

DEPARTMENT OF INDUSTRIAL RELATIONS

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SAN FRANCISCO 94142-0603**INITIAL STATEMENT OF REASONS****Proposed Amendments to Sections 344.6 (definitions), 344.16 (Fee Schedule) and 344.18 (Amusement Ride Fee Schedule) of Title 8 of the California Code of Regulations****PROBLEM ADDRESSED AND SUMMARY**

Pursuant to Labor Code sections 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 provisions of the California Occupational Safety and Health Act, commencing with Labor Code section 6300, as well as other provisions of law impacting upon the health and safety of employees and the public in the State of California.

As part of its mandate, the Division regulates the operation, repair and inspection of both permanent amusement rides (rides which are installed in a fixed location or "Permanent ARs") and portable amusement rides (rides which are assembled and disassembled at different sites as part of a traveling attraction or "Portable ARs").

Pursuant to the Amusement Rides Safety Law (Labor Code sections 7900 through 7915,) the Division is charged with establishing and administering a state system for the permitting and inspection of Portable ARs. The Division is authorized to collect fees for the inspection of Portable ARs as it deems necessary to cover the actual cost it incurs in having the inspection performed by a Division safety engineer.

Pursuant to the Permanent Amusement Ride Safety Inspection Program Law (Labor Code sections 7920 through 7932) the Division is charged with establishing and administering a state system for the inspection of Permanent ARs. The Division is authorized to adopt rules and regulations necessary for the administration of its Permanent AR program, and may fix and collect all fees necessary to cover its costs of administration.

Currently, both the Division's Permanent AR fee schedule (set forth in Title 8, Section 344.16) and its Portable AR fee schedule (set forth in Title 8, Section 344.18) are based on a calculated hourly rate of \$125.00 per hour. At the time the Division promulgated its existing amusement ride fee schedules, it calculated that it must charge \$125 per billed hour of its inspectors' time to adequately fund the amusement ride programs. The Division has not increased its amusement-ride inspection fee since 1996, and that hourly rate is no longer sufficient to fully fund the programs. In fact, as of this date, both programs are running in deficit.

Thus, the purpose of this rulemaking (hereinafter “the Proposed Rulemaking”) is to increase the Division’s income from the inspections, reinspections and investigations it performs. The Division proposes to increase its hourly inspection fee from \$125 to \$195 and to create a new annual fee to offset its travel and administration costs incurred in connection with its inspection programs.

SPECIFIC PURPOSE OF ADOPTION/FACTUAL BASIS

Section 344.6 – Definitions.

Section 344.6 defines terms relating to Permanent ARs that appear throughout Article 6. The Division proposes to add “Ride Footprint” as a new defined term to Section 344.6. The term is used in Section 344.16 in connection with the classification of Permanent ARs for purposes of assessing an annual fee. Section 344.6(j) would specify that a “ride footprint” is the surface area, expressed in square feet, that is covered by the ride, itself. The ride footprint would not include the surface area covered by the Permanent AR’s waiting area or queuing area. Without this definition, members of the regulated public might believe that a ride’s waiting and queuing areas are part of the footprint, and therefore might place their rides in an incorrect size classification.

Section 344.16 - Permanent Amusement Ride Fee Schedule.

Since 1996, when the Division last increased its amusement-ride inspection fee, the Division’s operating costs and inspectors’ salaries have risen sharply. Currently, to adequately fund its Permanent AR and Temporary AR programs, the Division has determined that it must charge an hourly rate of \$195.00 for inspections, reinspections and investigations of Permanent ARs. The Division bases this \$195 hourly rate on its cost detail analysis set forth in the “Hourly Billing Rate Combining Temporary and Perm Amusement Rides”, attached hereto and incorporated herein by this reference as “Attachment A”. The costs reflected in Attachment A represent the combined costs to the Division of operating both of its amusement ride programs.

The title of Section 344.16 would change from “Fee Schedule” to “Permanent Amusement Ride Fee Schedule” to reflect that the section relates only to Permanent ARs.

Subsection (d): Because the Division is proposing significant changes to the Permanent AR fee structure, the Proposed Rulemaking would simply delete existing subsection (d). In its place, the Division proposes to add language to Section 344.16(d)(1) to reflect the new \$195 hourly rate. The Division would also clarify that it would bill an inspector’s time in quarter-of-an-hour increments, rounded up to the nearest quarter hour. Under existing law, the Division rounds up its inspectors’ time to the nearest *hour*. The Division proposes to switch to billing in quarter-hour rather than hour increments to make the billing system more equitable. To further clarify the Division’s billing process, Section 344.16(d)(2) would state that the Division would bill only for “actual inspection time” or, in other words, that time during which an inspector is actually at the inspection site preparing the inspection report.

Finally, Subsection (d)(3) would state that the Division generally would not bill owners and operators for the time an inspector spends travelling to an inspection site. However, the Division currently incurs additional unnecessary costs when inspectors travel to inspection sites only to find that the ride operators are either not prepared for the scheduled inspections

or are not even on site. To encourage owners/operators to prepare for scheduled Division inspections, and to recoup the costs of wasted travel time, the Division proposes to add language to Subsection (d)(3) that would allow the Division to bill an owner or operator at the \$195 hourly rate for travel time to inspections that must be rescheduled due to the owner's/operator's own omissions.

Subsection (e). In addition to the time an inspector spends on site completing a hands-on inspection, he or she must spend time preparing for the inspection and traveling to the inspection site. Clerical and managerial staff also devote time to each inspection: filing, inputting information or, in the case of management, reviewing inspection reports. Since these functions (and their attendant costs) are integral to the inspection process, the Division proposes to recoup the costs by charging a flat annual fee for each Permanent AR. Generally speaking, the larger a ride is, the more time it takes the Division to process an inspection report. Therefore, to be as equitable as possible, the annual fee would be based on a sliding scale according to the size of the subject ride. Permanent ARs would fall under four classifications for purposes of the annual fee: small, medium, large and extra-large.

Subsection (f): Each classification would be based on several evaluation criteria, including the size of the ride footprint, the elevation to which it carries passengers, and its ridership capacity, among others – essentially, the criteria that the Division's experts believe are most indicative of the complexity of a ride and the amount of time necessary to complete an inspection. Because many rides are unique and no set of criteria could precisely describe certain unique rides that operate in the State of California, the proposed classification system would allow some flexibility. The classification system would default upwards; thus, for example, if a ride satisfies two criteria under both the “medium” and “large” classifications, it would be considered a “large” ride and would pay the higher annual fee. As another example, if a ride satisfies one of the “extra-large” criteria and two of the “medium” criteria, then the ride would be classified as “large” – only one step below the “extra-large” classification. In this way, the classification of a ride is more likely to reflect the amount of administrative time the Division spends in connection with inspection administration.

Subsection (g): Pursuant to Subsection (g), the Division would not assess inspection or annual fees to the owners/operators of a “small” ride if the owner/operator receives some portion of its recurring operating costs from a public entity and if the annual paid attendance for that owner/operator is fewer than 500,000 patrons. The purpose of this fee exception is to avoid burdening those owners/operators who can least afford to pay the inspection and annual fees.

Section 344.18.

The title of Section 344.18 would change from “Amusement Ride Fee Schedule” to “Portable Amusement Ride Fee Schedule” to reflect that the section relates only to Portable ARs.

Subsection (a): Because the Division is proposing significant changes to the Portable AR fee structure, the Proposed Rulemaking would simply delete existing Subsection (a). In its place, the Division proposes new language to reflect the \$195 hourly rate. The Division would also clarify that it would bill an inspector's time in quarter-of-an-hour increments, rounded up to the nearest quarter hour. To further clarify the Division's billing process, Section 344.18(a)(2) would state that the Division intends to bill only for “actual inspection time” or, in other words,

that time during which an inspector is actually at the inspection site preparing the inspection report.

Finally, under Subsection (a)(3), the Division generally would not bill owners and operators for the time an inspector spends travelling to an inspection site. However, the Division currently incurs additional unnecessary costs when inspectors travel to inspection sites only to find that the ride owners/operators are either not prepared for the scheduled inspections or not available on site. To encourage owners/operators to prepare for scheduled Division inspections, and to recoup the costs of wasted travel time, the Division proposes to add language to Subsection (a)(3) that would allow the Division to bill an owner or operator at the \$195 hourly rate for travel time to inspections that must be rescheduled due to the owner's/operator's own omissions.

Subsection (b): First, to maintain the several provisions of Section 344.18 in a logical order, the Division proposes to renumber existing Subsection (b) as Subsection (e). In place of existing Subsection (b), the Division would add language creating an Annual Fee.

As stated above, in addition to the time an inspector spends on site completing a hands-on ride inspection, he or she must spend time preparing for the inspection, drafting an inspection report and, as mentioned above, traveling to the inspection site. Clerical staff and managers also devote time to each inspection, whether by filing, inputting information or, in the case of management, reviewing reports. Since these functions (and their attendant costs) are integral to the inspection process, the Division proposes to recoup the costs by charging a flat annual fee for each Portable AR.

Generally speaking, the larger a ride is, the more time it takes the Division to process an inspection report. Therefore, to be as equitable as possible, the annual fee would be based on a sliding scale according to the size of the subject ride. Portable ARs would fall under four classifications for purposes of the annual fee: small, medium, large and extra-large.

Subsection (c): Each classification would be based on several evaluation criteria, including the size of the ride footprint, the elevation to which it carries passengers, and its ridership capacity, among others – essentially, the criteria that the Division's experts believe are most indicative of the complexity of a ride and the amount of time necessary to complete an inspection. Because many rides are unique and no set of criteria could precisely describe every ride in the State of California, the proposed classification system would allow some flexibility. The classification system would default upwards; thus, for example, if a ride satisfies two criteria under both the "medium" and "large" classifications, it would be considered a "large" ride and would pay the higher annual fee. As another example, if a ride satisfies one of the "extra-large" criteria and two of the "medium" criteria, then the ride would be classified as "large" – only one step below the "extra-large" classification.

OTHER REQUIRED SHOWINGS - GOVERNMENT CODE 11346.2(b)(2)-(4)

Studies, Reports, or Documents Relied Upon

The Division relied on the cost analysis for its Permanent AR Program and its Portable AR Program in formulating the Proposed Rulemaking.

Reasonable Alternatives Considered

The Division has determined that no alternative considered would be more effective in carrying out the purpose that underlies the proposed action, or would be as effective as and less burdensome to affected small businesses than the proposed action. Moreover, the Division did not consider a performance standard as a reasonable alternative for a fee regulation.

Reasonable Alternatives That Would Lessen the Impact on Small Businesses

None.

Evidence Relied Upon to Support the Initial Determination That the Proposed Regulations Will Not Have a Significant Adverse Economic Impact on Business

The Proposed Rulemaking will not result in significant adverse economic impacts to private persons or businesses. The Division bases this conclusion on the following:

The Division has not raised its hourly inspection rate since 1996 – a period of over 13 years. During that same time period, most of the amusement ride owners/operators have raised their admission prices significantly. For example, the price to enter one of California’s largest amusement parks has more than doubled since 1996 – presumably to meet the ever-increasing costs of doing business. The Division anticipates that owners/operators will be able to either absorb the proposed fee increase or else mitigate or cancel any economic impact that the proposed fee increase may have on their businesses through modest admission-price adjustments.