subsection, an acceptable NDT training course is one offered by an instructor certified by the American Society for Nondestructive Testing, Inc. (ASNT") Nondestructive Training Level III, and covering the test method body of knowledge as described in the ASNT Recommended Practice No. SNT-TC-1A.

(C) Achieve a score of at least 80% on the written examination pertaining to subjects addressed in the Proposed Regulations and Chapter 6.2 of this Title. The examination shall be given during the Division's normal working hours in Sacramento or Anaheim at a time convenient to the applicant.

Proposed subsection 344.10 is necessary to establish the minimum experience and educational requirement specified in Labor Code section 7921(c)(2). That section allows the Division to require between to and five years of experience in actual amusement ride inspection. The Division believes four years of such experience is the appropriate minimum experiential threshold to ensure competence. The Division also considers 16 of NDT training the minimum acceptable number to ensure competence. Proposed Section 344.10(c)(2)(C) is necessary to ensure QSI applicants have a certain level of familiarity and knowledgeable on the subject matters contained in this administrative

regulations and other technical regulations pertinent to permanent amusement rides.

Proposed Section 344.10(d) would provide that a QSI Certificate shall be valid for a period of two years from the date of issuance. Proposed Section 344.10(e) will also provide that an application for renewal of a QSI Certificate shall be made to the Division on a form prescribed by the Division, which shall require the certificate holder to provide his or her name, daytime telephone number, and any other information which the Division may reasonably request. All statements on the renewal application shall be made under penalty of perjury.

Each application shall be accompanied by the application fee fixed by Section 344.16(b), together with evidence of having completed 30 hours of continuing education from an approved school during the previous biennial renewal cycle. The 30 hours of continuing education is not required for QSI certified pursuant to Section 344.10(c)(1). Any continuing education satisfying the requirements to maintain a professional engineer's certificate of registration issued by the California Board for Professional Engineers and Land Surveyors or an equivalent licensing body in another state may be counted toward the foregoing continuing education requirement.

Proposed Sections 344.10(d) and (e) are necessary to periodically validate QSI's experience and qualifications, and to ensure a QSI remains current and knowledgeable on permanent rides, equipment, and procedures through continuing education.

Proposed Section 344.10(g) would authorize the revocation of a QSI certification if the Division determines that the holder: (1) has submitted a fraudulent inspection report to the Division or to the owner or operator of a permanent amusement ride; or (2) has not performed competently as QSI.

Proposed Section 344.10(g) is necessary to enable the Division to revoke a QSI's certification if the QSI operates fraudulently or incompetently.

#### Section 344.11. Approval of QSI Certification Courses.

Proposed Section 344.11(a) would specify QSI education course requirements. For example, to be approved, a QSI education course shall ensure that the instructor for each course is experienced in the subject matter of the course, and that the course content is current. All course participants must attend each course for its full duration, and must receive a certificate to verify completion. The course curriculum and number of hours of instruction for each course must meet the requirements set forth in Section 344.9 for QSI certification. Finally, the course must provide classroom training related to the design, maintenance, testing, inspection and operation of permanent amusement rides and applicable provisions of Title 8 of this Code.

Proposed Section 344.11(a) is necessary to establish standards of quality and reliability for QSI education course with respect to instructor's experience, course duration, curriculum, participant completion, and classroom training.

Proposed Section 344.11(b) would require a provider seeking approval of a QSI certification course to submit the following information to the Division prior to commencing instruction: (1) an agenda and summary of content for each course offered; (2) curriculum vitae for each of its instructors; and (3)

dates, times and locations for each course offered.

Proposed Section 344.11(b) is necessary for review of the courses provided by the provider with respect to course content, curriculum, and schedule, and location.

Proposed Section 344.11(c) would require the course provider to promptly notify the Division, in writing, each time the provider makes a substantive change to any of the information required pursuant to Section 344.11(a).

Proposed Section 344.11(c) is necessary to ensure that changes do not diminish the course content and quality.

#### Section 344.12. Suspension and Revocation Procedure.

Proposed Section 344.12 would provide permanent amusement ride owners and operators, as well as QSI course providers, with the right to a hearing in the event the Division revokes or suspends a certification or approval. Prior to the hearing, the Division would be required to provide at least 48 hours' notice, by either personal service or certified mail, of the hearing's time, date and location. At hearing, the Division would bear the burden of establishing good cause for any actions it takes.

Proposed Section 344.12 is necessary to provide permanent amusement ride owners and operators and QSI course providers with due process.

#### Section 344.13. Appeals to the Director.

As a further means of ensuring due process, proposed Section 344.13 would authorize permanent amusement ride owners and operators and QSI providers to appeal to the Director decisions of the Division reached at a hearing conducted in accordance with proposed Section 344.12. To request a hearing before the Director (or his or her designee), an appellant must submit a written appeal within five days of receipt of the Division's decision. The Director will issue a written decision.

#### Section 344.14. Insurance Requirements.

Proposed section 344.14 would permit a person or entity to operate a permanent amusement ride only if, at the time of operation, he, she, or it:

(a) Has obtained a valid insurance policy in an amount not less than one million dollars (\$1,000,000) per occurrence, and;

(1) Has submitted to the Division a copy of the policy;

(2) Has clearly identified in the policy the permanent amusement rides included and excluded; and

(3) Does not operate permanent amusement rides for which coverage is not provided; or

(b) Has obtained a bond in an amount not less than one million dollars (\$1,000,000), except that the

aggregate liability of the surety under that bond shall not exceed the face amount of the bond. A copy of the bond shall be submitted to the Division; or

(c) Meets a financial test of self-insurance to demonstrate financial responsibility covering liability for injury suffered by patrons riding the permanent amusement ride by providing a letter to the Division attesting that the owner has total assets of at least ten million dollars (\$10,000,000), and that the owner's total assets exceed the owner's total liabilities by either a minimum of two million dollars or a ratio of at least ten to one.

Proposed section 344.14 is necessary to implement the insurance, bonding, and prerequisites specified in Labor Code section 7926, and to ensure the owner/operator is aware of and comply with the financial responsibility. The Division sets forth the financial test of self-insurance, as authorized in Labor Code Section 7926(a)(3), at ratio of ten to one.

#### Section 344.15. Accident Response and Notification.

Proposed Section 344.15(a) would require each owner or operator of a permanent amusement ride to report or cause to be reported immediately to the Division's Anaheim or Sacramento Amusement Ride Section Office by telephone each known accident where maintenance, operation, or use of the permanent amusement ride results in the death of a patron, or results in a patron injury requiring medical service other than ordinary first aid. For the purposes of this section, an accident is "known" if the owner or operator witnesses or receives notice of a reportable injury, and the information received appears to be reliable and credible.

Proposed section 344.15(a) is necessary to ensure the Division is made aware of known accidents as specified in this Section as required by Labor Code Section 7925(a). It is also necessary to inform the owner or operator when the Division considers an accident is "known".

Proposed Section 344.15(b) would require the owner/operator of a permanent amusement ride to preserve, for the purpose of a possible investigation by the Division, the equipment or conditions that caused the accident if the death or injury reported pursuant to Section 344.15(a) resulted from the failure, malfunction, or operation of a permanent amusement ride.

Proposed section 344.15(b) is necessary to ensure the accident scene is preserved for possible accident investigation by the Division.

Proposed Section 344.15(c) would require state, county, local fire or police agency to notify immediately by telephone the Division's Anaheim or Sacramento Amusement Ride Section Office whenever the state, county, or local fire or police agency is called to an accident scene where a permanent amusement ride covered by this Article is involved and a serious injury or death occurred.

Proposed Section 344.15(c) is necessary to ensure the Division is aware of accidents involving permanent amusement rides to which these agencies may respond.

#### Section 344.16. Fee Schedule.

Proposed section 344.16 would set forth the fee schedule for the Permanent Amusement Ride program:

- (a) The application fee for aQSI Certificate) shall be five hundred dollars (\$500.00).
- (b) The fee for the biennial renewal of aQSI Certificate shall be one hundred and twenty five dollars (\$125.00).
- (c) The fee for review of Certificates of Compliance and provision of related notifications shall be two hundred and fifty dollars (\$250.00).
- (d) A fee of one hundred and twenty-five dollars (\$125.00) per hour, or fraction thereof, shall be charged for all work performed in connection with audits, inspections and investigations.

Proposed section 344.16 is necessary to establish fees that will be charged to owners/operators of permanent amusement rides forQSI applications, renewal of compliance certificates, review of compliance certificate, and the hourly charge for audits, inspections, and investigations, conducted pursuant to this Article. The fees are necessary to fund the Permanent Amusement Ride Safety Inspection Program.

Section 344.17. Confidentiality.

Proposed section 344.17 would require the Division to maintain the confidentiality of all documentation received pursuant to this Article to the extent that such documentation is protected by Labor Code section 6322.

Proposed section 344.17 is necessary to provide confidentiality of documents provided by the owners/operators of permanent amusement rides consistent with mandates set forth in the Labor Code.

FACTUAL BASIS

The Division has based the Proposed Regulations on: the requirements of the Act; the expert opinions of its own safety engineers; input from other personnel; recommendations received at advisory committee informational hearings; and on the documentation identified below as underlying data.

SPECIFIC TECHNOLOGY OR EQUIPMENT

The Proposed Regulations will not mandate the use of specific technologies or equipment.

IDENTIFIED ALTERNATIVES THAT WOULD LESSEN ADVERSE

IMPACT ON SMALL BUSINESSES

No adverse impact on small businesses is anticipated from the implementation of the Proposed Regulations. Therefore, no alternatives which would lessen the impact on small businesses have been identified.

## UNDERLYING DATA

The fees set forth in the Proposed Regulations are based on the Division's cost analysis, which is summarized below. The Division also considered the following underlying data in formulating the Proposed Regulations:

### Fees Necessary for Operation of the Amusement Ride Safety Program

(Data on employee wages and work hours, per SAM 8740, associated with the permanent amusement ride safety program.)

### Listing; Permanent Amusement Parks Sacramento District Office

(List of some of the permanent amusement rides identified by the Sacramento Permanent Amusement Ride Office.)

### Listing; Permanent Amusement Parks Anaheim District Office

(List of some of the permanent amusement rides identified by the Anaheim Permanent Amusement Ride Office.)

### Listing; Permanent Amusement Parks Los Angeles County

(List of some of the permanent amusement rides located in Los Angeles County)

### Worksheet; Calculations and Assumptions

(Data used to calculate the cost per ride and cost per business for complying with these regulations.)

The Division's cost analysis and other underlying documents are available for review during normal business hours at the Division of Occupational Safety and Health located at the Elevator, Ride and Tramway Unit, Headquarters Office, 2424 Arden Way, Suite 485, Sacramento, California.

## BUSINESS IMPACT

The Proposed Regulations will impact businesses that operate permanent amusement rides. The cost impact to businesses involved in permanent amusement rides will be the cost of application for certificate of compliance, application for certification of qualified safety inspector (QSI), the initial and recurring annual inspections performed by QSIs, the record-keeping on training, maintenance, repairs, inspections; and accidents reporting and investigations. The certifications and inspections, record-keeping, and accident reporting and investigations are required for compliance with Labor Code sections 7924 and 7925.

Some of the cost impact derives from fees charged by the Division for QSI certification and renewal, certificates of compliance, inspections, and accident investigations. The fees charged derive from the

wage scale of Division safety inspectors outlined in SAM Section 8740. The Division estimates these are the minimum fees that could be charged for each activity to generate sufficient revenues to implement and sustain the Permanent Amusement Ride Safety Inspection Program required by the Labor Code.

Calculations of the estimated cost for a typical permanent amusement ride business to comply with these regulations are set forth below. The number of businesses and number of permanent amusement rides are quantities estimated by the Division. The hourly fee for inspections is the charge necessary to generate sufficient revenues to maintain the inspection program.

A. Data:

- 1. Number of businesses impacted: 105
- 2. Number of permanent amusement rides: 1700
- 3. Average rides per business;  $1700/105 = 16$

B. Estimated costs, initial cost for a typical business

Estimated cost per ride;

\$ 375.00 inspections [(3 hours/ride X \$125/hour (Fee Schedule Section 344.15)]

\$ 2000.00 audits (16 hours/park X \$125/hour)

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\$ 2375.00 cost/ride

Total cost per average business;

$\$2375 \text{ cost/ride} \times 16 \text{ rides/average business} = \$ 38,000 \text{ cost/average business}$

This proposal will not result in a significant adverse economic impact on business, including the ability of California business to compete with business in other states.