

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #4

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GREEN
SEP 17 1993

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: West Virginia Division of Labor TITLE NUMBER: 42

CITE AUTHORITY WV Code 21-10-3

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 17

TITLE OF RULE BEING AMENDED: Amusement Rides and Amusement

Attractions Safety Act

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE
MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT
BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE
FILED WITH THE SECRETARY OF STATE.



\$6.00

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

1999
AUG 04 1999
OFFICE OF THE SECRETARY OF STATE
ADMINISTRATIVE LAW DIVISION

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Division of Labor TITLE NUMBER: 42

CITE AUTHORITY WV Code 21-10-3

AMENDMENT TO AN EXISTING RULE: YES X NO

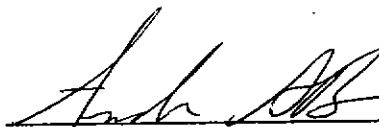
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 17

TITLE OF RULE BEING AMENDED: Amusement Rides and Amusement
Attractions Safety Act

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC
COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH
THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR
THEIR REVIEW.


Authorized Signature

RECEIVED

AUG 04 1999

**Legislative Rule making
Review Committee**

DATE:

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Division of Labor

LEGISLATIVE RULE TITLE: Amusement Rides & Amusement Attraction Safety Act

1. Authorizing statute(s) citation WV Code 21-10-3

2. a. Date filed in State Register with Notice of Hearing

June 30, 1999 (Public Comment Period ONLY)

b. What other notice, including advertising, did you give of the hearing?

- None -

c. Date of Hearing(s) N/A

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached No comments received none

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 4, 1999

f. Name and phone number(s) of agency person(s) to contact for additional information:

Andrew A. Brown, Asst. to the Commissioner

(304) 558-7890

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing: N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached None

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

FILED
JUN 30 2 02 PM '99

OFFICE OF THE SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Division of Labor TITLE NUMBER: 42

RULE TYPE: Legislative; CITE AUTHORITY WV Code 21-10-3

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 17

TITLE OF RULE BEING AMENDED: Amusement Rides and Amusement Attractions
Safety Act

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

RECEIVED

JUN 30 1999

Legislative Rule Making
Review Committee

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH

ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS

COMMENT PERIOD WILL END ON August 3, 1999 AT 4:30 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING
ADDRESS.

Andrew A. Brown, Asst. to the Commissioner

West Virginia Division of Labor

Room 319, Building #3

State Capitol Complex

Charleston, WV 25305

(304) 558-7890

THE ISSUES TO BE HEARD SHALL BE
LIMITED TO THIS PROPOSED RULE.



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

WEST VIRGINIA DIVISION OF LABOR

319 Building Three, Capitol Complex • Charleston, West Virginia 25305
Phone (304) 558-7890 • Fax (304) 558-3797

CECIL H. UNDERWOOD
Governor



STEVEN A. ALLRED
Commissioner

Facts and Circumstances

During the 1999 regular session of the West Virginia Legislature, Senate Bill 166 was passed. This was an amendment to WV Code §21-10, Amusement Rides and Amusement Attractions Safety Act. The bill added two new definitions to the Code, increased the annual permit fee and added a new annual inspection fee. The primary purpose of this rule amendment is to incorporate those changes and to provide some clean-up to the rule.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Amusement Rides and Amusement Attractions Safety Act

Type of Rule: X Legislative Interpretive Procedural

Agency West Virginia Division of Labor

Address Room 319, Building #3

State Capitol Complex

Charleston, WV 25305

1. Effect of Proposed Rule

	FISCAL YEAR				
	ANNUAL				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ -0-	\$ -0-	\$49,035	\$52,488	\$54,562
PERSONAL SERVICES	-0-	-0-	43,085	45,240	47,502
CURRENT EXPENSE	-0-	-0-	5,950	6,248	6,560
REPAIRS & ALTERNATIONS	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	500	-0-
OTHER	-0-	-0-	-0-	500	500

2. Explanation of above estimates:

The above estimates reflect current expenditures plus five percent increases for each future year.

3. Objectives of these rules:

To amend this rule into conformity with the provisions of WV Code 21-10, as amended by Senate Bill 166, 1999 Regular Session.

Rule Title: Amusement Rides and Amusement Attractions Safety Act

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Expenditures will remain unchanged. Revenues will increase from about \$10,000 annually to approximately \$60,000. This is a result of S.B.166, not this rule.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

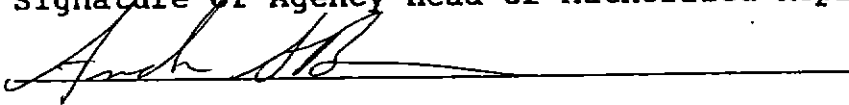
Device owners will see an annual fee increase of \$105.00 per device. This is a result of S.B. 166, not this rule.

C. Economic Impact on Citizens/Public at Large.

- none -

Date: 6/30/99

Signature of Agency Head or Authorized Representative



WEST VIRGINIA DIVISION OF LABOR

319 Building Three, Capitol Complex • Charleston, West Virginia 25305

Phone (304) 558-7890 • Fax (304) 558-3797

CECIL H. UNDERWOOD
Governor



STEVEN A. ALLRED
Commissioner

Summary of Changes

§42-17-2. Definitions. Three definitions, Amusement device (or ride), Permanent amusement device (or ride) and Temporary amusement device (or ride) were all deleted from the rule. These definitions are contained in the statute and are unnecessarily repeated in the rule. As these were deleted, the elements of the section were re-numbered.

§42-17-10. Permit Application Requirements.

10.1. Existing rule requires that an application for permit must be submitted at least seven days prior to the first intended use of a device in the state. Senate Bill 166 changed this time frame from seven days to fifteen days. This rule amendment reflects that change.

10.3. The word "temporary" has been changed to "mobile" to be consistent with the definition of mobile device adopted by Senate Bill 166.

§42-17-11. Fee Schedule. Senate Bill 166 raised the annual permit fee from twenty dollars to twenty-five dollars and imposed a new annual inspection fee of one-hundred dollars. This rule amendment reflects those changes.

TITLE 42
LEGISLATIVE RULE
DIVISION OF LABOR

SERIES 17
AMUSEMENT RIDES AND AMUSEMENT ATTRACTIONS
SAFETY ACT

JUL 1 1 05 PM '99

OFFICE OF THE CLERK OF THE HOUSE OF DELEGATES
STATE OF WEST VIRGINIA

§42-17-1. General.

1.1. Scope. -- W. Va. Code §21-10-1 et seq. ~~provides~~ requires that the commissioner of labor promulgate ~~regulations~~ rules to guard against personal injuries to the general public in the assembly, disassembly, and use of amusement ~~devices~~ rides and attractions at carnivals, fairs and amusement parks and to assure that the owner(s) of such ~~the devices~~ rides and/or ~~attraction~~ attractions maintain sufficient levels of liability insurance to protect the public in the event of accident. It is the purpose of ~~these regulations~~ this rule to set minimum acceptable safety standards for design, construction, operation, maintenance and inspection of ~~such the amusement devices~~ rides and attractions. ~~These regulations shall set~~ This rule sets procedures for the traceability of amusement ~~devices~~ rides and attractions to include registration, inspection, issuance of permits, collection of annual fees and maintenance of annual usage schedules.

1.2. Authority. -- W. Va. Code §§21-10-3 and 29A-1-1.

1.3. Filing Date. -- ~~June 15, 1989.~~

1.4. Effective Date. -- ~~June 15, 1989.~~

§42-17-2. Definitions.

2.1. Accepted engineering practice. ~~That~~ A practice which conforms to accepted principles, tests, or standards of nationally recognized technical or scientific authorities. References ~~given~~ include, Occupational Safety and Health Administration (§29 CFR 1900-1910) and American National Standards Institute (ANSI) Safety Standards.

~~2.2. Amusement device. An amusement ride or amusement attraction which is a mechanical device or combinations of devices which carries or conveys passengers on, along, around, over or through a fixed or restricted course or within a defined area; and shall include a building or structure around, over, or through which people may move or walk, without the aid of a mechanical device integral to the building or structure; for the purpose of providing people with amusement, pleasure, thrills or excitement.~~

~~2.3.~~ 2.2. Amusement park. A tract or area of land used principally as a permanent location for amusement ~~devices or structures~~ rides or attractions.

~~2.4.~~ 2.3. Animal rides. Any ride utilizing live animals to convey humans.

~~2.5.~~ 2.4. Carnival. An itinerant enterprise consisting principally of portable temporary amusement devices and/or mechanical rides operated to provide entertainment or amusement to the public. A carnival may also include animal rides.

~~2.6.~~ 2.5. Commissioner. The Commissioner of the West Virginia Division of Labor or his or her designated representatives.

~~2.7.~~ 2.6. Division. The West Virginia Division of Labor ~~to include~~ including all its sections and personnel.

~~2.8.~~ 2.7. Emergency number(s). Telephone numbers of local ambulance, fire department, police department and physician(s) that will respond to the scene of any emergency.

~~2.9.~~ 2.8. Employee. Any person hired by an owner, operator, or owner/operator's agent, on a temporary or permanent basis to perform any ~~task/work/act~~ task, work or act for the owner, operator or ~~owner/operator's agent~~ of an owner or operator, in the day-to-day, on-going operations of a carnival, fair, or amusement park, and who receives monies, goods, or services as ~~remuneration/compensation~~ remuneration or compensation for services rendered.

~~2.10.~~ 2.9. Fair. An enterprise principally devoted to the exhibition of the products of agriculture or industry and at which amusement ~~devices~~ rides or attractions ~~or temporary structures~~ are provided for use by the public.

~~2.11.~~ 2.10. First-aid kit. A weatherproof container with individual sealed packages for each type of item contained ~~therein~~ in this kit as approved by a consulting physician.

~~2.12.~~ 2.11. Full identifying data. Full name, date and place of birth, permanent home of record/residence and telephone number, business address, employer and telephone number; and for each amusement ~~devices~~ ride or attraction the name, manufacturer, serial number, operating speeds, passenger loads, etc.

~~2.13.~~ 2.12. Immediate site of operation. The exact physical location of and where the amusement ~~device~~ ride or attraction is being operated.

~~2.14.~~ 2.13. Imminent danger. A practice, or condition which exists due to a design, mechanical, structural, or electrical defect which presents an excessive and immediate danger of serious injury to ride passengers, ride operators and/or the general public.

~~2.15.~~ 2.14. Independent ~~owner/operator~~ owner or operator. ~~Anyone owning/operating~~ A person owning or operating an amusement ~~device~~ ride or attraction or animal ride at a carnival, fair or amusement park on a profit sharing or flat fee basis, and who normally does not travel with or is considered to be, a permanent part of any carnival, fair or amusement park. For purposes of ~~these regulations~~ this rule independent ~~owner/operator~~ owner or operator ~~shall be~~ is considered synonymous with ~~owner/operator~~ owner or operator and has equal responsibilities under the law.

~~2.16.~~ 2.15. Non-destructive testing (N.D.T.). Assorted testing methods used to disclose latent defects during which test the physical or chemical state of the material is not altered.

~~2.17.~~ 2.16. Operator. The person having direct control of the starting, stopping, or speed of an amusement ~~ride~~ ride or attraction.

~~2.18.~~ 2.17. Operational tests. Measurements of safety devices which do not come into play during the routine operation of any amusement ~~device~~ ride or attraction.

~~2.19.~~ 2.18. Owner. Any person, corporation, partnership, or association who owns an amusement ~~device~~ ride or attraction or, in the event that the amusement ~~device~~ ride or attraction is leased, the lessee.

~~2.20.~~ Permanent amusement device. ~~A device which is used, or intended to be used, as an amusement device that is erected to remain a lasting part of the premises.~~

~~2.21.~~ 2.19. Qualified. The ~~owner/operator/agent~~ owner, operator or agent shall permit only those employees qualified by training or experience to operate any amusement ~~device~~ ride or attraction, equipment or machinery common and/or related to normal use by and at any carnival, fair, or amusement park. ~~Proof of qualification(s) shall be documented and made immediately available to the commissioner, the division or special inspector upon request.~~

~~2.22.~~ 2.20. Ride operator assistant(s). ~~Anyone~~ A person assisting the ride or attraction operator in the operation of any amusement ~~device~~ ride or attraction to include but not be limited to on-off loading of ride passengers; screening ride passengers for signs of intoxication or other anti-social activities or behavior and ride passengers with physical handicaps which could endanger themselves and other ride passengers; maintaining ride equipment guards and fences for the safety of ride passengers and spectators; and ensuring that all ride passengers are safely secured and all safety devices are in place and functioning before the ride is started. ~~And once started~~ Once the ride has started, the assistant shall ~~to~~ constantly observe the ride and ride passengers in order to immediately warn the ride operator of any ride malfunction or danger to any ride passenger or the general public.

~~2.23.~~ 2.21. Safety coordinator. A person suited by training or experience and designated ~~(in writing)~~ in writing by the owner or operator of an amusement park, fair or carnival as being in charge of the safety of all amusement ~~devices~~ rides or attractions located at the park, fair or carnival.

~~2.24.~~ 2.22. Serious injury. An injury that results in death, loss of consciousness, or ~~required~~ requires medical treatment, other than first aid, by a physician or other medical professional for which a record is created.

~~2.25.~~ 2.23. Special inspector. An inspector licensed by the Commissioner and not employed by the Division.

~~2.26. Temporary amusement device. A device which is used as an amusement device that is regularly relocated from time to time, with or without disassembly.~~

§42-17-3. Rules and Regulations.

3.1. All ~~owners/operators/agents~~ owners, operators and agents shall maintain the following ~~physical~~ information at the immediate site of operation of all amusement devices in West Virginia. All required information shall be in English and legible.

3.1.a. Name plate. A unique identifying name plate shall be permanently affixed to each amusement ~~device~~ ride or attraction and ~~will~~ shall specify the location of manufacture by manufacturer, city, state and country. The name plate shall also have the serial number, ~~device~~ ride or attraction model number and date of manufacture.

3.1.b. Static and dynamic information. Each ~~owner/operator/agent~~ owner, operator and agent shall maintain at the immediate site of operation of the amusement ~~device~~ ride or attraction the following information: the height, width, diameter and weight of the amusement device- ride or attraction when in a non-operational state with no passengers and in a fully operational state with passengers.

3.1.c. Speed. Where the proper speed is essential to the safe operation of the amusement ~~device~~ ride or attraction, each ~~owner/operator/agent~~ owner, operator or agent shall maintain at the immediate site of operation of the amusement ~~device~~ ride or attraction the following information:

3.1.c.1. ~~Maximum~~ The maximum revolutions per minute; or

3.1.c.2. ~~Maximum~~ The maximum feet per second or mile per hour;

3.1.d. Direction of travel. When the proper direction of travel is essential to the design operation of the amusement device, the manufacturer shall designate the direction of travel, including reference point for the designation, and the owner/operator/agent shall maintain this information at the immediate site of operation of the amusement ~~device~~ ride or attraction.

3.1.e. Power requirements. Each ~~owner/operator/agent~~ owner, operator or agent shall maintain at the immediate site of operation of the amusement device the following information:

3.1.e.1. Electrical. ~~Total~~ The total electrical power required to operate the amusement ~~device~~ ride or attraction designated in watts, volts and amperes, including minimum and maximum voltage limits: and

3.1.e.2. Mechanical. A minimum horse power necessary to operate the amusement ~~device~~ ride or attraction safely.

3.1.f. Passenger capacity. Each ~~owner/operator/agent~~ owner, operator or agent shall maintain at the immediate site of operation of the amusement ~~device~~ ride or attraction, the following specifications of the manufacturer(s):

3.1.f.1. ~~Maximum~~ The maximum total passenger weight; or

3.1.f.2. ~~Maximum~~ The maximum number of passengers by carrier unit and amusement ~~device~~ ride or attraction total.

3.1.g. Recommended balance of passenger loading or unloading. When passenger distribution is essential to the safe operation of the amusement ~~device~~ ride or attraction, the appropriate loading and unloading procedure with respect to weight distribution shall be maintained at the immediate site of operation of the amusement ~~device~~ ride or attraction.

3.1.h. Recommended passenger restrictions. Where applicable, any passenger limitations such as, but not limited to, height, weight, age, passenger placement, physical condition, or other appropriate restrictions shall be printed in English in letters large and legible enough to be read at a reasonable distance (5-10 feet) and shall be posted in full public view at each amusement ~~device's~~ ride or attraction's immediate site of operation. The ~~operator/ride operator's~~ operator or operator's assistant(s) shall ~~have the right and obligation to~~ refuse access to an amusement ~~device~~ ride or attraction to any person, ~~(excluding the commissioner, the Division and special inspector(s) excluded),~~ where the ~~operator/ride operator's~~ operator or operator's assistant(s) believes that access by ~~these that person(s)~~ may jeopardize the safety of ~~the rider that person~~ or of any other person or the public in general.

3.1.i. Environmental restrictions. Specifications for operation restrictions relating to environmental conditions such as, but not limited to, wind, rain, corrosive atmosphere, and extreme heat or cold shall be maintained at the immediate site of operation of the amusement ~~device~~ ride or attraction by the ~~owner/operator/agent~~ owner, operator or agent.

3.1.j. Fastener schedule. A manufacturer's issued schedule for the correct ~~(required)~~ grade, or better, torque, and placement of all critical fasteners used in the assembly, or erection or both, of the amusement ~~device~~ ride or attraction shall be maintained by the ~~owner/operator/agent~~ owner, operator or agent at the immediate site of operation of the amusement ~~device~~ ride or attraction.

3.1.k. Manufacturer's operational, maintenance, field inspection guides, manuals, etc. All amusement ~~devices~~ rides or attractions shall have the manufacturer's operational, maintenance, field inspection guidelines to include service bulletins available at the immediate site of operation of the amusement ~~device~~ ride or attraction. These documents shall be in English and those in a foreign language shall be translated to English and certified by the translator (with ~~his/her~~ his or her full

identifying data, ~~home/business~~ home and business address and telephone number), as being a true and totally complete translation of those documents. Both language editions shall be immediately available to the commissioner, the Division or the special inspector.

3.2. All information required by this Section shall be made available to the commissioner, his or her inspectors, his or her agents or his or her designees immediately upon request.

§42-17-4. Operation Procedures for Amusement Devices- Rides and Attractions ~~Owner/Operator's/Agent's~~ Owner's, Operator's and Agent's Responsibility.

4.1. Each amusement ~~device ride or attraction~~ owner/operator/agent owner, operator or agent shall obtain, read and become completely familiar with the contents of the amusement ~~device ride or attraction~~ manufacturer's recommended operating instructions. Each ~~owner/operator/agent~~ owner, operator or agent shall prepare an operating fact sheet. This fact sheet shall be provided to each operator and the ride operator's assistant(s) of the amusement ~~device ride or attraction~~. This fact sheet and documentation that it has been provided each amusement ~~device-ride or attraction~~-operator and operator assistant(s) shall be made available to the commissioner, the division or special inspector upon request. The owner's fact sheet(s), on a device-by-device basis, shall include but not be limited to:

4.1.a. Specific amusement ~~device-ride or attraction~~ operation policies and procedures with pertinent information from the manufacturer's instructions;

4.1.b. ~~Description~~ A description of the amusement ~~device ride or attraction~~ operation;

4.1.c. Specific duties assigned to the position of the amusement device operator and the amusement device operator's ride assistant(s);

4.1.d. General safety procedures;

4.1.e. Additional recommendations of the ~~owner/operator/agent~~ owner, operator or agent; and

4.1.f. Specific emergency procedures in the event of an abnormal condition or an interruption of service.

4.2. Amusement ~~device ride or attraction~~ operator's operators and their assistant(s) shall be qualified. The ~~owner/operator/agent~~ owner, operator or agent shall provide training and instruction for each operator and operator assistant(s) of an amusement ~~device ride or attraction~~. Documentation by is required to include the full name, date and place of birth, permanent residence and telephone number and a list of all formal and informal training of amusement ~~device~~ ride and attraction ~~operator's~~ operators and operator assistant(s) assistants shall be is required, and This information shall be made immediately available to the commissioner, the Division or special inspector upon request. The training shall include, but not be limited to, the following:

4.2.a. Instruction ~~of~~ on amusement ~~device ride or attraction~~ operating procedures following instructions set forth by the amusement ~~device's~~ ride or attraction's manufacturer;

4.2.b. Instructions on specific duties of each assigned position for the ~~normal/emergency~~ normal and emergency and safe operation of the amusement ~~device~~ ride or attraction;

4.2.c. Instructions on general safety procedures;

4.2.d. Instructions on emergency procedures;

4.2.e. Demonstration of the operation of the amusement ~~device~~ ride or attraction:

4.2.f. Supervised observation of the amusement ~~device's~~ ride or attraction's ~~operator's~~ operator and ~~operator's assistant(s)~~ operator assistant's physical operation of the ~~device~~ ride or attraction; and

4.2.g. Additional instructions ~~deemed~~ considered necessary by the ~~owner/operator/agent~~ owner, operator or agent.

§42-17-5. Operational Testing.

5.1. The ~~owner/operator/agent~~ owner, operator or agent of an amusement ~~device~~ ride or attraction shall use manufacturer's specific operation tests along with manufacturer's recommended intervals for these tests to be performed to determine whether a given ~~device~~ ride or attraction is operating within operational limits as recommended by the manufacturer. Where manufacturer's guidelines for operational tests are not available, the ~~owner/operator/agent~~ owner, operator or agent shall use operational ~~test~~ tests based on available guidelines for ~~devices~~ rides and attractions similar in design and function. When not available, the owner shall provide, in writing, a certification from the ~~ride or attraction~~ manufacturer that these guidelines are not available and the reason why they are not available.

5.2. Nondestructive testing (N.D.T.). N.D.T. testing ~~shall be~~ is required as recommended by the manufacturer. In addition, any hidden shaft in an amusement ~~device~~ ride or attraction may be required to undergo N.D.T. at the owner's expense after written notice to the ~~owner/operator/agent~~ owner, operator or agent by the commissioner, the Division, or special inspector. The notice ~~will~~ shall state a date by which the N.D.T. shall be completed. Proof of required N.D.T. testing ~~will~~ shall be provided by the ~~owner/operator/agent~~ owner, operator or agent to the commissioner, the division or special inspector.

5.3. The ~~owner/operator/agent~~ owner, operator or agent of an amusement ~~device~~ ride or attraction shall conduct the tests developed under Section subdivision 5.1-2 of this rule at the manufacturer's recommended intervals but may conduct the tests on a more frequent basis ~~should the owner/operator/agent desire to do so, if he or she considers it necessary~~. Testing directed by the commissioner, the Division or special inspector will be at owner's expense and in addition to those required by the manufacturer or ~~owner/operator/agent~~ owner, operator or agent.

5.4. ~~Failure to comply will result in the commissioner not issuing, or revoking a permit to operate and the amusement device operation being terminated until such time as the owner/operator/agent complies with the testing requirements to include providing the results to the commissioner, the Division or special inspector. If the owner, operator or agent fails to comply with testing requirements, the commissioner may refuse to issue an operating permit or revoke an existing permit ceasing the operation of an amusement ride or attraction.~~

§42-17-6. Maintenance Procedures for Amusement Devices Rides and Attractions.

6.1. Each ~~owner/operator/agent~~ owner, operator or agent of an amusement ~~device~~ ride or attraction shall read and become completely familiar with the contents of the manufacturer's recommendations, and shall develop and implement a program of maintenance and inspections providing for the duties and responsibilities necessary in the care of each amusement ~~device~~ ride or attraction. This program of maintenance shall include a checklist provided to each person performing the regularly scheduled maintenance on each ~~device~~ ride or attraction. These inspections shall be fully documented and the inspection sheets shall contain the full identifying date of the amusement ~~device~~ ride or attraction and the inspector to include the full name, date and place of birth, permanent residence address and telephone number, of the person(s) conducting the maintenance and inspections of ~~device by device~~ each amusement ride or attraction. These shall be considered permanent records and shall be

retained seven (7) years past the date that the amusement ~~device~~ ride or attraction was permanently removed from operation. The ~~owner's/operator's/agent's~~ owner, operator or agent's checklist (~~on a device-by-device basis~~) for each ride or attraction shall include, but not be limited to:

6.1.a. Description of preventive maintenance assignments to be performed with frequency no less than that recommended by device manufacturer;

6.1.b. ~~Description~~ A description of inspections to be performed ~~with~~ and their frequency;

6.1.c. Special safety instructions, where applicable; and

6.1.d. Any additional recommendations of the ~~owner/operator/agent~~ owner, operator or agent.

6.2. The ~~owner/operator/agent~~ owner, operator or agent of the amusement ~~device~~ ride or attraction shall provide training for each person performing the regularly scheduled maintenance on the device, pertaining to ~~their~~ his or her assigned duties. This training shall be fully documented and the training sheets shall contain the full identifying data of the amusement ~~device~~ ride or attraction the training was conducted on, a device-by-device basis, and the trainee to include his or her full name, date and place of birth, permanent residence address and telephone number. This training shall include, but not be limited to ~~the following~~:

6.2.a. Instruction on inspection and preventative and required maintenance procedures not less than the manufacturer's recommendations;

6.2.b. Instruction on the specific duties of the assigned position;

6.2.c. Instruction on general safety procedures;

6.2.d. Demonstration of the physical performance of the assigned performance of ~~his/her~~ his or her assigned regularly scheduled duties and inspections;

6.2.e. Supervised observation of the maintenance person's physical performance of ~~that person's~~ his or her assigned regularly scheduled duties and inspections; and

6.2.f. Additional instructions deemed necessary by the owner.

6.3. Prior to allowing an amusement ride or attraction to carrying ~~carry~~ passengers, the ~~owner/operator/agent~~ owner, operator or agent shall conduct or cause to be conducted, a daily pre-opening inspection based on provided instructions to insure the safe operation of the ~~device~~ amusement ride or attraction. The ~~owner/operator/agent~~ owner, operator or agent shall maintain a legible, written record of the daily inspection, signed, dated and ~~with which~~ contains full identifying data as to the ~~device~~ ride or attraction and the person(s) performing the inspection(s). These records shall be kept for a period of not less than seven (7) years. The inspection program shall include, but not be limited to ~~the following~~:

6.3.a. ~~Inspection~~ An inspection of all passenger-carrying equipment, including restraint equipment and latches;

6.3.b. ~~Visual~~ A visual inspection of entrances, exits, stairways, and ramps;

6.3.c. ~~Visual~~ A visual inspection of grounds around and/or inside device;

6.3.d. ~~Functional~~ A functional test of all communication equipment necessary for the operation of the ~~device~~ ride or attraction;

6.3.e. ~~Inspection~~ An inspection or test of all automatic and manual safety equipment;

6.3.f. ~~Inspection~~ An inspection or test of the brakes, including service brakes, emergency brakes, parking brakes, and back stops;

6.3.g. ~~Visual~~ A visual inspection of any fencing, guarding, and barricades;

6.3.h. ~~Visual~~ A visual inspection of the ~~device ride or attraction~~ structure;

6.3.i. ~~Visual~~ A visual inspection of electrical equipment and wiring;

6.3.j. ~~Visual~~ A visual inspection to ensure that all belts, sprockets, gears, pinch points, open holes, etc., are guarded in accordance with §29 CFR 1910.219 (Mechanical Power Transmission Apparatus);

6.3.k. The ~~device ride or attraction~~ shall be operated for a minimum of two (2) complete operating cycles for each inspection. A complete cycle shall include operation of all passenger-carrying equipment. If the amusement ~~device's ride or attraction's~~ manufacturer requires more than the minimum of two (2) complete operating cycles, the manufacturer's requirements shall be followed;

6.3.l. ~~Visual~~ A visual inspection of all pins and fasteners; and

6.3.m. ~~Visual~~ A visual inspection of all blocking and shoring.

6.4. Following any unscheduled cessation of operation necessitated by malfunction, adjustment, environmental conditions, mechanical, electrical, operational or structural modification, the ~~device amusement ride or attraction~~ shall be unloaded and the device or the specifically affected element shall be appropriately inspected and operated without passengers to determine that the cause for cessation of operation has been corrected and does not create an operational or safety hazard.

6.4.a. ~~These incidents~~ Any unscheduled cessation of operation shall be fully documented and contain not only the full identifying data of the ~~device ride or attraction~~ and operator(s) involved, but shall also include the nature of the incident, date, time, weather, location, ride speed, passenger load, passenger loading, etc.

6.4.b. The records involving these incidents shall be retained for a period of not less than seven (7) years from the date of the incident.

6.5. If the commissioner's representative or special inspector finds that the amusement ~~device ride or attraction~~ presents an imminent danger, ~~that person will~~ he or she shall immediately notify, in writing, the amusement ~~device ride or attraction operator/owner/agent~~ owner, operator or agent, and sponsor of the fair or carnival or owner of the land upon which the fair or carnival is located. If the ~~device ride or attraction~~ is not immediately removed from service, the inspector ~~will~~ shall file an immediate report by telephone of the imminent danger with the commissioner. A temporary or permanent restraining order shall be issued where appropriate.

6.6. The ~~owner/operator/agent~~ owner, operator or agent of any amusement ~~device ride or attraction~~ which, during the course of its operation, is involved in an accident which results in a fatality or serious injury shall report the fatality or injury to the commissioner within twenty-four (24) hours of its occurrence. The report shall include the full identifying data ~~of the injured parties~~ persons, the hospital where treatment was rendered, the type of injuries, the amusement ride or attraction device involved, ~~owner/operator/agent~~ the owner, operator or agent and ~~device~~ the amusement ride or attraction operator and assistant(s) and any other information pertaining to the events leading up to, the nature of and the outcome of the accident as well as the status of the ~~device amusement ride or~~

attraction involved in the accident.

6.6.a. Any ~~device~~ amusement ride or attraction which has caused, contributed to, or has been damaged during an accident in which a fatality or serious injury occurs shall not be removed from the accident site until written permission to do so is given by the commissioner. Any amusement ~~device~~ ride or attraction that is involved in an accident in which a fatality or serious injury occurs shall immediately be shut down and the accident scene left intact as at the time of the accident. The ~~owner/operator/agent~~ owner, operator or agent ~~will~~ shall collect the information required by ~~Sections~~ subsections 6.1 through 6.6 of this rule and ensure the availability of the ~~operator/operator assistant(s)~~ operator or operator assistant operating the ~~device~~ ride or attraction at the time of the accident to the commissioner, the division or special inspector.

6.6.b. ~~Dismantling the device involved in the accident, removing the device and/or any part thereof will be regarded as destruction of evidence and will be viewed as evidence of negligence on the owner/operator/agent's part and no excuse for such will be accepted by the commissioner, the Division or special inspector. No person may dismantle, alter or remove any amusement ride or attraction which has been involved in an accident without the written permission of the commissioner.~~

6.6.c. ~~Altering, removing, destroying or in any way modifying any record required by these regulations may result in permanent revocation of a permit to operate by the commissioner. All accident records must be retained for a period of not less than seven (7) years from the date of the accident. No person may alter, remove, destroy or in any way modify any record required by this rule.~~

6.6.d. ~~The records involving these accidents shall be retained for a period of not less than seven (7) years from the date of the accident. The Commissioner may permanently revoke the operating permit of any amusement ride or attraction owner, operator or agent found to have violated the provisions of this subdivision.~~

§42-17-7. Miscellaneous Safety Requirements for Amusement Devices Rides and Attractions.

7.1. Electrical systems.

7.1.a. The following wiring systems ~~will be~~ are acceptable:

7.1.a.1. A Three Phase Five Wire System grounded at the power source and constructed in accordance with the 1984 National Electrical Code. Compliance with the requirements of any later edition of the National Electrical Code shall be accepted by the Commissioner as compliance with this Section.

7.1.a.2. A Single Phase Four Wire System grounded at the power source and constructed in accordance with the 1984 National Electrical Code. Compliance with the requirements of any later edition of the National Electrical Code shall be accepted by the Commissioner as compliance with this Section.

7.1.b. For amusement ~~devices~~ rides and attractions in which water is a major medium, ground fault interruption circuitry ~~must~~ shall be provided for wiring systems of 240 volts or less, 30 amps or less.

7.1.c. All electrical equipment and devices are to be guarded against access by unauthorized persons.

7.1.d. Dark rides and attractions ~~The~~ require that the track or buss supplying voltage to the individual cars shall be maintained at 30 volts or less potential.

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7.2. Structural.

7.2.a. All amusement rides and attractions shall be guarded against access by ~~non~~unauthorized personnel into the area of operation.

7.2.b. One A B & C fire extinguisher of at least 10 lb. capacity shall be placed on all generator units and fuel-powered amusement rides and attractions.

7.2.c. There shall be a minimum of six (6) feet between fences when a fence is attached to a portion of a ride containing an electrical device. Where the electrical device is 240 volts or less, 30 amps or less and equipped with ground fault interruption circuitry, the minimum distance need not be required by this subdivision does not need to be maintained. Common fences are acceptable under other conditions.

7.2.d. Dark rides and attractions. ~~There shall be~~ require a minimum of one (1) smoke and fire detector per five hundred (500) square foot area and a ten (10) pound fire extinguisher shall be located at all entrances and exits and at any operator station not located directly at an entrance or exit.

7.3. ~~Ride~~ Amusement ride or attraction operation.

7.3.a. The ~~owner/operator/agent~~ owner, operator or agent shall not allow any ride or attraction operator under the influence of any illegal drug, narcotic or alcohol to operate or assist in the operation of the ride or attraction. Further, any ride or attraction operator or his or her assistant who is under a doctor's care and who has been prescribed any medication that could affect his or her safe operation of the ride shall report this information to his or her employer, immediately.

7.3.b. When requested, the operator ~~must~~ shall halt a an amusement ride or attraction and allow passengers desiring to disembark to do so.

7.3.c. The owner shall have no fewer than one (1) operator per ride or attraction. However, at no time shall the number of operator(s) be less than that required or recommended by the ~~device~~ ride or attraction manufacturer for the safe operation of the ~~device~~ ride or attraction.

7.3.d. The owner shall not allow an operator to leave the controls during operation of ride and shall not allow assistants to leave their assigned stations during operation of the ride.

§42-17-8. Insurance, Bond, or Other Security.

8.1. Before any permit can be issued, the owner ~~must~~ shall file with and have accepted by the Commissioner an approved Certificate of Insurance against liability for injury to persons arising out of the use of an amusement ~~device~~ ride or attraction to be in an amount not less than that specified by W. Va. Code §21-10-12.

8.2. Evidence of insurance may be:

8.2.a. A policy of insurance procured from one or more insurers acceptable to the Insurance Commissioner of West Virginia either:

8.2.a.1. Licensed to transact insurance in West Virginia; or

8.2.a.2. Approved as a non-admitted surplus lines carrier for risks located in this State.

8.2.b. Cash or other security acceptable to the Commissioner of Labor.

8.3. The commissioner shall not accept any policy of insurance unless it ~~shall obligate~~ obligates the

insurer to give written notice to the Commissioner thirty (30) days before any proposed cancellation, suspension or non-renewal of the policy. The Commissioner shall make available upon request an approved endorsement form.

§42-17-9. Permit Required.

Before beginning operation of any amusement device ride or attraction in West Virginia the owner of the device shall apply in writing to the Commissioner for a permit to operate. ~~A permit to operate is valid for a period of one (1) year from the date of issuance. All permits to operate shall expire on the thirty-first day of December of each year.~~

§42-17-10. Permit Application Requirements.

10.1. Each application for a permit shall be received by the Commissioner not less than ~~seven (7)~~ fifteen (15) days before the first intended date of use. Amendments to the application shall be received by the commissioner no less than twenty-four (24) hours before the first intended date of use of the amusement ride or attraction.

10.2. Each permit application shall include the following information:

10.2.a. ~~Name~~ The name of the owner of the amusement device: ;

10.2.b. The address of the owner: ;

10.2.c. The name of the state under whose laws the owner is incorporated; ~~(if incorporated)~~.

10.2.d. The make, model, and serial number of the amusement device and name and address of manufacturer: ;

10.2.e. Acceptable evidence of the liability insurance policy, bond, or other security covering the amusement device. The Commissioner may, at his or her discretion, ~~required~~ require submission of the complete copy of insurance: ;

10.2.f. An inspection report by a special inspector or in the alternative a request for inspection by the Division: ;

10.2.g. Each application shall be accompanied by a schedule of operation within West Virginia during the effective period of the requested permit. This schedule ~~must~~ shall include:

10.2.g.1. ~~Location~~ The location of operation: ;

10.2.g.2. ~~Setup~~ The ride or attraction setup date: ;

10.2.g.3. ~~Starting date/time~~ The starting date and time of usage for the ride or attraction: ;
and

10.2.g.4. ~~Disassembly~~ The amusement ride or attraction disassembly date.

10.3. In addition, each application for a permit for a ~~temporary mobile device~~ amusement rides or attractions shall include the following information:

10.3.a. ~~Planned~~ The planned schedule of appearances of the amusement ride or attraction in West Virginia including dates and locations: ;

10.3.b. ~~Names~~ The name of the sponsor or land owner at each location where use of the amusement ride or attraction is planned.

§42-17-11. Fee Schedule.

11.1. ~~Upon application for a permit, The owner, operator, or agent of an amusement ride or attraction must apply for a new permit each year. with the application accompanied by an inspection report by an approved special inspector, an~~ The annual permit fee shall be charged at the rate of twenty dollars (\$20.00) shall be twenty five dollars (\$25.00) for the each device amusement ride or attraction. covered by any permit application. Permit applications will not be processed unless the annual permit fee is attached.

11.2. An annual inspection fee of one hundred dollars (\$100.00) shall be charged for each amusement ride or attraction. The inspection fee must accompany the application for permit. Permit applications will not be process unless the inspection fee is attached. If the permit applicant utilizes the services of an authorized special inspector, the annual inspection fee shall be paid to the special inspector. A copy of the special inspector's inspection report which certifies that the inspection fee has been paid shall be attached to the permit application.

§42-17-12. Qualifications of Approved Special Inspectors.

12.1. A special inspector shall have ~~the following qualifications:~~

12.1.a.1. At least five years experience in amusement device maintenance and safety and ~~completion of~~ have completed approved courses in materials inspection and testing and in fasteners, or in the alternative;

12.1.a.2. A four (4) year college degree in engineering or architecture with a minimum of twelve (12) semester hours of course work in the area of mechanics and strength of materials; ; and

12.1.b. ~~Evidence of successful completion of~~ Successfully completed an approved Rides Safety Inspection course within the previous two (2) calendar years.

12.2. Each applicant for approval as a special inspector shall submit with his or her annual application evidence of insurance against errors and omissions in an amount of not less than one hundred thousand dollars (\$100,000.00) per occurrence, procured from one or more insurers licensed to transact insurance in West Virginia or approved as a non-admitted surplus lines carrier for risks located in this State.

12.3. ~~Each application applicant~~ applicant for approval as a special inspector shall submit with his or her annual application a license fee in the amount of fifty dollars (\$50.00).

12.4. ~~Applications~~ Any person applying for approval as a special inspector shall be made make application annually on a form to be provided by the Commissioner.