

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

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

**TITLE 8: Chapter 4, Subchapter 6.2, Articles 1 through 4, Sections 3195.1 through 3195.14  
of the Permanent Amusement Ride Safety Orders**

**Inspection of Permanent Amusement Rides, Including Aquatic Devices**

There are no modifications to the information contained in the Initial Statement of Reasons except for the following sufficiently related modifications that are the result of public comments and/or Board staff evaluation.

In response to written comments 61 and 82, Section 3195.1(b) reference to the 6<sup>th</sup> Edition 2000 is deleted and the individual standards included in that publication are modified to incorporate the most recent version of the listed ASTM Standards. References made to these publications are similarly updated throughout the proposal. This modification is necessary to update the references to the most current version.

In response to written comment 56, the proposed Section 3195.2(a) reference to the definition of "owner or operator" is relocated so that it is before the reference to the definition of "permanent amusement ride." This nonsubstantive modification is necessary to be in alpha order and be in the same order as the definitions in Section 344.6.

In response to written comments 3 and 41, Section 3195.2(b)(2)(B) is deleted so that modified subsection (b)(2) reads "Reasonably and substantially appears to have an impact on the safety of patrons." This modification is necessary to make it clear that owners or operators of permanent amusement rides need to maintain records of incidents that could have an impact on patron safety regardless of other rides being possibly affected.

The date specified in Section 3195.2(f)(1) is changed to the effective date of the standard and the date of November 1, 2001 is replaced with [to be filled in by OAL] so OAL will add the effective date when the final regulation is approved. This modification is necessary to recognize all rides placed in operation before these regulations become effective as an existing ride.

In response to written comment 58, the proposed definition of "facility" at Section 3195.2(g) is modified by deleting the phrase "at a single location" and adding the concept of a single or grouping of contiguous properties. This modification is necessary to clarify the term "contiguous property" that is used in the definition.

In response to written comment 59, the definition of "patron" at Section 3195.2(i) is modified to provide clarifying examples of what is considered an agent of the owner/operator. This

modification is necessary to make it clear that consultants, contractors and other individuals hired by the owner/operator are agents and not considered a patron.

In response to written comment 60, proposed Section 3195.3(a), Required Documentation, substitute the phrase “in public operation” for the word “operated” to be consistent with the definition of “public operation” at proposed Section 3195.2(j). The modification is necessary to clarify that a permanent amusement ride may be “operated” or run without patrons at various times, including, but not limited to, during initial construction, major modifications and testing.

In response to written comment 63, element 1 of the Exception to proposed Section 3195.3(a)(3)(B), the phrase “or device” is deleted from the sentence. The modification is necessary since the term “device” is sometimes used in ASTM, but it is not used anywhere else in this proposal and therefore is unnecessary and may be confusing.

In response to written comments 28 and 65, element 11 of the Exception to Section 3195.3(a)(3)(B) is modified so it is not misconstrued as to require the evacuation of patrons from a ride and full re-start testing for very minor, temporary hold ups of the ride that are not due to a potential mechanical failure. Patrons are also not required to stay on board until the ride is inspected. The modification is necessary to clarify that unscheduled stops of a ride that are potentially due to a mechanical failure would require that public operation of the ride be discontinued until it is inspected and determined safe to operate.

In response to written comment 66, the Exception to Section 3195.3(a)(4)(A) is nonsubstantively modified to use the plural form of “Section” in the last sentence of the paragraph.

In response to written comments 2, 43, 68 and 96, Section 3195.3(a)(4)(D) is modified to more clearly address the issue of patron safety. This language is necessary to require the owner or operator to define patron-specific safety measures for each potential safety issue they identify as one which should be addressed. In some cases, e.g., patrons who are pregnant, patrons with a pacemaker, or patrons with heart disease or back problems, the issue is one involving a medical or physical condition which is not known to and not easily ascertainable by the owner or operator. In these cases, the proposed language is necessary to permit the safety measure to be an appropriate warning.

In response to written comment 71, Section 3195.7(b) is modified by adding the word “restrictions” to be consistent with the terminology “patron restrictions” used in proposed Section 3195.3(a)(4)(D) and makes this section read more consistently with other sections of the proposal. To avoid any potential confusion as to which permanent amusement rides require the posting of signs, the word “applicable” is added. These two modifications are necessary to clarify the requirements and make the terms consistent with other sections. The nonsubstantive addition of the comma in the last sentence is intended merely to make the text grammatically correct.

In response to oral comments 10 and 15, Sections 3195.7 and 3195.10 are modified to address the issue of having an adequate number of persons trained and equipped to provide first aid and

CPR. The modification is necessary to ensure that reported cases requiring immediate first aid or CPR are responded to promptly.

In response to written comment 102, Section 3195.9(d)(1)(A) is modified by deleting the words “forward unit’s” and after the word “failure” inserting the words “of the ride or ride unit.” This modification is necessary to include situations where the entire ride or any unit of the ride including the forward unit may fail to clear a stopping point.

In response to written comment 103, Section 3195.9(d)(1)(B) is modified to delete unnecessary term “conveyance vehicle.” This modification is necessary to make the use of the term “ride” consistent throughout the proposal and not confuse the term with additional descriptors that would already be covered by the term “ride.”

In response to written comment 104, Section 3195.9(d)(2) insert the words “with patrons on board” after the word “operated.” This makes the provision more clear that the prohibition applies only when patrons are on board. This modification is necessary to allow test operation of rides where signals are under repair or not yet fully functional.

In response to written comment 75, Section 3195.9(h)(1) is modified to clarify that only those authorized persons controlling the operation of the ride while it is moving need to be by the controls. This modification is necessary to clarify that other authorized persons performing other functions such as assisting patrons in and out of rides do not need to be by the controls. The modification is also necessary to clarify that authorized persons do not need to be by the controls when the ride is not moving.

In response to written comment 76, Section 3195.9(h)(4) is modified to ensure that after an unscheduled stop (using either the stop switch required by proposed subsection (h)(2) or the disconnect switch required by subsection (h)(3)); the permanent amusement ride cannot be automatically restarted without an intentional action by an authorized person. This modification is necessary to clarify that this subsection’s requirements pertain to devices required by subsections (h)(2) and (3).

In response to written comment 8, the type of amusement ride incident records required by Section 3195.12(b) are modified to include a description of repairs and modifications performed in response to an incident. This modification is necessary to record all possible actions taken in response to an incident not just inspections and maintenance.

In response to written comments 77 and 78, in Section 3195.12(b) and (c) the term “operator” is replaced with “authorized person(s) present” at the ride at the time of the incident. The additional words “to the incident” are also added to clarify that only those otherwise unscheduled inspections and maintenance activities undertaken in direct response to the amusement ride incident need to be maintained in the incident records. In section 3195.12(c) the phrase “a representative number of” is added to witnesses to allow information to be collected from some of the witnesses instead of all of them. These modifications are necessary to clarify and focus the requirements of these subsections onto records that appropriately reflect the incident situation.

## **SUMMARY AND RESPONSE TO ORAL AND WRITTEN COMMENTS**

### I. Written Comments

Kathy Fackler, Saferparks, by letter date June 1, 2002.

#### Comment 1:

The amusement ride owners are required to provide documentation that verify their rides were built, maintained, and operated to certain ASTM standards. The proposal contains generous use of exceptions to the ASTM standards to accommodate the rides that vary in age, complexity, nationality, and various other industry standards. If the exceptions are used thoughtfully and responsibly by ride owners and state inspectors, the proposal would be a usable regulatory guideline for amusement rides. Saferparks is concerned of the potential for ride owners to overuse the exceptions to avoid providing the safety-related documentation on amusement rides.

#### Response:

This comment seeks no change in the language of the proposal. The Board agrees with the commenter that the Division of Occupational Safety and Health (Division) enforcement of the proposed regulation will be an important element of assuring public safety on permanent amusement rides.

#### Comment 2:

Saferparks criticized the previous proposal for not adequately providing for child safety, and for the dissemination of failure data and hazard warnings between ride owners, manufacturers, inspectors, and patrons. Language has been provided that partially address those concerns, particularly the concern about dissemination of failure data and hazard warnings. However, Saferparks suggests the following be added: "Permanent amusement rides operated for the public use must comply with age- and size-appropriate safety protection."

#### Response:

The Board agrees to modify Section 3195.3(a)(4)(D) to more clearly address the issue of patron safety issues that relate to age and size of the patron.

#### Comment 3:

The definition of "amusement ride incident" defines safety-related events that ride owners must keep records of. This information is in addition to the public records on serious injuries defined in the Division Administrative Regulations. Saferparks is concerned with proposed Section 3195.2(b)(2)(B). Events, failure, or malfunction that impact the safety of the patrons should be

logged and made available to the state inspectors - without consideration as to whether other rides of the same design exist. As written, failures that appear to impact patron safety would not have to be logged if no other ride of the same design exists. Saferparks suggests that Section 3195.2(b)(2)(B) be revised to read, "Reasonably and substantially appears to have an impact on the safety of patrons."

Response:

The Board agrees with the comment that owners or operators of permanent amusement rides should maintain records of incidents that could have an impact on patron safety. Therefore, the Board is modifying the proposal to delete the language of Section 3195.2(b)(2)(B) as originally proposed.

Comment 4:

The definition of "authorized person" in Section 3195.2(d) does not address the issue of competence. The proposed regulation should set minimum age limits, sobriety requirements, and other screening criteria for those who operate and maintain rides. The following language is proposed "Qualified Person means an individual assigned by the owner who has the degree of competence necessary to perform the work on an amusement ride so that the riders will be safe."

Response:

The originally proposed definition adequately covers the qualifications and competency requirements of persons assigned to work in and around amusement rides. The performance-oriented criteria is sufficient and the Board declines to add specification type language for criteria such as age and sobriety. The commenter's proposed definition of "qualified person" does not address the issues of training and reading comprehension in the current proposed definition, which could be less protective. Also see response to oral comment #12. Therefore, no further modification to the proposal is necessary in response to this comment.

Comment 5:

Information on ride failure that may occur on other rides of similar design and that impact patron safety should be disseminated quickly through alternate organizations or agencies if the ride manufacturer is out of business.

Response:

The comment would best be addressed administratively rather than through this proposed regulation by establishing some administrative mechanism to disseminate information. This request goes beyond the scope of the current rulemaking and the Division will explore administrative means of obtaining and retaining such information and report back to the Board if future rulemaking is necessary to carry out this project. Therefore, the Board does not believe

any changes to the current proposal would accomplish the request and no further modification to the proposal is necessary in response to this comment.

Comment 6:

Section 3195.9(f) should explicitly address child safety. The ASTM standards do not address the developmental difference between children and adults. The recommendation is made that the following language be added: "(3) All rides shall employ age- and size-appropriate safety equipment adequate to protect the full range of patrons allowed to ride."

Response:

The performance oriented language of subsection (f) accomplishes the same goal by requiring "devices that retain, restrain, or support the patron during all phases of ride movement." Therefore, no further modification to the proposal is necessary in response to this comment.

Comment 7:

Written emergency procedures and staffing levels should be required for all amusement rides, not just aquatic devices as specified in Section 3195.11. The requirements of Section 3195.11(a)(1) and (a)(2) should be moved to Section 3195.3, and the requirements in Section 3195.11(b) should be moved to Section 3195.9(h).

Response:

The requirements specified in Section 3195.11 are specific to aquatic devices and in addition to the performance oriented language of Section 3195.3. The additional emergency procedures such as shutting off water supplies and staffing level requirements for aquatic devices based on the number and dimension of flumes is not appropriate or applicable to most non-aquatic rides and it would be confusing to add those obligations to Sections 3195.3 and 3195.9. Therefore, no further modification to the proposal is necessary in response to this comment.

Comment 8:

The amusement ride incident records indicated in Section 3195.12(b) should include a description of repairs and/or modifications performed in response to an incident. Suggest modification to Section 3195.12(b) to read: Records of amusement ride incidents shall consist of any reasonable format chosen by the owner or operator which includes the name of the operator and describes the incident as well as any inspection, maintenance, repairs, and/or modifications performed in response.

Response:

The Board agrees to revise the proposal accordingly to include repairs and modifications as possible outcomes done in response to an incident that should be recorded.

Comment 9:

The cost estimate of the proposal does not factor the cost of ride-related accidents and injuries on private persons. Therefore, the cost-benefit analysis for this accident prevention program is incomplete. The economic impact of the proposed regulations must consider all the costs, not just those costs borne by the theme parks.

Response:

The Board agrees that all costs and savings need to be addressed. The cost benefit statement did attempt to identify all such major costs and savings including those incurred by patrons and other members of the regulated public. As part of the public notice for this proposal, the Board solicited any further cost and benefit data. The commenter and other commenters did not provide any specific suggestions on how to reduce the cost impact of the proposal. Rather, the comment focuses on factors that should be, and were, included in the cost analysis. Therefore, no further modification to the proposal is necessary in response to this comment.

The Board thanks Ms. Fackler for her comments and participation in the Board's rulemaking process.

Allen F. Weitzel, Manager of Safety and Training, Santa Cruz Seaside Company, by letter dated June 18, 2002.

Comment 10:

As ASTM standards incorporated by reference at proposed Section 3195.1(b) are updated or revised, will manufacturers and owners continue to be held responsible for the 2000 version of ASTM or held accountable to revised standards as they occur?

Response:

The California Code of Regulations requires that when a document is incorporated by reference it is specified by date. Therefore, when the ASTM document is updated a proposed change to the regulation would be necessary and the regulated public would have another opportunity to comment before a new version would be incorporated and made a requirement. Therefore, no further modification to the proposal is necessary in response to this comment.

Comment 11:

Proposed Section 3195.3(a)(1) requires owners and operators to have and maintain documentation indicating that the design and manufacture of the ride is in compliance with ASTM F 1159-97a. As this standard is revised will manufacturers and owners continue to be held responsible for the 1997 version or held accountable to revised standards as they occur.

Response:

See the response to comment 10.

Comment 12:

We are in favor of Exception No. 1 and No. 2 to proposed Section 3195.3(a)(1) which would allow, as an alternative to documentation of compliance with referenced ASTM provisions, documentation of compliance with other accepted standards providing a level of detail that is comparable to that specified by the referenced ASTM provisions.

Response:

The Board thanks the commenter for his support of the proposed performance oriented language.

Comment 13:

We are in favor of the Exception No. 2 at proposed Section 3195.3(a)(1) applicable to owners/operators of existing permanent amusement rides who cannot obtain all or part of the required documentation because it is reasonably believed not to exist or is not reasonably available. This exception permits the alternative of having and maintaining that documentation from the manufacturer which is reasonably available and if information is missing on performance characteristics or forces on passengers, using alternative documentation as a supplement to the extent such information is necessary for a reasonably adequate evaluation of the safety of the ride.

Response:

The Board thanks the commenter for his support of the proposed performance oriented language.

Comment 14:

We agree with the concept of Exception No. 1 to proposed Section 3195.3(a)(2) with regard to alternatives to providing complete documentation to satisfy the requirement if complete documentation is reasonably believed not to exist or is reasonably believed to be unavailable. While we can surmise what the exact exception is, the detail of the exception should be clearly delineated in the regulation.

Response:

With older rides that do not have all or part of the design and installation documentation, the amount and type of documentation that can reasonably be obtained will vary on a case-by-case basis. Thus, for all possible situations no further clarification or specification can be made beyond this performance oriented obligation to make a reasonable attempt at obtaining what documentation is still known to exist. Therefore, no further modification to the proposal is necessary in response to this comment.

Comment 15:

Proposed Section 3195.3(a)(3) requires owners/operators to specify the length of initial and refresher training. Specifying the length of training is burdensome and unreasonable. One cannot predict the speed of a training session and how quickly (or not) the trainee absorbs the information. The content and frequency can be specified but not length. Please clarify if there was other intent.

Response:

The proposal does not specify the length of training; it merely requires the employer to document in their training manual the amount of time they have allotted to provide their initial and refresher courses. As the commenter states, that amount of time can vary depending on the content, how the employer conducts the training and the ability of the trainee to absorb the material. The documentation of course length can change to reflect those variables on a case-by-case basis. The Board does not believe it is unreasonable or burdensome for the employer to document the amount of time used in conducting training. Therefore, no further modification to the proposal is necessary in response to this comment.

Comment 16:

We are in favor of the exception to the requirements of proposed Section 3195.3(a)(3) for existing permanent amusement rides only, if the required documentation is reasonably believed not to exist or is not reasonably available.

Response:

The Board thanks the commenter for his support of the proposed performance oriented language.

Comment 17:

We are in favor of the exception to the requirements of proposed Section 3195.3(a)(4)(E) for existing permanent amusement rides only, if the required documentation is reasonably believed not to exist or is not reasonably available.

Response:

The Board thanks the commenter for his support of the proposed performance oriented language.

Comment 18:

We are in favor of the Exception to 3195.3(a)(5) with regard to the manufacturer's quality assurance program.

Response:

The Board thanks the commenter for his support of the proposed performance oriented language.

Comment 19:

We are in favor of the Exception to 3195.3(a)(6) with regard to the manufacturer-originated information applicable to each ride.

Response:

The Board thanks the commenter for his support of the proposed performance oriented language.

Comment 20:

The commenter agrees that an incident should be reported to the Division but the ride should not be automatically shut down awaiting the Division approving to reopen the ride. It would be acceptable to the commenter to have the ride checked by maintenance and test run before reopening and discuss further steps to take when the Division responds. If the ride malfunctions or there is operator error the commenter agrees that the ride should be shut down until the Division responds. AB 850 should have had a rider responsibility requirement. A rider could fail to report an injury to an operator and report it hours or days later. The Division should not require a ride to be shut down automatically in these situations if there is no operator error or ride malfunction.

Response:

The Board thanks the commenter for his support of reporting incidents to the Division. Regarding the comment about shutting down a ride automatically, the commenter does not specify what part of the regulation he is commenting about and the Board believes he is referring to the existing administrative regulation 344.15 that requires a death or serious injury to be reported immediately and the scene to be preserved for the Division inspector. Such serious injuries would not likely go unnoticed by an operator or go days before being reported. Furthermore, that requirement and the concern about AB 850 not having rider responsibility requirements are beyond the scope of this proposal. Therefore, no further modifications are necessary in response to this comment.

Comment 21:

We are concerned about the requirement of proposed Section 3195.3(b) that owners/operators of permanent amusement rides make available to the Division (upon request) all documentation and records required by Section 3195.3(a). We are concerned about the personal medical information we would be required to report to the State regarding injured patrons and the possible conflict it creates with regard to the Privacy Laws of the State of California. Reference is made to Health and Safety Code Sections 123100 and 103885 and to Civil Code Sections 56 and 56.16. If the Division will require owners/operators to release medical records, there should be a requirement for the Division to obtain a written consent from the involved patron, acknowledging that the patron will allow the Division to ask for and receive their medical paperwork from the owner/operator. The issue of medical information for minors should also be addressed.

Response:

The Division often obtains access to medical records in the course of its accident investigations and retains those documents in accordance with state privacy laws. Where necessary, the Division obtains a medical release to obtain and/or use the medical records in further legal proceedings. The proposal is consistent with state privacy laws, other Title 8 regulations that allow the Division access to medical records and the Division's policy to obtain a medical release where appropriate. Therefore, no further modification to the proposal is necessary in response to this comment.

Comment 22:

It is unclear if the Exception to proposed Section 3195.4 allows for use of DIN or TUV standards. If this is the Division's intent, we agree with such a procedure.

Response:

The proposal clearly states that DIN and TUV Standards may be used where the operator can demonstrate that, for that specific ride, compliance with those standards ensures a similar level of safety to the ASTM requirements. Therefore, no further modification to the proposal is necessary in response to this comment.

Comment 23:

In proposed Section 3195.8, Physical Information and Adherence to General Safety-Related Operating Parameters, subsection (a) is unclear, particularly the second sentence, and should be rewritten to provide greater clarity.

Response:

The Board believes the requirement of subsection (a) and its exception are clear and refers the commenter to the Initial Statement of Reasons with regard to this subsection. Without further specification as to what is unclear or needs restating the Board declines to make any modification in response to the comment.

Comment 24:

In proposed Section 3195.9, Motion Restriction and Other Specific Hazard Control Measures, subsection (a) is unclear. Additionally, if this section intends to require owners/operators to install additional back up brake systems, such a requirement would negate the procedure of operating the ride to manufacturer requirements.

Response:

The Board believes the requirement of subsection (a) is clear and refers the commenter to the Initial Statement of Reasons with regard to this subsection. Providing brakes or other methods of stopping the vehicle in the event of an emergency is necessary when it has been determined that the normal stopping devices are not adequate to prevent collisions. In such situations, the owner/operator can work with the manufacturer, whenever possible, to ensure that emergency brakes and other methods supplement the manufacturer's original procedure to prevent injury or damage. In those rare situations where all else fails, owner/operators who have equivalent safety measures to the proposed regulation may also apply to the Standards Board for a variance. Therefore, no further modification to the proposal is necessary in response to this comment.

Comment 25:

With regard to Section 3195.9, Motion Restriction and Other Specific Hazard Control Measures, it is unclear if this section requires that signal systems be engineered into the ride controls or whether verbal or hand signals between ride operators are acceptable. Please clarify, consistent with the reality that anything added to a ride after manufacturing must be approved by the manufacturer.

Response:

The Board believes the requirement of subsection (d) and its exception are clear and refers the commenter to the Initial Statement of Reasons with regard to this subsection. The signal system does not have to be engineered into the device. Any type of signal system may be used if it meets the requirements of subsection (d). Therefore, no further modification to the proposal is necessary in response to this comment.

Comment 26:

We are in favor of the provisions in proposed Section 3195.12, Recordkeeping, as they are consistent with current five-year retention practices and allow our own forms to be used. We also suggest that the state accept computerized records.

Response:

In response to his first statement, the Board thanks the commenter for his support of the proposed performance oriented language. With regard to paper or electronic retention or records either method is acceptable as long as the record is available to the Division during an inspection, maintained for at least five years and contains the information specified. Therefore, no further modification to the proposal is necessary in response to this comment.

Comment 27:

It is not clear in proposed Section 3195.12 how the owners/operators will be protected on paperwork that the owner/operator is required to submit to the Division, when the releasing of said paperwork might cause the owner/operator to violate another law or regulation.

Response:

With regard to medical records, see the response to comment 21. The Board is not aware of other laws or regulations that would be in conflict with the requirement for the Division to have access to such records. Therefore, no further modification to the proposal is necessary in response to this comment.

Comment 28:

Element 11 of Section 3195.3(a)(3)(B) is unclear. Does the requirement mean that in the event of a power outage, patrons should stay on board a ride until an inspection is made?

Response:

The sentence is clarified to state that the ride cannot operate again with patrons on board until an inspection is made and the ride is functioning properly. It does not mean that patrons need to stay on board until an inspection is made. In response to comment 65 some further clarifying modifications were made to another part of that element.

Comment 29:

Neither the technical nor the administrative regulations for permanent amusement rides specify protocols and restrictions that are placed on the Division with regard to indiscriminate contacting of park employees following a reported incident.

Response:

The Labor Code and Title 8 administrative regulations give the Division the right to contact and interview employees to adequately carry out its mandate of investigating incidents. Concern about the conduct of inspectors is an administrative matter that is beyond the scope of this proposal and should be directed to the Division. Therefore, no further modification to the proposal is necessary in response to this comment.

Comment 30:

In the technical or administrative regulations for permanent amusement rides the Division should be required to automatically (and without charge) provide a final written report of every accident investigation to the involved park owner/operator. A timetable for completion of the final report should be established, so accident reporting does not drag on forever and the park will know that closure has been reached by the Division. Any addendum accident investigation reports should also be automatically sent to the involved park.

Response:

The comment more appropriately pertains to the administrative regulations already proposed and adopted by the Division. The comment is beyond the scope of the proposal currently before the Board and the commenter should contact the Division to determine if the issue was raised during its public comments on the administrative regulations and would consider further proposed changes on the matter. Therefore, no further modification to the proposal is necessary in response to this comment.

Comment 31:

In the technical or administrative regulations for permanent amusement rides a clear difference should be identified as to what the State considers to be an “incident” versus “a case.” We have heard both terms used during State generated accident investigations.

Response:

The proposal before the Board clearly and consistently uses the term incident, which is defined in Section 3195.2. No inconsistency exists between the proposal and administrative regulations currently in Title 8 with regard to this term. Therefore, no further modification to the proposal is necessary in response to this comment.

Comment 32:

In the technical or administrative regulations for permanent amusement rides it is not clear how soon an incident must be reported to the Division. We have been told to report incidents quickly, but sometimes when we do that we are criticized for not having all the information available. Please clarify if priority should be given to fast reporting or to waiting until all the facts are in which could result in delayed reporting.

Response:

Reporting incidents is specified in the administrative regulations and not addressed in this proposal. The Commenter should address his questions on the existing administrative regulation to the Division. The comment is therefore beyond the scope of this proposal and no modification is necessary in response to this comment.

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

Comments 33, 34 and 35 omitted, go to comment 36.

Boyd F. Jensen, II, Garrett & Jensen, Attorneys at Law, representing Six Flags Theme Parks, Inc., by letter dated June 20, 2002.

Comment 36:

ASTM standards are amended yearly. How will requirements of new and amended standards be incorporated into the proposed regulation in future years?

Response:

See the response to comment 10.

Comment 37:

Proposed Section 3195.1(b)(2) incorporates by reference Sections 1 through 4 of ASTM F 770-93 (Reapproved 2000). This excludes Section 5 of this ASTM standard entitled "Patron Responsibility" which is a drastic omission. An adequate safety system for the citizens of the State of California is not provided where regulation of either the manufacturers, operators, or patrons is excluded.

Response:

The Division does not have authority to enforce regulations or requirements upon patrons. The Commenter may refer to that section for guidance but the Board declines to incorporate it into the proposed regulation since it goes beyond the scope of what the Division can enforce. Therefore, no further modification to the proposal is necessary in response to this comment.

Comment 38:

The provision of Labor Code Section 7923 that safety orders for permanent amusement rides shall, to the extent possible, be consistent with those adopted for traveling amusement rides is not addressed in the proposed standard. The proposed standard makes no reference to this injunction of Labor Code Section 7923 nor is any reference made to any of the amusement ride

regulations for the mobile industry set forth under Subchapter 7, Sections 3900-3920. There are obvious attempts to use similar language and concepts, but that “application” should be set forth at this point.

Response:

The Division used the guidance of section 7923 in developing the proposed language with the assistance of an advisory committee of which the Commenter actively participated. The proposal does cite section 7923 as one of the sections giving the Board the authority for adopting this proposal. No further mention or reference to this section is needed. Therefore, no further modification to the proposal is necessary in response to this comment.

Comment 39:

No reference is made as to whether other orders apply such as the General Industry Safety Orders, Elevator Safety Orders, Tramway Safety Orders, or the Pressure Vessel Safety Orders. Many amusement rides have overlapping components where the other safety orders may apply. Many amusement parks within the state use mobile rides, albeit they are fixed and do not travel as part of a show or carnival. These overlaps need further comment, particularly in light of Labor Code Section 7923(b).

Response:

The proposed regulations do not conflict with other Title 8 regulations. These regulations apply to permanent amusement rides. As with any employer that has hazards that are covered by the other safety orders those requirements would apply accordingly. The mobile rides that are fixed and do not travel sound like they would fall under the scope of the permanent amusement ride requirements since the commenter’s description characterizes them as a permanent device. However, such determinations would need to be made on a case-by-case basis and such application cannot be provided for globally in a regulation. Therefore, no further modification to the proposal is necessary in response to this comment.

Comment 40:

The term "incident" in Section 3195.2(b) is unclear and exceeds the authority prescribed in Labor Code Section 7925. The portable amusement ride regulations at Title 8 Section 3920 only require the reporting of “accidents.” Also, Section 3920 limits reporting only to accidents involving the public. Therefore the definition of “incident” proposed at Section 3195.2(b) is inconsistent with the standard for reporting that has been applicable to portable amusement rides for over 30 years. Labor Code Section 7924(f) clearly limits the records which must be maintained. There is no statutory authority to require owners/operators to record “incidents” or accidents that do not rise to the level of requiring medical service beyond ordinary first aid. Proposed sections require keeping records of ride malfunctions, whether such malfunctions result in an injury or occur to a member of the public. The enabling legislation requires the

recording of maintenance, repairs and inspections, but does not require owners/operators to maintain records of all malfunctions.

Response:

The comment is concerned with the definition of “amusement ride incident” from the standpoints of both reporting and recording. It is important to note that the only uses of the term “amusement ride incident” in the proposed regulation, is with respect to recordkeeping in proposed Section 3195.12(a)(4), and with respect to transfer of information upon sale in Section 3195.13(a)(3). While Section 3195.12(a) requires that records of amusement ride incidents be provided to the Division upon request, there is no requirement for an owner or operator to report the incident to the Division within a particular time period and in the absence of a request from the Division.

The comment also addresses the authority of the Board to adopt a regulation requiring recording of amusement ride incidents which do not rise to the level requiring reporting specified in Labor Code Section 7925(a). Labor Code Section 7923 provides a broad grant of authority for the Division to propose for adoption by the Board rules and regulations to assure the safety of patrons of permanent amusement rides. The Division believes, and the Board concurs, that records of amusement ride incidents are a key element of information that must be available in order for Division staff to effectively inspect permanent amusement rides. The Board further believes that such records are a key element of an owner or operator’s own program for assuring patron safety.

Comment 41:

The language of proposed Section 3195.2(b)(2)(B) makes little sense.

Response:

See response to comment 3.

Comment 42:

Sections 3195.3(a)(1), (2), (5), and (6) are internally inconsistent. The proposed regulation applies the same ASTM standards on owners/operators which the standard itself imposes upon the “manufacturers.” From a practical standpoint, the documents set forth in Sections 4.1 and 4.3 and other sections of ASTM Standard F 11159-97A are proprietary and are never available to owners/operators.

Response:

As appropriate and available, the provisions of the ASTM standard shall apply to owners and operators. The exact comment on “internal inconsistency” is not clear because not enough information about what parts are inconsistent was provided. However, some aspects of ASTM

only apply to manufacturers and may not be available to the owner and operator. In other cases the information is provided or available upon request to the owner and operator. Therefore, no further modification to the proposal is necessary in response to this comment.

Comment 43:

The duty imposed on owner/operators, or at least the language of proposed Section 3195.3(a)(4)(D) chosen to communicate that duty, violates the Federal Americans with Disabilities Act (ADA) and portions of the California Civil Rights Act. As an alternative, affirmative language about ride forces, requirements, or characteristics should be imposed on owners/operators so that all individuals regardless of strength, weakness, or disability can decide whether to participate in the attraction. Rather than prohibit admission because the operator perceives the individual fits within the category of “mental disability,” it would be better to have the operator set forth that a ride requirement would be the “ability to perceive, react, and analyze lights, sounds, and significant lateral forces.” The patron, or their family member or guardian, would therefore not be denied entry by the operator, and a violation of civil rights would be avoided. Recreational experiences, even as described in restrictive terms, which are applicable to everyone, generally do not violate civil rights legislation. Signage at the front of the amusement park and at appropriate locations within the park would be sufficient to advise the great majority of individuals who will have little difficulty in determining the attraction they choose to participate with, and then enjoy it safely. Written “ride admission policies” could be available for anyone who desired, because of disability or not, to review rides and make their own decisions of what is best for them. The language of Section 5 of ASTM Standard 770-93 with respect to patron responsibility should be used.

Response:

The Board has modified the subsection to clarify the issue. The Board believes that ride owners and operators can and are legally responsible to determine whether there is a necessity for patron-specific safety measures and to implement those measures accordingly. See the response to comment 37 regarding the incorporation or use of section 5 of the ASTM standard. The modified language requires the owner or operator to define patron-specific safety measures for each potential safety issue they identify as one which should be addressed. For some patrons, e.g., those who are pregnant, have a pacemaker, or have heart disease or back problems, the issue is one involving a medical or physical condition which is not known to and not easily ascertainable by the owner or operator. In these cases, the proposed language permits the safety measure to be an appropriate warning.

The revised version of Section 3195.3(a)(4) requires the implementation of patron-specific safety measures and/or warnings based on patron weight, size, age or disability. The proposed provisions are unlikely to expose an operator to liability under the ADA if the required safety measures are applied as required, i.e., patron-specifically and with sound safety reasons behind them.

The ADA requires that no individual be discriminated against on the basis of disability in the full use and enjoyment of goods, services and facilities in places of public accommodation. These provisions specifically cover amusement parks and rides.<sup>1</sup> However, the ADA cannot be used to require an entity to permit an individual to participate where such participation poses a direct threat to the health and safety of the patron or others.<sup>2</sup> The key to making a non-discriminatory determination of safety is the patron specific nature of the assessment. The assessment must be individual, based on the actual disability, and related directly to the issue of safety.<sup>3</sup> The assessment must not be based on stereotypes or generalizations.<sup>4</sup>

The same general analysis applies to considerations of possible discrimination under the California Unruh Civil Rights Act, which provides that “All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, or medical condition, are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.”<sup>5</sup>

The currently-proposed language anticipates compliance with these standards. As a result, so long as these requirements are applied in a non-discriminatory fashion for reasons directly related to patron safety, they will not expose the owner/operator of amusement park rides to potential liability under the ADA.

#### Comment 44:

Section 3195.4 is confusing, unclear, and impossible to perform. The proposal requires the ride owner/operator to ensure that the manufacturers and designers of amusement rides comply with the ASTM standards. The standards are intended to impose criteria on designers and manufacturers of amusement rides, not on owners/operators. The owner/operators rely on the manufacturers of amusement rides to comply with the ASTM standards. It is not possible for an operator to go back over and re-engineer the hydraulic, filtering, anthropomorphic, welding, bolting, pneumatic, diagnostic and emergency fail safe systems to enforce manufacturer compliance.

#### Response:

The proposal clearly states that owners/operators not operate a ride unless they have the test documentation specified in the ASTM standard. The owner/operator can rely on the manufacturer for that documentation and this proposal does not require the owner/operator to enforce manufacturer compliance. The exemption to 3295.4 does allow the owner/operator to use other generally accepted standards if more appropriate than the ASTM standard as long as

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<sup>1</sup> 42 U.S.C.A., section 12181(7)(I).

<sup>2</sup> Id. at 12182(b)(3)

<sup>3</sup> 28 CFR section 36.208(c); U.S. v. Morvant 898 F.Supp 1157 (E.D. 1995); Anderson v. Little League Baseball, inc. 794 F.Supp. 347 (D. Ariz. 1992).

<sup>4</sup> Montalvov v. Radcliffe 167 F.3d 873 (4<sup>th</sup> Cir. 1999).

<sup>5</sup> Cal. Civ. Code Ann., section 51(b)(West 2003).

those standards ensure patron safety. Therefore, no further modification to the proposal is necessary in response to this comment.

Comment 45:

Section 3195.5 is inconsistent with the Labor Code, other Safety Orders, and impractical and impossible to comply with. ASTM Standard F 846-92 imposes its requirements on manufacturers and not on operators. Section 8.1.9 of this ASTM standard clearly states that the owner/operator is responsible for “implementing a program of testing based on the recommendations of the manufacturer.” If proposed Section 3195.5(a) is requiring documentation from owners that they are testing consistent with manufacturer recommendations, their obligation is more clear. This standard imposes upon manufacturers the obligation to set forth operational testing parameters once a ride is purchased and installed. As the operators who purchase an off the shelf ride, they are never given copies of all manufacturer testing data when the ride is being developed unless it is a “prototype amusement ride” as set forth in Section 5.1 of ASTM Standard F 846-92.

Response:

See response to comment 44.

Comment 46:

Some of the proposed regulations grant the State the authority to require different ride designs than those specified. Therefore, the State may place itself in the unwarranted position of mandating changes to a permanent amusement ride that may void manufacturer warranties and may cause the State to incur direct liability.

Response:

The proposal requires that new rides be designed and manufactured in conformance with ASTM specifications and the exemption to that standard permits other standards where an owner/operator can demonstrate such standards are as safe as ASTM. That proposal does not mandate owners/operators to change a ride or void a warranty; it requires new rides to comply with ASTM or equivalent standards of safety before they are used in California. Rides manufactured to lesser safety standards are not allowed. Therefore, no further modification to the proposal is necessary in response to this comment.

Comment 47:

Some of the proposed regulations are not consistent with the existing safety orders for portable amusement rides. Portable amusement rides which are allowed to enter the state for a temporary time period and then travel to another state without any controls are regulated less intrusively than permanent amusement rides which remain in California and are under constant regulatory supervision.

Response:

Where appropriate these proposed regulations are consistent with the existing safety orders for portable amusement rides. However, since temporary and permanent rides do differ, it is necessary to propose some requirements that are unique to the installation, operation and maintenance of permanent rides. However, once a temporary ride enters the state it must be brought up to Title 8 requirements before it can operate. Therefore, no further modification to the proposal is necessary in response to this comment.

Comment 48:

It is the Division's responsibility to provide explicit safety requirements on amusement park operators. No set of Safety Orders, however comprehensive, will ever guarantee or ensure safety. The Division exceeded its authority in this effort. Safety is obtained through a process of eliminating dangerous conditions so that recreational enthusiasts and thrill seekers at amusement parks have open and obvious access to the attractions they choose to enjoy. Safety Orders are a very important part of that process, but to expect them to guarantee safety is not proper.

Response:

It is unclear which part of the proposal the comment is directed to since the word guarantee is not used in the regulation. The purpose of the proposal is to prevent injuries by correcting and controlling potentially unsafe conditions. The Division and this proposal did not exceed its authority. Therefore, no further modification to the proposal is necessary in response to this comment.

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

Mark Schuller, by letter dated June 20, 2002.

Comment 49:

Section 3195.2(b) provides the definition for "amusement ride incident." Section 3195.2(b)(1) should be deleted because if an incident does not appear to impact the safety of patrons there should be no requirement to specifically document it. For example, it is common for some rides to cease operation for more than 12 hours at a time due to inclement weather (which could fall under the broad definition of "event").

Response:

Events, failures or malfunctions that are serious enough for the ride to be closed for more than 12 hours are considered an incident because they have the potential of impacting patron safety and should be documented as an incident. Closing rides for weather, darkness, holidays or other non-safety related conditions is not an event within the scope of this standard meaning of this definition. Therefore, no further modification to the proposal is necessary in response to this comment.

Comment 50:

Section 3195.2(d) defines "authorized person." The definition should contain an exception for those who are specialized in certain tasks, such as welders, to allow them to perform their specific task on the amusement ride without having to receive other training.

Response:

As stated in (d)(2) the training can be limited to the duties for which the employee is authorized, including even a specialized task like welding. Employees performing such specialized tasks need to be properly trained since their work could ultimately affect the safety of the patron who uses the ride after such specialized tasks are performed. Therefore, no further modification to the proposal is necessary in response to this comment.

Comment 50a:

Section 3195.3(a)(1)(B)11. should be revised to allow the movement of vehicles to offload passengers after the ride has been inspected and determined to be safe. There are several rides that have procedures for moving vehicles to specific areas for unloading.

Response:

Existing language allows for the operation of the ride after it has been inspected and determined to function properly. Therefore, no further modification to the proposal is necessary in response to this comment. Also see response to comments 28 and 65 for clarifying changes made in response to those related comments.

Comment 50b:

Section 3195.6(b) should allow maintenance and inspection functions to use assistants that are not "authorized persons." These assistants could be at the direction and supervision of the authorized person.

Response:

Existing language would not preclude assistants from being authorized to assist in the maintenance or inspection of a ride. The individual would have to be trained and meet the other criteria specified in the definition of an authorized person. The scope of authorization for such assistants could include being under the direction and supervision of another authorized person. Therefore, no further modification to the proposal is necessary in response to this comment.

Comment 50c:

Section 3195.8(b) states that the Division permanently affix a registration number on a ride. This should be done in accordance with manufacturer requirements and in such a manner that does not affect the structural or operational performance of the ride.

Response:

The intent of the proposal is to ensure the safe operation of the ride so Division personnel will not purposefully undermine the safety of a ride by any administrative action they take including how they affix their registration numbers. Concern about any potential administrative wrongdoing is beyond the scope of this proposal and should be directed to the Division. Therefore, no further modification to the proposal is necessary in response to this comment.

Comment 50d:

Section 3195.9(b) should be revised to allow automatic or permanent rollback along with controls or devices. Where manufacturer recommendations are not available an exemption should allow for situations where anti-rollbacks would not allow the safe operation of the ride

Response:

With respect to required documentation from the manufacturer such an exemption is already provided in Section 3195.3(a). Where the documentation required by Section 3195.3 does not include a recommendation on anti-rollback devices and the manufacturer can no longer be contacted for such a recommendation, the owner/operator can apply to the Standards Board for a variance. Therefore, no further modification to the proposal is necessary in response to this comment.

Comment 50e:

Section 3195.11(2)(D) states that all visible portions of the flume be supervised. What portions of the flumes are considered visible? This should state that all portions of the flume that are visible by the designated attendant should be supervised.

Response:

Covered portions of the flume are not considered visible and do not need to be supervised. All other portions of the flume that can be seen are visible and shall be supervised. That supervision should not depend on the placement of an attendant or his/her viewing the flume. Therefore, no further modification to the proposal is necessary in response to this comment.

Comment 50f:

Does Section 3195.13 cover the transfer of rides within California or transferred from California?

Response:

The Division only has jurisdiction over rides in California.

Comment 50g:

The cost estimates of the proposal do not appear to include costs associated with the fees charged by the Division for inspections and record audits. Does the cost estimate consider all costs associated with the proposal?

Response:

The cost estimates do include all costs associated with the proposed regulations. The administrative regulations imposing fees on owner/operators had its own cost estimates. As part of the notice of this regulation, further cost information was requested and no specific data was provided with this comment that would require the Board to revise its initial cost estimate. Therefore, no further modification to the proposal is necessary in response to this comment.

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

Steven A. Elliot, PE, Ride Actions Limited, by letter dated May 8, 2002.

Comment 51:

Section 3195.9(d)(1)(B) appears to require a signal system that is limited to engineered electric and mechanical means of signaling. The requirement should be revised to make hand signals part of the signal system when appropriate. Recommend adding: "Under appropriate conditions, hand signals between operators or other non-engineered means may satisfy the requirement of this paragraph."

Response:

See response to comment 25.

Comment 52:

Section 3195.9(f)(1) appears to require that all fastenings on carriers be the type that patrons cannot open. This requirement could be a significant burden on passengers and operators. Suggest clarity be provided by revising the sentence to read: "All fastening devices shall be of a type that cannot be released inadvertently or by other accidental means while patron is properly seated or positioned in the carrier."

Response:

The proposal clearly states that fasteners be of a type that cannot be released inadvertently or accidentally. The proposal will allow fasteners that can be intentionally opened by patrons. Adding the criteria that the patron be seated or positioned properly does not clarify between inadvertent and intentional opening of a fastener. Therefore, no further modification to the proposal is necessary in response to this comment.

Comment 53:

Suggest the requirement for fences installed or replaced pursuant to Section 3195.9(h)(5) be made effective four years from the effective date of this regulation.

Response:

The ASTM specifications for fences were published in 1997 and owner/operators have voluntarily complied with these national consensus standards since then. New fences should not need an additional four years to comply with these standards that have been widely followed for the last five years. Therefore, no further modification to the proposal is necessary in response to this comment.

Comment 54:

Suggest that ASTM F 2137-01 be included in Section 3195.1(b). The standard should be included to provide a standardized means to measure the characteristic of rides and devices to allow for comparison of collected data.

Response:

The document was published after the 6<sup>th</sup> edition 2000 of the ASTM standards and the consensus advice provided by the Advisory Committee used to develop this proposal. The suggested addition of this document and the measurement of ride characteristics is beyond the scope of this rulemaking. However, the Division will review the document and develop follow up rulemaking if it is determined that such a document is appropriate to add in the future. Therefore, no further modification to the proposal is necessary in response to this comment.

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

J. David Thomas, Vice President, Corp Facilities, Health, Safety & Environment, Universal Studios, Inc., by letter dated June 17, 2002.

Comment 55:

In proposed Section 3195.1(b)(6) the commenter recommends that the latest (2002) version of ASTM F 1159 be referenced. To ensure that the Safety Orders incorporate the most up-to-date technical information available and to minimize the need for future revisions to the Safety Orders, it is important that all references to ASTM Standards reflect the most recent versions.

Response:

The Board concurs and has revised the reference to the latest version of the document.

Comment 56:

In proposed Section 3195.2(a) the commenter recommends that reference to the definition in Title 8 Section 344.6 of "owner or operator" be relocated so that it is before the reference to the definition in Section 344.6 of "permanent amusement ride." This suggestion is made so that the order of definitions referred to in proposed Section 3195.2(a) is the same as that in Section 344.6.

Response:

The Board agrees to make this nonsubstantive change to be consistent with the alpha order used in Section 344.6.

Comments 57:

In the proposed definition of "Authorized person" at Section 3195.2(d), delete the word "attend" because it is vague and not otherwise used or defined within the Safety Orders.

Response:

The word is necessary and used in the proposal especially when referring to attendants or other similar employees who may attend but not necessarily operate a ride. Therefore, no further modification to the proposal is necessary in response to this comment.

Comments 58:

In the proposed definition of “facility” at Section 3195.2(g), delete the phrase “at a single location” because it is duplicative of the term “contiguous property” that is also used in this definition.

Response:

The Board agrees to make this nonsubstantive clarifying modification.

Comment 59:

In the proposed definition of “patron” at Section 3195.2(i), add a reference to “contractor” and “consultant” to the list of those members of the public who would not be considered a “patron” for the purposes of this regulation. Independent contractors and consultants working for the owner or operator are under the control of the owner or operator and should be expressly excluded from the proposed definition of “patron.”

Response:

The Board agrees to make a clarifying change to state that a consultant or contractor would be considered an ‘agent’ of the owner/operator and already excluded.

Comment 60:

In proposed Section 3195.3(a), Required Documentation, substitute the phrase “in public operation” for the word “operated” so as to be consistent with the definition of “public operation” at proposed Section 3195.2(j). A permanent amusement ride may be “operated” without patrons at various times, including, but not limited to, during initial construction, major modifications and testing. The promulgated Administrative Regulations and these proposed Safety Orders consistently do not require regulatory compliance until a permanent amusement ride is ready to be placed into “public operation.” Therefore, this revision brings this section into conformity with the clear language of the implementing statute, AB850, and the consistent regulatory approach of the Division, that it is “public operation” that triggers various regulatory requirements.

Response:

The Board agrees to make the suggested modification.

Comment 61:

The commenter recommends the following changes to proposed Section 3195.3(a)(1), Required Documentation:

1. All references to ASTM F 1159 should be revised to refer to the latest (2002) versions of this standard.
2. The first sentence should be revised adding the language shown underlined: Manufacturer-originated documentation indicating that the design and manufacture of the ride is in compliance with ASTM F 1159-02 to the extent such documentation is required to be delivered to the owner or operator pursuant to ASTM F 1159-02. ASTM F 1159-02 does not require that all manufacturer-developed design and manufacture documentation be provided to the owner or operator and such information is not generally made available due to confidentiality and other concerns. The Safety Orders should be limited to only that design and manufacture documentation that is normally required to be provided to the owner or operator under the cited ASTM Standard.
3. The NOTE in Exception No. 1 should be revised by substituting the word “requirements” for the word “restrictions.” The activities referred to in the note are better characterized as “requirements” rather than “restrictions.”

Response:

With respect to point 1: The document was published after the 6<sup>th</sup> edition 2000 of the ASTM standards and so was not included in subsection (b). Now that the 2002 version is available the Board agrees to modify the proposal as suggested.

With respect to point 2: The exceptions to Section 3195.3(a)(1) address the possibility that some documentation is not reasonably made available to the owner/operator. Therefore, no further modification to the proposal is necessary in response to this comment.

With respect to point 3: The requirements of Section 3195.4 are also restrictions in that a ride cannot be operated without the proper documentation. So the use of the word restrictions is appropriate in this note. Therefore, no further modification to the proposal is necessary in response to this comment.

Comment 62:

In Exception No. 2 to proposed Section 3195.3(a)(2)(B), the commenter recommends revision of this provision to add the language shown in underlined: “The operational limits of the ride and the specifications used to evaluate testing results shall be established by the owner or operator using all manufacturer-originated information that is in the possession of the owner or operator that is necessary to ensure that the operation of the ride is within the design limitations of the ride.” This revision should be made to clarify that the owner/operator is not required to develop supplementary information not currently in the owner or operator’s possession or to attempt to obtain additional information from the original manufacturer.

Response:

The existing language is clear and addresses the same issue in that it requires manufacturer information that is readily available and relevant. If information is relevant and available, the owner/operator should obtain and use it regardless if they already possess it. Therefore, no further modification to the proposal is necessary in response to this comment.

Comment 63:

In element 1 of the Exception to proposed Section 3195.3(a)(3)(B), eliminate “or device” from the language. While the term “device” is sometimes used in ASTM, it is not used anywhere else in these proposed Safety Orders. As such the term “device” does not appear to be necessary here and may lead to confusion.

Response:

The Board agrees to make the suggested modification.

Comment 64:

In element 9 of the Exception to proposed Section 3195.3(a)(3)(A) and (B), the commenter recommends revising the language to read as follows (suggested additions shown underlined, suggested deletions shown in strikeout):

“Procedures for performing ~~documented and signed~~ pre-opening inspections, to be conducted each day prior to public operation. Each ~~The~~ such pre-opening inspection shall either be in written form, signed and dated by the authorized person completing the inspection, or shall be in electronic form with the name of the authorized person that completed the inspection, and the date and time of the inspection, recorded by electronic means, and shall include, but not necessarily be limited to, the items listed in Section 6.3 of ASTM 853-98.”

In element 9 of the Exception to proposed Section 3195.3(a)(3)(A) and (B), the words “documented and signed” are overly vague. The Safety Orders should specify that a written or electronic record of each pre-opening inspection be prepared, dated and specifically identify the authorized person completing such inspection. Given the large number of records that will be generated during the required five-year retention period, it is imperative that the Safety Orders expressly recognize that pre-opening inspection records may be appropriately maintained in an electronic format.

Response:

The Board disagrees that signing is vague and not needed. Signing is a commonly understood term and necessary to ensure that persons conducting the inspection attest to having done the inspection. The existing performance oriented language allows for the documentation and signature to be kept electronically or in writing and does not need to be specified as the

commenter suggests. Therefore, no further modification to the proposal is necessary in response to this comment.

**Comment 65:**

In element 11 of the Exception to proposed Section 3195.3(a)(3)(A) and (B), the commenter recommends revising the language to read as follows (suggested additions shown underlined):

“Procedures to be followed in the event of any unscheduled cessation of the operation of the ride which appears to have been the result of an equipment failure, malfunction, or other safety issue. The procedures shall require that, when such an unscheduled cessation of the operation occurs, the ride cease operation with patrons on board until inspection or test-operation of the ride has demonstrated that the ride is functioning properly.”

The requirements in element 11 of this Exception appear to be overbroad. The proposed language potentially could be misconstrued as to require the evacuation of patrons from a ride and full re-start testing even for very minor, temporary hold ups of the ride. For example, there may be a momentary “unscheduled cessation” of a ride whenever a ride vehicle is about to enter into a designated block zone (e.g., a particular scene or staging area) due to the fact that the ride vehicle in front of it has not yet cleared the block zone. The Safety Orders need to recognize that some unscheduled cessations of operation of a ride may be very temporary and do not necessarily suggest that there has been an equipment failure, malfunction or other potential safety issue.

Response:

The Board agrees to modify the proposal to address the commenter’s suggested concerns.

Comment 66:

In the Exception to proposed Section 3195.3(a)(4)(A), the commenter recommends that owners or operators subject to the Exception only be required to maintain whatever additional documentation is reasonably necessary to provide an effective informational basis for the procedures developed as specified. The commenter also recommends that the plural form of “Section” be used in the last sentence of the Exception. As is already recognized in a large number of sections within the proposed Safety Orders, it is appropriate to limit the information required in this provision to that which is “reasonably” necessary. The recommended change from the word “Section” to “Sections” is merely intended to make the sentence grammatically correct.

Response:

The word ‘necessary’ already provides sufficient limitation on the type and amount of information to provide. Therefore, no further modification to the proposal is necessary in

response to this comment except the Board will make the nonsubstantive grammatical change of Section to Sections.

Comment 67:

In Section 3195.3(a)(4)(B), the commenter recommends that this section be revised to read as follows: “(B) A procedure for promptly notifying the applicable manufacturer, if known, of each amusement ride incident.” The text of this section, as originally proposed, appears to largely duplicate the definition of an “amusement ride incident” as that term is defined in proposed Section 3195.2(b). To avoid any potential confusion, the text should be shortened and made more clear by incorporating this term into this section.

Response:

An incident also includes situations where the ride was shut down for more than 12 hours. These situations do not need to be conveyed to the manufacturer. The proposed language is clear and on point to what situations should be conveyed to a manufacturer. Therefore, no further modification to the proposal is necessary in response to this comment.

Comment 68:

In proposed Section 3195.3(a)(4)(D) regarding patron restrictions, the commenter recommends the following revisions (suggested additions shown underlined, suggested deletions shown in strikeout):

“(D) Procedures for implementing patron restrictions, where necessary to assure operation of the ride in a manner that is safe for all patrons. These procedures shall, at a minimum, implement all specific manufacturer recommendations ~~listed in~~ pursuant to Section 2.6 of ASTM F 698-94, to the extent such recommendations exist and are reasonably available. Patron restrictions may consist of denial of entry to the ride, provision of written or oral warnings to patrons, or other special provisions or conditions for a patron’s use of the ride. Patron restrictions may be implemented individually or in any combination, provided the restriction or combination of restrictions chosen is an effective protective measure for the special consideration addressed by the restriction and that the patron restriction does not violate any local, state or federal civil rights, privacy, non-discrimination or reasonable accommodation law or regulation. ~~Special considerations~~ Patron warnings and restrictions may include patron weight patron size (e.g., height, weight ~~or other body dimension~~) and special needs due to the patron being a child or having a readily observable physical disability, an apparent mental disability, or a health condition that adversely impacts the potential safety of the patron or other riders ~~affects rider safety.~~”

Section 2.6 of ASTM F 698-94 provides guidance to and methodology for manufacturers to use in establishing appropriate patron restrictions for a specific permanent amusement ride. The manufacturer, in turn, provides the owner/operator with specific systems and recommendations applicable to that particular ride. Because of the nature of this process, such recommendations

are not expressly “listed” in the ASTM Section, rather they are developed “pursuant to” the guidance and methodology established in the referenced ASTM Section.

The addition of the word “may” in the following sentence is necessary to expressly acknowledge that the various types of patron restrictions listed are not compulsory; and, in fact, for some permanent amusement rides, no such restrictions are appropriate (i.e., “necessary to assure operation of the ride in a manner that is safe for all patrons”). Similarly, it is important to specifically recognize that appropriate warnings to patrons may be either “written or oral.” The addition of the word “other” is intended to make it clear that the “special provisions” referenced are in addition to and may take a different form than those restrictions which consist of a denial of entry or warnings. Finally, the term “special provisions” should be broadened to “special provisions or conditions” to clarify that the most appropriate restriction may take the form of a conditional approval for a patron to access a permanent amusement ride. Such conditional ridership might be to allow certain patrons only to ride in certain rows or in certain locations within the permanent amusement ride.

We strongly recommend that the note in the proposed Safety Orders that states that patron restrictions are not “intended” to create a conflict with anti-discrimination requirements under various state and federal laws (such as the Americans with Disabilities Act) be revised, broadened and incorporated into the main body of the text of this subsection. In addition to the anti-discrimination requirements expressly acknowledged, the restriction of patrons from particular permanent amusement rides based on physical or medical factors (e.g., obesity, pregnancy) raises potentially serious civil rights and privacy issues. This is especially the case to the extent that the Safety Orders may otherwise be interpreted to suggest that permanent amusement ride owners and operators may have an affirmative duty to question patrons regarding their physical or medical condition. For example, questioning all women as to whether or not they are pregnant would clearly be overly intrusive, invade the patron’s right to privacy, and would be unlikely to yield fully accurate information. Rather than place such an unreasonable, and very likely unlawful, responsibility on the permanent amusement ride operator, the appropriate requirement is that the owner or operator provide patron restrictions for those attributes that are readily apparent (e.g., patron height) and patron warnings for those attributes which are not readily visually discernable to ride operator (e.g., medical conditions such as high blood pressure).

Given the importance of and level of concern with compliance with various civil rights, privacy and anti-discrimination programs, it is insufficient to simply state that it is the Division’s “intention” that patron restrictions not “require unlawful” conduct relative to such discrimination laws. Rather, the Safety Orders should expressly acknowledge the importance of such civil rights, privacy and anti-discrimination requirements by incorporating compliance with their provisions into the main text. Doing so makes it clear that compliance with such laws and regulations is given equal weight with the owner/operator’s patron restriction responsibilities. Furthermore, we have expanded the wording to recognize that, in addition to “state and federal laws,” local laws and implementing local, state and federal regulations must be respected in the formulation and exercise of any patron-related ride restrictions.

Finally, the last sentence in this subsection, as proposed, provides a non-inclusive listing of patron attributes that may be the basis for restricting patron access to a specific permanent amusement ride. For consistency with the language used in the previous sentences, the words “Special considerations include” should be replaced with “Patron restrictions may be based on.” The terms “patron weight” and “patron size” are overlapping and duplicative. Part of a patron’s size is the height and weight of the patron. It is clearer and more precise to delete “patron weight” and combine this concept within the “patron size” parenthetical description. In addition, the words “other body dimension” are imprecise, duplicative and should be deleted. We note that the term “apparent” is already used in conjunction with “mental disability,” providing recognition that mental disabilities may not be readily observable to the owner/operator of a permanent amusement ride. Patron physical disabilities (e.g., certain heart conditions, back conditions) similarly may vary widely and may not be readily discernable to the permanent amusement ride operator. It is impractical and unreasonable to expect the owner/operator of a permanent amusement ride to recognize many types of physical disabilities that do not have an apparent and easily identifiable manifestation. Therefore, the addition of the qualifier “readily observable” is appropriate to limit those physical disabilities requiring owner/operator intervention to only those which are visible and apparent. Finally, patron restrictions related to health conditions should be limited to only those which have an adverse impact on the safety of the patron or other riders.

Response:

The Board has modified the proposal in a manner that addresses the commenter’s concerns, even though the exact terminology suggested by the commenter has not been used. With respect to the suggestion that reference to anti-discrimination laws be incorporated directly into the regulatory text, the Board has decided that it is inappropriate to reference these laws even in a note, as was proposed in the previous version. The potential for unlawful discrimination always exists in enforcement of laws and regulations, and it is for this reason that prohibitions against discrimination are often framed in terms of entitlement to equal protection under the law. The Board does not believe it is any more necessary to reference anti-discrimination laws here than anywhere else in statute or regulation where such potential exists. Rather, what is necessary is to state the requirement clearly and in a fashion which suggests the purpose of the requirement, which is the protection of patrons from safety hazards.

Please see also the response to comment 43.

Comment 69:

In proposed Section 3195.3(a)(6), the commenter recommends that the information requirement of this section be limited to only that required by Sections 1 through 3 of ASTM F 698-94 as these are the only sections of this ASTM standard that are incorporated by reference at 3195.1(b)(1). Also, as is already recognized in a large number of sections within the proposed Safety Orders, it is appropriate to limit the information required in the Exception to proposed Section 3195.3(a)(6) to that which is “reasonably” necessary.

Response:

There are no other sections in that ASTM standard so there is no need to add ‘Sections 1-3’. See the response to comment 66 with regard to adding ‘reasonably.’ Therefore, no further modification to the proposal is necessary in response to this comment.

Comment 70:

In the Exception to proposed Section 3195.5(a) the commenter recommends adding reference to subsection (a)(2)(B) and the Exception to that subsection as well so that this Exception would read as follows (suggested additions are shown underlined):

“EXCEPTION FOR EXISTING PERMANENT AMUSEMENT RIDES ONLY: If complete documentation meeting the requirements of Sections 3195.3(a)(2)(A) or (a)(2)(B) is reasonably believed not to exist or is not reasonably available, the ride may be open to the public if the owner or operator has documentation demonstrating the proper performance of the ride thought testing performed in conformance with the specifications of the documentation required by Section 3195.3(a)(2)(B), including Exception No. 2 to Section 3195.3(a)(2)(B).”

The proposed Safety Orders require that testing be performed in conformance with the documentation required by proposed Sections 3195.3(a)(2)(A) and 3195.3(a)(2)(B). However, the Exception appears to only address the situation when the documentation required by proposed Section 3195.3(a)(2)(A) does not exist or is not reasonably available. The exception should be expanded to also address the situation when the documentation required by proposed Section 3195.3(a)(2)(B) does not exist or is not reasonably available.

Response:

The exemption is to subsection (A) and will not make sense if it is expanded to (B). Subsection (B) addresses how to notify the manufacturer of incidents that occur after the effective date of the standard and thus no historical type exemption is needed. In the exemption the two subsections are interrelated and a further exemption as requested by the commenter would not make sense. Therefore, no further modification to the proposal is necessary in response to this comment.

Comment 71:

In proposed Section 3195.7(b) Operation Procedures and Related Training, the commenter recommends the following revisions (suggested additions shown underlined, suggested deletions shown in strikeout):

“(b) The owner or operator shall use effective signs, videos, or other similarly effective means of advising patrons of those instructions, limitations, restrictions and warnings deemed necessary for patron safety by the owner or operator, including those maintained

as part of the procedures required by Section 3195.3(a)(4) (D). When signs are used for this purpose, they shall be permanently and conspicuously posted at ~~each~~ the applicable permanent amusement ride.”

Inclusion of the word “restrictions” is consistent with the terminology “patron restrictions” used in proposed Section 3195.3(a)(4)(D) and makes this section read more consistently with other sections of the proposed Safety Orders. To avoid any potential confusion as to which permanent amusement rides require the posting of signs, the word “each” should be replaced with the words “the applicable.” The addition of the comma in the last sentence is intended merely to make the text grammatically correct.

Response:

The Board agrees to make the suggested modifications.

Comment 72:

In proposed Section 3195.8, Physical Information and Adherence to General Safety-Related Operating Parameters, the commenter recommends adding the word “operational” before the word “specifications.” The requirements referenced in proposed Section 3195.3(a)(6) only apply to any operational specifications that are to be included on the nameplate required pursuant to Sections 1 through 3 of ASTM F 698-94. Accordingly, to avoid any confusion and to ensure that the provision is not over broadly interpreted, the word “operational” should be inserted.

Response:

Adding the word ‘operational’ may be considered to allow a ride to operate if it complies with the specifications considered ‘operational’ as compared to specifications in that ASTM document that may be more design or maintenance oriented in nature. To avoid this potential restrictive view, the Board declines to modify the proposal and shall retain the language as originally proposed.

Comment 73:

In proposed Section 3195.9(b), Anti-Rollback Controls, the commenter recommends the following revision with additional language shown underlined:

“Each permanent amusement ride with a passenger conveyance vehicle that traverses an inclined track shall be provided with automatic anti-rollback controls, unless the ride is designed and intended to rollback or unless such controls would conflict with manufacturer recommendations.”

In proposed Section 3195.9(b), it is important to note that not all ride vehicular rollback is problematic; indeed, some rides are designed to have the vehicles roll back down inclined tracks

(e.g., pirate ship “swing” rides). Therefore, it is appropriate to expressly acknowledge such situations.

Response:

Rides intended to go backward or rollback for a short distance would be addressed in the manufacturer recommendations. These rides may still need anti-rollback devices that prevent backward movement beyond the manufacturer’s recommended distance. Therefore, no further modification to the proposal is necessary in response to this comment.

Comment 74:

In proposed Section 3195.9(e), Protection of Patrons from Hazardous Surfaces and Moving Parts, we recommend adding the phrase “during normal operation of the ride” after “may come in contact” in subsection (1) and after “come into contact” in subsection (2). The insertion of the phrase “during normal operation of the ride” in both proposed subsections (e)(1) and (e)(2) is intended to clarify that the requirement to protect patrons from potentially hazardous surfaces and moving parts does not extend to those areas of the permanent amusement ride not normally directly accessible to patrons (e.g., foundation support bolts, ride track support brackets and columns, moving wheels of a ride vehicle, ride chain drives).

Response:

The Board disagrees with the need to limit the protection from exposure to hazards. Foreseeable exposure during evacuations and other non-normal operations should also be considered. Therefore, no further modification to the proposal is necessary in response to this comment.

Comment 75:

In proposed Section 3195.9(h), Operation and Control of the Ride, subsection (h)(1), the commenter recommends the following changes (suggested additions shown underlined, suggested deletions shown in strikeout):

“(1) All rides shall be operated and controlled only by authorized person(s). At least one ~~All~~ authorized persons who is designated to operate or control the ride shall be stationed at or adjacent to within immediate reach of the operating controls at all times whenever ~~while~~ the ride is in public operation, even if automatic devices are used to control the time cycle of the ride.”

In proposed subsection (h)(1), the phrase “immediate reach” is overly vague. It is unnecessary and impractical to require that **all** (emphasis added) authorized persons designated to operate or control the ride must, at all times during each ride cycle, be able to immediately reach the operating controls of the ride during its entire operation. Many permanent amusement rides employ multiple authorized persons. For example, for a roller coaster, it is not unusual to have two or more authorized persons stationed at the load platform to assist patron loading and the

securing of safety restraints. Two additional authorized persons may be stationed at the unload platform to similarly assist patron unloading and to direct patrons to the ride exits. Yet another authorized person may be stationed at a control panel or booth to control the start/stop of the ride. (Indeed, the proposed Safety Orders envision just such multiple employee teams by requiring the use of signal systems in proposed Section 3195.9(d).) It is more appropriate to require that the lead authorized person, or the one, authorized person designated to control the operation of the ride be physically located at or near the ride operating controls. As discussed above in reference to recommended revisions to proposed Section 3195.3(a), the operational restrictions required by proposed Section 3195.9(h)(1) are not necessary when patrons are not present.

Response:

The Board Agrees to add clarifying language to convey that only those authorized persons designated to control the operation of the ride need to be by the controls and to further clarify that that person(s) needs to be at the controls when the ride is moving.

Comment 76:

In proposed Section 3195.9(h), Operation and Control of the Ride, subsection (h)(4), the commenter recommends replacement of the existing language with the following:

“(4) Each time that a permanent amusement ride has been stopped by use of any device required by subsections (h)(2) or (h)(3), the ride shall not be capable of restarting unless manually reset.”

As currently drafted, proposed subsection 3195.9(h)(4) is confusing. The commenter believes that the intent of this subsection is to ensure that after an unscheduled stop (using either the stop switch required by proposed subsection (h)(2) or the disconnect switch required by subsection (h)(3)); the permanent amusement ride cannot be automatically restarted without an intentional action by an authorized person. The revised language makes such an intent clear.

Response:

The Board agrees to modify the proposal to address the commenter’s concern.

Comment 77:

In proposed Section 3195.12, Recordkeeping, in subsection (b) the commenter recommends the following revisions (additions are underlined, deletions are shown in ~~strikeout~~):

“(b) Records of amusement ride incidents shall consist of any reasonable format chosen by the owner or operator which includes the name of the authorized person(s) ~~operator~~ and describes the incident as well as any inspection and maintenance performed in response to the incident.”

The term “operator” as defined in the Administrative Regulations at Section 344.6 generally means the company or organization with operational responsibility for the permanent amusement ride. In proposed Section 3195.12(b) the term “operator” appears to be intended to refer to the specific authorized person who was in control of operation of the ride at the time of the incident. The recommended revisions make this distinction clear. The additional words “to the incident” are needed to clarify that only those otherwise unscheduled inspections and maintenance activities undertaken in direct response to the amusement ride incident need to be maintained in the incident records. Routine inspection and maintenance records should continue to be maintained in accordance with the requirements of proposed Section 3195.12(a)(2).

Response:

The Board agrees to modify the proposal to address the commenter’s concern.

Comment 78:

In proposed Section 3195.12. Recordkeeping, in subsection (c) the commenter recommends the following revisions (additions are underlined, deletions are shown in ~~strikeout~~):

“(c) The information on accidents recorded pursuant to Section 3195.12(a)(3) ~~this section~~ shall include but not necessarily be limited to each of the following, to the extent reasonably available:

- (1) The date of occurrence of the accident.
- (2) The name of the ride and manufacturer of the ride where or on which the accident occurred.
- (3) A detailed description of the accident.
- (4) The names, addresses, ages, and telephone numbers of all persons involved in the accident, including but not limited to those injured, the authorized person(s) present ~~ride operators and attendants~~, and representative witnesses who agree to provide statements, if any.
- (5) A description of the injury and the medical treatment provided to each ~~the~~ injured ~~parties~~ party involved in the accident.”

In proposed Section 3195.12(c), the phrase “pursuant to this section” is confusing. It is simply not clear to which “section” reference is made. To avoid this confusion, the text should specifically reference proposed Section 3195.12(a)(3) (which, in turn, references the accident reporting requirements of the Administrative Regulations at Section 344.15). In addition, for the reasons discussed above in proposed Section 3195.12 (b), the term “ride operator” in subsection (c)(4) should be replaced with the more precise term “authorized person(s).” Finally, in some instances, an exceeding large number of potential witnesses may be present at the scene of a

permanent amusement ride incident. In such cases, it is unnecessary to obtain witness information from all such potential witnesses. In fact, it would be impractical to attempt to detain or control a large number of such potential witnesses. Therefore, requirement to obtain such witness information should be limited to a reasonable number of observers. The recommended language would establish the standard as a requirement to obtain representative witness information. Alternatively, the Standards Board could set an upper limit on the number of identified witnesses (e.g., ten). The Safety Orders should also expressly recognize the fact that permanent amusement ride owners/operators have limited ability to compel potential witnesses to provide statements or even to furnish their name and other basic information. Therefore, it is appropriate to acknowledge that witnesses must agree to be included in the recorded information.

Finally, proposed subsection (c)(5) should be revised to more clearly reflect the fact that the reportable injuries are only those which result in medical treatment and that in a reportable accident, different persons may sustain differing injuries, resulting in differing treatment.

Response:

The specification of the exact subsection is unnecessary since that is the only place where accident reports are mentioned. Editing the sentence structure in subsection (5) and adding ‘medical’ is similarly unnecessary since treatment is in context to injuries. However, the Board agrees to modify the proposal to address the commenter’s concerns in subsection (4).

The Board thanks Mr. Thomas for his comments and participation in the Board’s rulemaking process.

Comments 79, 80 and 81 omitted, go to comment 82.

Jeffery Paule, Senior Vice President, General Counsel, Walt Disney World Co., by letter dated June 19, 2002.

Comment 82:

Proposed Section 3195.1(b) references a document entitled “ASTM Standards on Amusement Rides and Devices, 6<sup>th</sup> Edition 2000.” This document is issued approximately every five years. Accordingly, several of the ASTM standards in subsection (1) through (7) are not the most recent version. We recommend that the Division utilize the document entitled “Annual Book of ASTM Standards -- 2002.” This document includes the most up-to-date ASTM standards.

Response:

The Board agrees to update the individual documents incorporated by reference. However, the Board has elected to eliminate its reference to the compendium volume or book printed in 2000 or 2002 since that additional reference is unnecessary.

Comment 83:

In proposed Section 3195.2(d)(1) and (4), in the definition of “authorized person,” delete the words “to attend” in subsection (1) and the words “or to be in view of” in subsection (4). Written instructions that are “in view of” an authorized person are also “available” to such person. Therefore, the words “or to be in view of” are superfluous.

Response:

See the response to comment 57 above regarding deletion of the word “attend” as suggested. Since some instructions such as operating controls are posted on or near the ride, the term “in view of” would be appropriate. Therefore, the Board declines to modify the proposal as requested.

Comment 84:

In proposed Section 3195.2(g), in the definition of “facility,” delete the word “contiguous” as it is confusing when used with the words “at a single location.”

Response:

See the response to the same suggestion at comment 58 above.

Comment 85:

In proposed Section 3195.2(i) add to the definition of “patron” the words “contractor” and “consultant.”

Response:

See the response to the same suggestion at comment 59 above.

Comment 86:

In proposed Section 3195.3, delete the word “operated” and replace with “in public operation.” This latter phrase is a defined term (see subsection (j)) and thus describes more accurately those documents that have to be maintained at the facility.

Response:

See the response to the same suggestion at comment 60 above.

Comment 87:

In Exception 1 to proposed Section 3195.3(a)(1), in the “NOTE” at the end of the exception, delete the word “restrictions” and replace with “specifications.” The “NOTE” references Section 3195.4, which addresses ASTM specifications, not restrictions.

Response:

See the response to the related suggestion at comment 61 above.

Comment 88:

Change Section 3195.3(a)(3)(B) to read as follows:

“Mandatory maintenance procedures that conform to the instructions required by subsection (A), conform to the specifications of Sections 5 and 6 of ASTM F 853-98, and include an effective training program to be provided to all employees performing maintenance. The training program shall conform to the specifications to section 6.2 of ASTM F 853-98, include a manual containing the subject matter of the training, and specify the length of the initial training as well as the length and frequency of refresher training.”

Response:

The proposed language conveys the same intent in a slightly different sentence structure. The Board shall retain the proposed language as it is clear and no added clarity is provided by the commenter’s suggested restructuring.

Comment 89:

In proposed Sections 3195.3(a)(3)(B)1. and 8. delete the words “or device” in these two subsections. This deletion is consistent with the rest of the document, which does not include the word “device” when referring to a ride.

Response:

See the response to comment 63 above as it relates the use of ‘device’ throughout the proposal.

Comment 90:

Proposed Section 3195.3(a)(3)(B)9. covers procedures to be performed during pre-opening inspections. This section should be changed to read:

“Procedures for performing pre-opening inspections, to be conducted each day prior to public operation, which shall include, but not necessarily be limited to, the items listed in Section 6.3 of ASTM F 853-98. Each pre-opening inspection shall be performed by an authorized person and documented in written or electronic form.”

Response:

See the response to similar comment 64.

Comment 91:

Change proposed Section 3195.3(a)(3)(B)10. to read as follows:

“A training program to be provided to all employees performing maintenance. The training program shall conform to the specifications of Section 6.2 of ASTM F 853.98, include a manual containing the subject matter of the training, and specify the length of the initial training as well as the length and frequency of refresher training.”

Response:

See the response to similar comment 88.

Comment 92:

In proposed Section 3195.3(a)(3)(B)11. after the word “cessation” insert the words “as defined in ASTM F 853-98.” This will make the sub-section more clear regarding when the procedures required by this sub-section are to be followed.

Response:

See the response to similar comment 65.

Comment 93:

In the Exception to proposed Section 3195.3(a)(4)(A) add the word “reasonably” before “necessary” and change the word “Section” to “Sections.” The word “reasonably” is used throughout the regulations in similar provisions and should be used here as well.

Response:

See the response to the same suggestion at comment 66 above.

Comment 94:

In proposed Section 3195.3(a)(4)(B) delete this section as proposed (including subsections (1) and (2)) and substitute: “A procedure for promptly notifying the applicable manufacturer, if known, of any amusement ride incident.” It is not necessary to use the definition of an “amusement ride incident” when this phrase is already a defined term.

Response:

See the response to the same suggestion at comment 67 above.

Comment 95:

In proposed Section 3195.3(a)(4)(C) delete the apostrophe after the word “systems.”

Response:

The apostrophe is appropriate in this grammatical situation. Therefore, no further modification to the proposal is necessary in response to this comment.

Comment 96:

For proposed Section 3195.3(a)(4)(D), regarding patron restrictions, we suggest replacement with the following language:

“Procedures for implementing patron restrictions, where necessary to assure operation of the ride in a manner that is safe for all patrons. These procedures shall, at a minimum, implement the specific manufacturer recommendations referenced in Section 2.6 of ASTM F 698-94, to the extent any such recommendations exist and are reasonably available. Patron restrictions may consist of denial of entry to the ride, provision of written or oral warnings to patrons, or other special provisions or conditions for a patron’s use of the ride. Patron restrictions may be implemented individually or in any combination, provided the restriction or combination of restrictions chosen is consistent with the patron’s particular circumstances and does not otherwise violate local, state or federal non-discrimination, reasonable accommodation and access laws and regulations. A patron’s particular circumstances may include the patron’s size (e.g., height, weight or other body dimension), the patron’s status as a child, the patron’s readily observable behavior, and the patron’s physical ability to be properly seated and restrained.”

Response:

The Board agrees to modify the subsection to address the commenter's concern to the extent specified in the response to comments 43 and 68. See the response to similar comments 43 and 68 with regard to violating other laws and the issue of patron restriction.

Comment 97:

In proposed Section 3195.3(a)(4)(E) delete the words "and attendants," as it is not clear whom this is meant to include, and make grammatical changes so that the sub-section reads as follows:

"An effective training program to be provided to all operators in conformance with the specifications of Section 4.1.3 of ASTM F 770-93 (Reapproved 2000). The training program shall include a manual containing the subject matter of the training and shall specify the length of the initial training as well as the length and frequency of refresher training."

Response:

See response to similar comment 88.

Comment 98:

In proposed Section 3195.3(a)(6) add the word "reasonably" before "necessary."

Response:

See the response to the same suggestion at comment 69 above.

Comment 99:

In the Exception to proposed Section 3195.5(a), it is not clear that the section refers to both Sections 3195.3(a)(2)(A) and 3195.3(a)(2)(B) and that the Exceptions thereto for existing permanent amusement rides apply. Therefore, the section should be changed to read as follows:

"EXCEPTION FOR EXISTING PERMANENT AMUSEMENT RIDES ONLY:  
If complete documentation meeting the requirements of Section 3195.3(a)(2)(A) or 3195.3(a)(2)(B) is reasonably believed not to exist or is not reasonably available, the ride may be open to the public if the owner or operator has documentation demonstrating the proper performance of the ride through testing performed in conformance with the specifications of the documentation required by Sections 3195.3(a)(2)(A) and 3195.3(a)(2)(B) or, if applicable, the Exceptions thereto."

Response:

See the response to the substantively same suggestion at comment 70 above.

Comment 100:

The title of Section 3195.6 covers training; therefore subsection (b) should include training and read as follows: “All maintenance, inspection and training functions shall be performed by an authorized person.”

Response:

The training does not need to be performed by authorized personnel, as that term is defined, and training of the maintenance and inspection employees is addressed in subsection (a). Therefore, no further modification to the proposal is necessary in response to this comment.

Comment 101:

Many vehicles are designed to roll back. Therefore, after the word “unless” in proposed Section 3195.9(b) insert the following: “the ride is designed and intended to roll back or unless.”

Response:

See the response to the same suggestion at comment 73 above.

Comment 102:

In proposed Section 3195.9(d)(1)(A) delete the words “forward unit’s.” This term is confusing and superfluous. Also, after the word “failure” insert the words “of the ride.” This makes the provision more clear.

Response:

The Board agrees to make the suggested modification.

Comment 103:

In proposed Section 3195.9(d)(1)(B) delete the word “conveyance.” This term is confusing and superfluous.

Response:

The Board concurs and makes this nonsubstantive modification.

Comment 104:

In proposed Section 3195.9(d)(2) after the word “operated” insert the words “with patrons on board.” This makes the provision more clear that the prohibition applies only when patrons are on board.

Response:

The Board shall clarify the proposal in response to this comment.

Comment 105:

In proposed Section 3195.9(f)(1) delete the words “as necessary” and replace with the words “as required by the manufacturer.” The phrase “as necessary” is confusing and subject to varying applications and interpretations. Requirements that are specified by the manufacturer are clearly defined and understood.

Response:

The Board does not agree to limit the requirement to only that equipment specified by the manufacturer. In some cases the owner has modified the ride to include safety equipment that goes beyond the specifications of the manufacturer. When those types of changes are necessary the subsection must address that type of equipment too. Therefore, no further modification to the proposal is necessary in response to this comment.

Comment 106:

Proposed Section 3195.9(h)(1) section suggests that all rides are operated and controlled by more than one person and that all such persons must be within reach of the operating controls. However, there may be a ride where only one authorized person is operating and controlling the ride. Moreover, not all employees are stationed near the operating controls. Therefore, we propose changing this section to read as follows:

“All rides shall be operated and controlled by an authorized person or persons. At least one authorized person who is designated to operate or control the ride shall be stationed within immediate reach of the operating controls while the ride is in operation, even if automatic devices are used to control the time cycle of the ride.”

Response:

See the response to the suggestion on the same proposed section at Comment 75.

Comment 107:

In Section 3195.12(b) after the words “name of the” insert the words “owner or.” After the word “response” insert the words “to the incident.” These are stylistic changes.

Response:

See the response to similar comment 77.

Comment 108:

In proposed Section 3195.12(c) delete the words “this section” and replace with “Section 3195.12(a)(3)”.

Response:

See the response to a similar suggestion at comment 78 above.

Comment 109:

Change proposed Section 3195.12(c)(4) to read as follows:

"The names, addresses, ages and telephones numbers of all persons involved in the accident, including but not limited to those injured, the ride operators, and any witnesses."

Response:

See response to similar comment 78.

Comment 110:

In proposed Section 3195.12(c)(5), before the word “treatment” insert “medical.” After the word “injured” insert the words “party or.” Since only accidents in which the injured party has received medical treatment are reportable this section should likewise only require information regarding the medical treatment an injured party has received.

Response:

See response to similar comment 78.

Comment 111:

In proposed Section 3195.13(a)(3), at the end of the sentence after the word “Title” insert “based on records maintained by the owner or operator pursuant to Sections 3195.12(a)(3) and (4).”

The proposed change will make it clear that the five-year retention provision of Section 3195.12 applies to this section on transfer of information.

Response:

The additional reference is unnecessary and will not add further clarity. If the records are older than five years and are no longer available then they could not be available for transfer. Therefore, no further modification to the proposal is necessary in response to this comment.

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

II Oral Comments

Kathy Fackler, Saferparks, oral comments 1 through 6.

Oral Comment 1:

The proposal should include a requirement that rides operated for the public must employ age- and size-appropriate safety protection.

Response:

See response to written comments 2 and 43.

Oral Comment 2:

The proposal should include a requirement for effective dissemination of failure data and hazard warnings between ride owners, manufacturers, inspectors and patrons.

Response:

The requirements in the current proposal for documentation, recordkeeping, and patron warnings are sufficient to convey the needed hazard information between these parties. No specific recommendations for new or modified language were provided by the commenter. Therefore, no further modification to the proposal is necessary in response to this comment.

Oral Comment 3:

The proposal should address ride operator screening and include a minimum age of 16 for operators and attendants of amusement rides. It should also be illegal to operate or be an attendant on an amusement ride if an individual is under the influence of alcohol or drugs.

Response:

See the response to the commenter's similar written comment 4.

Oral Comment 4:

Ms. Fackler expressed concern with the amount of time it is taking to implement the regulation. She made statements referring to exemptions for the Los Angeles county theme parks, inflatable rides, go carts, and wave pools and questioned why as of last Fall, reporting guidelines were going out the door on Disney's letterhead, not the State's.

Response:

The Board is obligated to consider all public comments and make changes where warranted. The comments regarding exemptions are beyond the scope of this proposal related to the implementing legislation and previously adopted administrative regulations. The comment about reporting guidelines is also beyond the scope of this proposal and may be an administrative matter the commenter should address to the Division. Therefore, the adoption and implementation of these proposed regulations is proceeding as quickly as possible.

Oral Comment 5:

Ms. Fackler mentioned the 11 separate exceptions found in the third draft of the technical regulations such as exempting ride owners from providing evidence of compliance with safety standards written by their own engineers or attorneys. In response to questioning from Board member Mueller, Ms. Fackler said she understood the reasons for the exceptions and understands why they are necessary as long as they are used responsibly.

Response:

No modifications suggested by the commenter or needed in response to the comment.

Oral Comment 6:

Ms. Fackler expressed concern with a paragraph in the Notice for the comment period and public hearing for the proposed regulation which requested proposed alternatives that would lessen any adverse economic impact on businesses.

Response:

See response to the commenter's similar written comment 9.

The Board thanks Ms. Fackler for her comments and participation in the Board's rulemaking process.

Oral Comment 7:

Tami Smurphat commented that she believed the death of her son after falling approximately 525 feet from a ride on August 22, 1999 could have been prevented. She stated that children between the ages of fourteen and seventeen operated the ride from which her son fell. She expressed concerns with ride operators not being more thoroughly trained and not being tested for use of drugs.

Response:

The Board gives their condolences for the loss of her son and is hopeful that the proposed regulations will prevent further loss of life. Also see response to oral comment 3.

The Board thanks Ms. Smurphat for her comments and participation in the Board's rulemaking process.

Oral Comment 8:

Victoria Nelson commented that her daughter Quimby was killed on a waterslide at Water World in Concord five years ago. She expressed sadness that agreement still had not been reached on regulations to prevent such accidents and urged the Division to follow through on AB850 and focus on accident prevention.

Response:

The Board gives their condolences for the loss of Ms. Nelson's daughter and concurs with the need for prevention and a focus on accident prevention. Also see response to oral comment 4.

The Board thanks Ms. Nelson for her comments and participation in the Board's rulemaking process.

Oral Comment 9:

Victoria Zucker commented that her son had suffered severe brain injury on a ride at Disneyland on September 22, 2000. She said that safety measures that might have prevented her son's injuries were not taken out of concern for costs. She also said that Disney's policy of not allowing ride operators to call 911 in case of emergencies contributed to the severity of her son's injuries. Mrs. Zucker supported the comments of Ms. Fackler made on behalf of Saferparks.

Response:

The Board is sorry for Ms. Zucker's son's severe injuries and intends for the proposed standard to prevent further injuries and delayed treatment and response to an injured patron by requiring trained staff to be more readily available. Also see the response to Mr. Herrera's similar oral comment 10 regarding response times and first aid requirements.

The Board thanks Ms. Zucker for her comments and participation in the Board's rulemaking process.

Oral Comment 10:

Jason Herrera commented on response times and first aid requirements. He stated that his company deals with park accidents and has found that response times in theme parks for first aid can be between ten and fifteen minutes. He said his company would like to propose a law or act that would require ride operators to have basic knowledge of first aid and CPR skills that could be taught by his company.

Response:

The Board agrees to modify Sections 3195.7 and 3195.11(b) to address the issue of having an adequate number of persons trained to provide first aid and CPR.

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

Oral Comment 11:

Kathy Fackler commented that to prevent accidents related to patron size that rides should be designed with more safety in mind, such as shoulder harnesses and more containment.

Response:

Section 3195.9(f) adequately addresses the need for restraints and containment type devices which in some cases would include shoulder harnesses. No specific language was provided by the commenter. Also see response to the commenter's similar written comment 6. Therefore, no further modification to the proposal is necessary in response to this comment.

Oral Comment 12:

Board members Arioto and Bradshaw commented that child labor law restrictions might address some of the concerns with respect to the minimum age of ride operators and attendants.

Response:

In California, two Title 8 regulations enforced by the Division of Labor Standards Enforcement (DLSE) limit work around hazardous machinery to individuals 16 years of age or older. Section 11701 specifically prohibits children under 16 years of age from "All occupations where such children come in close proximity to moving machinery." Section 11707 also includes among dangerous activities prohibited for minors under the age of 16 "working in close proximity to explosives or the functioning parts of unguarded and dangerous moving equipment, aircraft, vessels, or of functioning blades and propellers."

California Labor Code Section 1292 prohibits minors under 16 from work in any capacity in adjusting any belt to any machinery, or in oiling, wiping or cleaning machinery, or assisting therein. California Labor Code Section 1294 prohibits minors under 16 from being employed or permitted to work in any capacity on any railroad, whether steam, electric, or hydraulic, as well as upon any vessel or boat engaged in navigation or commerce. Section 1294 also prohibits a minor under 16 years of age from operating any automobile, motorcar, or truck.

In addition to state laws and regulations, under the provisions of California Labor Code Section 1294.1, DLSE enforces federal prohibitions on work by minors under the age of 16 in particularly hazardous occupations identified at Title 29 CFR Part 570. The Wage and Hour Division in the Employment Standards Administration of the U.S. Department of Labor has published Fact Sheet #37, Fact Sheet # 37 states in part:

Under the child labor provisions, workers under 18 years of age generally may not:

Operate power-driven hoists such as elevators, cranes, derricks, and high-lift trucks. However, 16- and 17-year-olds may operate most amusement park and recreation establishment rides.

Occupations Limitations. Fourteen- and 15-year-olds may not be employed in the following occupations often found at amusement parks and recreation establishments:

Work involving the operation or tending of any power-driven machinery and hoists (except office machinery). This prohibition includes work involving most amusement park and recreation establishment rides, and power-driven lawn mowers and trimmers.

In light of the laws and regulations noted above limiting operation of most amusement rides to individuals over 15 years of age, the Board has determined that it is not necessary to adopt operator age restrictions as part of the proposed regulations for permanent amusement rides.

Oral Comment 13:

Boyd Jensen, Garrett & Jensen, Attorneys at Law, commented on alternatives to the approach of proposed Section 3195.3(a)(4)(D). He suggested placing admission information on rides, rather than restrictions. He suggested that it would be better to focus on positive terms such as what a person needs to possess to be admitted to a ride, rather than on the reasons they would not be admitted.

Response:

See response to written comments 2, 43, and 68.

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

Oral Comment 14:

Ms. Fackler, responding to the comment of Boyd Jensen said that sometimes theme parks tend to use words such as "in order to enjoy this ride" you need these abilities when what they really are saying is "in order to survive this ride" you need these abilities, and that this created a gap in expectations between patrons and park management. She suggested more restrictive containment systems being used on some rides as examples of possible safety solutions.

Response:

See the response to oral comments 11 and 13 respectively.

Oral Comment 15:

Board member Art Murray expressed concern with the language of proposed Section 3195.7(c) dealing with the requirement of one person to have a valid certificate for first aid and CPR and asked if one person was sufficient. He suggested that it was not.

Len Welsh responded that one person was probably not sufficient and briefly discussed the reason for the language. He pointed out that one person has to be readily available at all times.

Response:

See response to oral comment 10.

ADDITIONAL DOCUMENTS INCORPORATED BY REFERENCE

- (1) American Society for Testing and Materials (ASTM) F 698-94 (Reapproved 2000), "Standard Specification for Physical Information to be Provided for Amusement Rides and Devices," Sections 1 through 3.
- (2) ASTM F 893-87 (Reapproved 2000), "Standard Guide for Inspection of Amusement Rides and Devices," Sections 1 through 5.
- (3) ASTM F 1159-02, "Standard Practice for the Design and Manufacture of Amusement Rides and Devices," Sections 1 through 14.

These documents are too cumbersome or impractical to publish in Title 8. Therefore, it is proposed to incorporate the documents by reference. Copies of these documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.