

WEST VIRGINIA  
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #7

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SECRETARY OF STATE

NOTICE OF AN EMERGENCY RULE

AGENCY: Department of Labor TITLE NUMBER: 42

CITE AUTHORITY: §21-10

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 17

TITLE OF RULE BEING FILED AS AN EMERGENCY: Amusement Rides and  
Amusement Attractions Safety Act

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

House Bill 4470, Amusement Rides and Amusement Attractions Safety Act, was passed on March 11, 1988 to be effective 90 days from passage. Enforcement of the Act is mandated to begin on June 9, 1988 and this rule is necessary to implement that enforcement.

Use Additional Sheets If Necessary.

*W.F. Carmichael*  
W. F. Carmichael  
Commissioner of Labor

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West Virginia Legislative Rule

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Department of Labor

OFFICE OF THE SECRETARY OF STATE

Chapter 21-10

Series 17

Title: Amusement Rides and Attractions Safety Act

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Section 1. General.

1.1 Scope - Chapter 21, Article 10 of the West Virginia Code, 1988, provides that the commissioner of labor promulgate Regulations to guard against personal injuries to the general public in the assembly, disassembly, and use of amusement devices at carnivals, fairs and amusement parks and to assure that the owner(s) of such devices and/or attraction maintain sufficient levels of liability insurance to protect the public in the event of accident. It is the purpose of these regulations to set minimum acceptable safety standards for design, construction, operation, maintenance and inspection of such amusement devices. These regulations shall set procedures for the traceability of amusement devices 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 - July 1, 1988

1.4 Effective Date - The effective date of these regulations shall be July 1, 1988, except as may be otherwise specified for amendments and additional regulations hereafter adopted by the Department.

Section 2. Definitions

2.1 - Accepted engineering practice: that 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: Any mechanical device or combination of devices which carries or conveys passengers on, along, around, over or through a fixed or restricted course or within a defined area for the purpose of giving its passengers amusement, pleasure, or excitement.

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Series 17, Sect. 2

2.3 Amusement park: A tract or area used principally as a permanent location for amusement devices or structures.

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

2.5 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 Commissioner: The Commissioner of the West Virginia Department of Labor or his designated representatives.

2.7 Department: The West Virginia Department of Labor to include all its divisions and personnel.

2.8 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 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 for the owner, operator or owner/operator's agent, 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 for services rendered.

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

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

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

2.13 Immediate Site of Operation: The exact physical location of and where the amusement device is being operated.

2.14 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 Independent owner/operator: Anyone owning/operating an amusement device 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 independent owner/operator shall be considered synonymous with owner/operator and has equal responsibilities under the law.

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

2.18 Operational tests: Measurements of safety devices which do not come into play during the routine operation of any amusement device.

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

2.20 Permanent 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 Qualified: The owner/operator/agent shall permit only those employees qualified by training or experience to operate any amusement device, 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 department or special inspector upon request.

2.22 Ride operator assistant(s): Anyone assisting the ride operator in the operation of any amusement device 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; 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, 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 Safety coordinator: A person suited by training or experience and designated (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 located at the park, fair or carnival.

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

2.25 Shall: "Shall" means mandatory.

2.26 Should: "Should" means recommended.

2.27 Special inspector: An inspector licensed by the Commissioner and not employed by the Department.

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

### Section 3. Rules and Regulations

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

3.2 Name Plate: A unique identifying name plate shall be permanently affixed to each amusement device and will specify location of manufacture by manufacturer, city, state and country. The name plate shall also have the serial number, device model number and date of manufacture.

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

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3.4 Speed: Where the proper speed is essential to the safe operation of the amusement device, each owner/operator/agent shall maintain at the immediate site of operation of the amusement device the following information:

- a. Maximum revolutions per minute, or
- b. Maximum feet per second or mile per hour.

3.5 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.

3.6 Power requirements: Each owner/operator/agent shall maintain at the immediate site of operation of the amusement device the following information:

- a. Electrical. Total electrical power required to operate the amusement device designated in watts, volts and amperes, including minimum and maximum voltage limits.
- b. Mechanical. A minimum horse power necessary to operate the amusement device safely.

3.7 Passenger capacity: Each owner/operator/agent shall maintain at the immediate site of operation of the amusement device, the following specifications of the manufacturer(s):

- a. Maximum total passenger weight, or
- b. Maximum number of passengers by carrier unit and amusement device total.

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

3.9 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 immediate site of operation. The operator/ride operator's assistant(s) shall have the right and obligation to refuse access to an amusement device to any person (the commissioner, the Department and special inspector(s) excluded), where the operator/ride operator's assistant(s) believes that access by these person(s) may jeopardize the safety of the rider or of any other person or the public in general.

3.10 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 by the owner/operator/agent.

3.11 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 shall be maintained by the owner/operator/agent at the immediate site of operation of the amusement device.

3.12 Manufacturer's operational, maintenance, field inspection guides, manuals, etc.: All amusement devices 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. 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 full identifying data, home/business address and telephone numbers, as being a true and totally complete translation of those documents. Both language editions shall be immediately available to the commissioner, the Department or the special inspector.

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

Section 4. Operation Procedures for Amusement Devices Owner/Operator's/Agent's Responsibility:

4.1 Each amusement device owner/operator/agent shall obtain, read and become completely familiar with the contents of the amusement device manufacturer's recommended operating instructions. Each owner/operator/agent shall prepare an operating fact sheet. This fact sheet shall be provided to each operator

and ride operator's assistant(s) of the amusement device. The owner's fact sheet(s), on a device-by-device basis, shall include but not be limited to:

- a. Specific amusement device operation policies and procedures with pertinent information from the manufacturer's instructions.
- b. Description of the amusement device operation
- c. Specific duties assigned to the position of the amusement device operator and the amusement device operator's ride assistant(s).
- d. General safety procedures.
- e. Additional recommendations of the owner/operator/agent.
- f. Specific emergency procedures in the event of an abnormal condition or an interruption of service.
- g. This fact sheet and documentation that it has been provided each amusement device operator and operator assistant(s) shall be made available to the commissioner, the department or special inspector upon request.

4.2 Amusement device operator's and their assistant(s) shall be qualified! The owner/operator/agent shall provide training and instruction for each operator and operator assistant(s) of an amusement device. The training shall include, but not be limited to, the following:

- a. Instruction on amusement device operating procedures following instructions set forth by the amusement device's manufacturer.
- b. Instructions on specific duties of each assigned position for the normal/emergency and safe operation of the amusement device.
- c. Instructions on general safety procedures.
- d. Instructions on emergency procedures.
- e. Demonstration of the physical amusement device operation.
- f. Supervised observation of the amusement device's operator's and operator's assistant(s) physical operation of the device.
- g. Additional instructions deemed necessary by the owner/operator/agent.
- h. Documentation by full name, date and place of birth, permanent residence and telephone number of all formal and informal training of amusement device operator's and operator assistant(s) shall be required and shall be made immediately available to the commissioner, the Department or special inspector upon request.

Section 5. Operational Testing:

5.1 The owner/operator/agent of an amusement device 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 is operating within operational limits as recommended by the manufacturer. In the case manufacturer's guidelines for operational tests are not available, the owner/operator/agent shall use operational tests based on available guidelines for devices similar in design and function. When not available, the owner shall provide, in writing, a certification from the ride manufacturer that these guidelines are not available and the reason why!

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

5.3. The owner/operator/agent of an amusement device shall conduct the tests developed under Section 5.1-2 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. Testing directed by the commissioner, the Department or special inspector will be at owner's expense and in addition to those required by the manufacturer or owner/operator/agent.

5.4. Failure to comply will result in the commissioner not issuing, or revoking a certificate of inspection 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 Department or special inspector.

Section 6. Maintenance Procedures for Amusement Devices.

6.1 Each owner/operator/agent of an amusement device shall read and become completely familiar with the contents of the manufacturer's recommendations, each owner/operator/agent shall develop and implement a program of maintenance and inspections providing for the duties and responsibilities necessary in the care of each amusement device. This program of maintenance shall include a checklist provided to each person performing the

regularly scheduled maintenance on each device. The owner's/operator's/agent's checklist (on a device-by-device basis) shall include, but not be limited to:

- a. Description of preventive maintenance assignments to be performed with frequency not less than that recommended by device manufacturer.
- b. Description of inspections to be performed with frequency.
- c. Special safety instructions, where applicable.
- d. Any additional recommendations of the owner/operator/agent.
- e. These inspections shall be fully documented and the inspection sheets shall contain the full identifying data of the amusement device and the inspector to include full name, date and place of birth, permanent residence address and telephone number, of the person(s) conducting the maintenance and inspections on device-by-device basis. These shall be considered permanent records and shall be retained seven (7) years past the date that the amusement device was permanently removed from operation.

6.2 The owner/operator/agent of the amusement device shall provide training for each person performing the regularly scheduled maintenance on the device, pertaining to their assigned duties. This training shall include, but not be limited to the following:

- a. Instruction on inspection and preventative and required maintenance procedures not less than the manufacturer's recommendations.
- b. Instruction on the specific duties of the assigned position.
- c. Instruction on general safety procedures.
- d. Demonstration of the physical performance of the assigned performance of his/her assigned regularly scheduled duties and inspections.
- e. Supervised observation of the maintenance person's physical performance of that person's assigned regularly scheduled duties and inspections.
- f. Additional instructions deemed necessary by the owner.
- g. This training shall be fully documented and the training sheets shall contain the full identifying data of the amusement device the training was conducted on, on a device-by-device basis, and the trainee to include full name, date and place of birth, permanent residence address and telephone number.

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Leg. Rule 21-10  
Series 17, Sect. 6

6.3 Prior to carrying passengers, the owner/operator/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. The owner/operator/agent shall maintain a legible, written record of the daily inspection, signed, dated and with full identifying data as to the device and the person(s) performing the inspection(s). These records shall be kept for a period of no less than seven (7) years. The inspection program shall include, but not be limited to the following:

- a. Inspection of all passenger-carrying equipment, including restraint equipment and latches.
- b. Visual inspection of entrances, exits, stairways, and ramps.
- c. Visual inspection of grounds around and/or inside device.
- d. Functional test of all communication equipment necessary for the operation of the device.
- e. Inspection or test of all automatic and manual safety equipment.
- f. Inspection or test of the brakes, including service brakes, emergency brakes, parking brakes, and back stops.
- g. Visual inspection of any fencing, guarding, and barricades.
- h. Visual inspection of the device structure.
- i. Visual inspection of electrical equipment and wiring.
- j. Visual inspection to ensure that all belts, sprockets, gears, pinch points, open holes, etc., are guarded in accordance with 29 CFR 1900-1910.
- k. The device shall be operated for a minimum of two complete operating cycles. A complete cycle shall include operation of all passenger-carrying equipment. If the amusement device's manufacturer requires more than the minimum of two complete operating cycles, the manufacturer's requirements shall be followed.
- l. Visual inspection of all pins and fasteners.
- m. 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 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.

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Series 17, Sect. 6

- a. These incidents shall be fully documented and contain not only the full identifying data of the device and operator(s) involved, but will also include nature of the incident, date, time, weather, location, ride speed, passenger load, passenger loading, etc.
- b. The records involving these incidents shall be retained for a period of no 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 presents an imminent danger, that person will immediately notify, in writing, the amusement device operator/owner/agent, and sponsor of the fair or carnival or owner of the land upon which the fair or carnival is located. If the device is not immediately removed from service, the inspector will 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 of any amusement device which, during the course of its operation, is involved in an accident which results in a fatality or serious injury shall report the injury to the commissioner within 24 hours of occurrence. The report shall include the full identifying data of the injured parties, the hospital where treatment was rendered, type of injuries, device involved, owner/operator/agent and device 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 involved in the accident.

- a. Any device 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 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 will collect the information required by Sections 6.1-6.6 and ensure the availability of the operator/operator assistant(s) operating the device at the time of the accident to the commissioner, the department or special inspector.

- 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 Department or special inspector.
- c. Altering, removing, destroying or in any way modifying any record required by these regulations may result in permanent revocation of permit to operate by the commissioner.
- d. The records involving these accidents shall be retained for a period of no less than seven (7) years from the date of the accident.

Section 7. Miscellaneous Safety Requirements for Amusement Rides

7.1 Electrical Systems

- a. The following wiring systems will be acceptable:
  - 1. 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.
  - 2. 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.
- b. Ground fault interruption circuitry must be provided for wiring systems of 240 volts or less, 30 amps or less, for amusement devices in which water is a major medium.
- c. All electrical equipment and devices are to be guarded against access by unauthorized persons.
- d. Dark Rides - The track or buss supplying voltage to the individual cars shall be maintained at 30 volts or less potential.

## 7.2 Structural

- a. All rides shall be guarded against access by non-authorized personnel into the area of operation.
- b. One AB&C fire extinguisher of at least 10 lb. capacity shall be placed on all generator units and fuel-powered rides.
- c. There shall be a minimum of 6 feet between fences when 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 GFI circuitry the minimum distance need not be maintained. Common fences are acceptable under other conditions.
- d. Dark rides - There shall be a minimum of one (1) smoke and fire detector per 500 square foot area and a 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 Operation

- a. The owner shall not allow any ride operator under the influence of any illegal drug, narcotic or alcohol to operate or assist in the operation of the ride. Further, any ride operator or his assistant under doctor's care and who has been prescribed any medication that could affect his safe operation of the ride shall report this information to his employer, immediately!
- b. When requested, the operator must halt a ride and allow passengers desiring to disembark to do so.
- c. The owner shall have no fewer than one (1) operator per ride. However, at no time shall the number of operator(s) be less than that required or recommended by the device manufacturer for the safe operation of the device.
- 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.

## Section 8. Insurance, Bond, or other Security

8.1 Before any permit can be issued, the owner must 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, to be in an amount not less than that specified by Chapter 21, Article 10, Section 12 of the West Virginia Code.

8.2 Evidence of insurance may be:

- a. A policy of insurance procured from one or more insurers acceptable to the Insurance Commissioner of West Virginia either:
  1. Licensed to transact insurance in West Virginia.
  2. Approved as a non-admitted surplus lines carrier for risks located in this State;
- 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 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.

Section 9. Permit Required

Before beginning operation of any amusement device 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 year from the date of issuance.

Section 10. Permit Application Requirements

10.1 Each application for a permit shall be received by the Commissioner no less than 7 days before the first intended date of use. Amendments to the application shall be received by the commissioner no less than 24 hours before the first intended date of use.

10.2 Each permit application shall include the following information:

- a. Name of the owner of the amusement device.
- b. The address of the owner.
- c. The name of the state under whose laws the owner is incorporated (if incorporated).
- d. The make, model, and serial number of the amusement device and name and address of manufacturer.

- e. Acceptable evidence of the liability insurance policy, bond, or other security covering the amusement device. The Commissioner may, at his discretion, require submission of the complete copy of insurance.
- f. An inspection report by a special inspector or in the alternative a request for inspection by the Department.
- 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 include :
  - 1. Location of operation
  - 2. Setup date
  - 3. Starting date/time of usage, and
  - 4. Disassembly date.

10.3 In addition, each application for a permit for a temporary device shall include the following information:

- a. Planned schedule of appearances in West Virginia including dates and locations.
- b. Names of sponsor or land owner at each location where use is planned.

#### Section 11. Fee Schedule

11.1 Upon application for a permit, with the application accompanied by an inspection report by an approved special inspector, an annual permit fee shall be charged at the rate of \$20.00 for the device covered by any permit application.

#### Section 12. Qualifications of Approved Special Inspectors

12.1 A special inspector shall have the following qualifications:

- a.
  - 1. At least five years experience in amusement device maintenance and safety and completion of approved courses in materials inspection and testing and in fasteners, or in the alternative,
  - 2. A four-year college degree in engineering or architecture with a minimum of twelve semester hours of course work in the area of mechanics and strength of materials.
- b. Evidence of successful completion of an approved Rides Safety Inspection course within the previous two calendar years.

Department of Labor  
Leg. Rule 21-10  
Series 17, Sect. 12

12.2 Each applicant for approval as a special inspector shall submit with his annual application evidence of insurance against errors and omissions in an amount of no less than \$100,000 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 applicant for approval as a special inspector shall submit with his annual application a license fee in the amount of \$50.00.

12.4 Applications for approval as a special inspector shall be made annually on a form to be provided by the Commissioner.



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(Plus all the volunteer  
help we can get)

STATE OF WEST VIRGINIA  
SECRETARY OF STATE  
Charleston 25305

August 10, 1988

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Department of Labor

RULE: New Rule, Series 17, Amusement Rides and Amusement Attractions Safety

DATE FILED AS AN EMERGENCY RULE: July 1, 1988

DECISION NO. 10-88

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

KEN HECHLER  
Secretary of State

SECRETARY OF STATE

1988 AUG 10 PM 4:03

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(Plus all the volunteer  
help we can get)

# STATE OF WEST VIRGINIA

## SECRETARY OF STATE

Charleston 25305

DECISION

EMERGENCY RULE DECISION  
(ERD 10-88)

AGENCY: Department of Labor  
RULE: New Series 17, Amusement Rides and Amusement  
Attractions Safety

DATE FILED AS AN EMERGENCY RULE: July 1, 1988

- par. 1 The Department of Labor has filed the above new rule as an emergency rule.
- par. 2 West Virginia Code 29A-3-15A requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a(a)].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the ERD is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The Department of Labor has filed this emergency rule with supporting documents with the Secretary of State on July 1, 1988 and with the LRMRC on July 14, 1988.

par. 7 It is the determination of the Secretary of State that the Department of Labor has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §21-10-3 reads in part:  
§21-10-3. Rules.

*The department of labor shall promulgate rules for the safe installation repair, maintenance, use, operation and inspection of all amusement rides and amusement attractions as the department finds necessary for the protection of the general public using amusement rides and amusement attractions.*

par. 9 It is the determination of the Secretary of State that the Department of Labor has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency: WV Code 29A-3-15(g) defines "emergency" as follows:

*(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.*

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Department of Labor are as follows:

House Bill 4470, Amusement Rides and Amusement Attractions Safety Act, was passed on March 11, 1988 to be effective 90 days from passage. Enforcement of the Act is mandated to begin on June 9, 1988 and this rule is necessary to implement that enforcement.

- par. 13 As stated in prior Emergency Rule Decisions, this office will apply a lesser degree of standards to emergency rules designed to prevent injury or life threatening conditions.
- par. 14 Delay in implementing inspections of amusement facilities particularly during the season when the majority of these businesses are operated would substantially harm the public interest as well.
- par. 15 It is the determination of the Secretary of State that this proposal meets the standards for emergency rule.
- par. 16 This decision shall be cited as Emergency Rule Decision 10-88 or ERD 10-88 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Department of Labor, the Attorney General and the Legislative Rule Making Review Committee.

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KEN HECHLER  
SECRETARY OF STATE

Entered \_\_\_\_\_