

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #2

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2011 JUN 27 PM 3:13

OFFICE OF THE WEST VIRGINIA
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: W. Va. Code 21-10-3.

AMENDMENT TO AN EXISTING RULE: YES 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 RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____


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 July 27, 2011 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

David W. Mullins, Commissioner

Division of Labor
Capitol Complex

Building 6, Room B-749
Charleston, WV 25305

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

749-B Building 6 , Capitol Complex • Charleston, West Virginia 25305

Phone (304) 558-7890 • Fax (304) 558-2273

www.wvlabor.org

EARL RAY TOMBLIN
Governor



DAVID W. MULLINS
Commissioner

Statement of Facts and Circumstances

and

Summary of Proposed Amendments to Title 42, Series 17

Amusement Rides and Amusement Attractions Safety Act

The West Virginia Division of Labor proposes the following amendments and revisions to Title 42, Series 17, of the West Virginia Code of State Regulations:

- incorporating by reference the specific American Society for Testing and Materials (“ASTM”) standards for amusement rides and amusement attractions that are used by inspectors to assess the installation, repair, use, operation, maintenance and inspection for the safety of the general public;
- clarifying current administrative practices for the registration, inspection, and issuance of permits for amusement rides and amusement attractions;
- defining an inflatable amusement device or air-supported structure as an amusement ride or amusement attraction; and
- eliminating redundant provisions that are in the ASTM standards.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Amusement Rides and Amusement Attractions Safety Act

Rule Title: _____

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Division of Labor

Address: State Capitol Complex
Building 6, Room B-749
Charleston, WV 25305

Phone Number: 304.558.7890 x 111 Email: david.w.mullins@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The Division of Labor anticipates that the proposed amendments to the legislative rule will have a minimal impact on the costs and revenues of state government.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Amusement Rides and Amusement Attractions Safety Act

Rule Title: _____

Rule Title: _____

- 3. Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

N/A

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

Date: June 27, 2011

Signature of Agency Head or Authorized Representative

Angel R. Moore

**TITLE 42
LEGISLATIVE RULE
DIVISION OF LABOR**

FILED
2011 JUN 27 PM 3:13
OFFICE OF THE CLERK
SECRETARY OF STATE

**SERIES 17
AMUSEMENT RIDES AND AMUSEMENT ATTRACTIONS
SAFETY ACT**

§42-17-1. General.

1.1. Scope. -- This legislative rule sets the minimum safety standards for the installation, repair, use, operation, maintenance and inspection of amusement rides and attractions and establishes procedures for the registration, inspection, issuance of permits, collection of annual fees, and the certification of inspectors, special inspectors, and limited specialty inspectors.

1.2. Authority. -- W. Va. Code §21-10-3.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Repeal of former rule. -- This legislative rule repeals and replaces 42 CSR 17, "Amusement Rides and Amusement Attractions Safety Act," filed May 2, 2009 and effective June 1, 2009.

§42-17-2. Application and Enforcement.

2.1. Application. This legislative rule applies to the West Virginia Division of Labor and all persons, amusement rides and amusement attractions governed or otherwise within the purview of the Amusement Rides and Amusement Attractions Safety Act, W. Va. Code §21-10-1, *et seq.*

2.2. Enforcement. The enforcement of this legislative rule is vested with the West Virginia Division of Labor.

§42-17-3. Definitions.

3.1. "Amusement device" means a device that is synonymous with the definitions of amusement ride and amusement attraction as set forth in W. Va. Code § 21-10-2 (a) and (b).

3.2. "ASTM" refers to the American Society for Testing and Materials, 100 Barr Harbor Drive, P. O. Box C700, West Conshohocken, PA 19428-2959.

3.3. "Commissioner" refers to the Commissioner of the West Virginia Division of Labor or

his or her designated representatives.

3.4. "Division" refers to the West Virginia Division of Labor, including all its sections and personnel.

3.5. "Emergency numbers" means the telephone numbers of a local ambulance, fire department, police department and physician that will respond to the scene of an emergency.

3.6. "Employee" means a person hired by an amusement ride or amusement attraction owner, operator, or agent, whether on a temporary or permanent basis, and who receives monies, goods, or services as compensation for services rendered.

3.7. "First aid" means the one-time treatment or observation of scratches, cuts not requiring stitches, burns, splinters and contusions.

3.8. "First-aid kit" means a weatherproof container with individually sealed packages for each type of item, as approved by a consulting physician.

3.9. "General public," as referred to in W. Va. Code § 21-10-3, means any person riding an amusement ride, using an amusement attraction, or within the vicinity of an amusement ride or amusement attraction.

3.10. "Immediate site of operation" means the exact physical location where the amusement ride or attraction is being operated, including the street address, and the name of the town or city.

3.11. "Imminent danger" means a practice or condition which could reasonably be expected to cause death or serious injury to ride passengers, ride operators and/or the general public.

3.12. "Inflatable amusement device" or "air supported structure" means an amusement ride or attraction designed for use that includes, but is not limited to, bouncing, climbing, sliding or interactive play, is made of flexible fabric inflated by continuous air flow from one or more blowers, and relies on air pressure to maintain its shape.

3.13. "Limited specialty inspector" means an inspector certified by the Commissioner who is limited to inspecting inflatable amusement devices or air supported structures, climbing walls, trackless trains, EuroBungees and mechanical bulls.

3.14. "NAARSO" refers to the National Association of Amusement Ride Safety Officials, P. O. Box 638, Brandon, FL 33509.

3.15. "NDT" means non-destructive testing.

3.16. "Operator assistant" means a person assisting the ride or attraction operator in the

operation of any amusement ride or attraction.

3.17. "Play dates" means the dates that an amusement ride or amusement attraction is available to the general public.

3.18. "Qualified employee" means an employee of an owner, operator, or agent who is qualified by training or experience to assemble, set up, operate, and disassemble an amusement ride or attraction.

3.19. "Serious injury" means an injury that results in death, loss of consciousness, or requires medical treatment by a physician or other medical professional for which a record is created.

3.20. "Special inspector" means an inspector certified by the Commissioner and not employed by the Division.

3.21. "Unscheduled cessation of operation" means an unplanned cessation of operation of an amusement ride or amusement attraction due to any mechanical, electrical, operational or structural malfunction, modification or adjustment or due to any environmental conditions, including weather.

§42-17-4. Adoption of Standards.

4.1. The following standard is adopted and incorporated by reference: ASTM F 698 - 94 (Reapproved 2000), "Specification for Physical Information to be Provided for Amusement Rides and Devices."

4.2. The following standard is adopted and incorporated by reference: ASTM F 747 - 06, "Terminology Relating to Amusement Rides and Devices."

4.3. The following standard is adopted and incorporated by reference: ASTM F 770 - 06a, "Practice for Operation Procedures for Amusement Rides and Devices."

4.4. The following standard is adopted and incorporated by reference: ASTM F 846 - 92 (Reapproved 2009), "Guide for Testing Performance of Amusement Rides and Devices."

4.5. The following standard is adopted and incorporated by reference: ASTM F 853 - 05, "Practice for Maintenance Procedures for Amusement Rides and Devices."

4.6. The following standard is adopted and incorporated by reference: ASTM F 893 - 05a, "Guide for Inspection of Amusement Rides and Devices."

4.7. The following standard is adopted and incorporated by reference: ASTM F 1159 - 03a, "Practice for Design and Manufacture of Patron Directed, Artificial Climbing Walls, Dry Slide, Coin

Operated and Purposeful Water Immersion Amusement Rides and Devices and Air-Supported Structures.”

4.8. The following standard is adopted and incorporated by reference: ASTM F 1193 - 06, “Practice for Quality, Manufacture, and Construction of Amusement Rides and Devices.”

4.9. The following standard is adopted and incorporated by reference: ASTM F 2291 - 06a, “Practice for Design of Amusement Rides and Devices,” Section 14, “Fencing, Guardrails, Handrails, and Gates for Amusement Rides and Devices.”

4.10. The following standard is adopted and incorporated by reference: ASTM F 2374 - 07a, “Practice for Design, Manufacture, Operation, and Maintenance of Inflatable Amusement Devices.”

4.11. The following standard is adopted and incorporated by reference: ASTM F2376 - 08, “Practice for Classification, Design, Manufacture, Construction, and Operation of Water Slide Systems.”

4.12. The following standard is adopted and incorporated by reference: NAARSO Certification Program Rules, October 27, 2009, Section 3, “Examination,” and Section 5, “Requirements for Certification and Renewals for an Inspector of Amusement Rides and Devices, Limited Specialty Certification and Renewal and Level 1 Certification and Renewal.”

§42-17-5. Registration and Permit Required.

5.1. Before beginning the operation of any amusement ride or attraction in West Virginia, the owner of the amusement ride or attraction shall apply in writing to the Commissioner for a permit to operate and shall register each amusement ride or amusement attraction.

5.2. A permit to operate an amusement ride or attraction shall expire annually on December 31st of each year.

5.3. A permit to operate is valid only for the amusement rides or amusement attractions registered with the Commissioner.

5.4. A permit to operate is valid only for the play dates and locations provided on the application or on an amendment to the application.

§42-17-6. Permit Application and Registration Requirements.

6.1. An owner of an amusement ride or attraction shall submit an application for a permit to the Commissioner and shall register each ride or attraction at least 15 days before the first intended date of use.

6.2. The application for a permit and the registration shall be on forms provided by the Commissioner.

6.3. An owner shall submit any amendment to the application or registration to the Commissioner on a form provided by the Division.

6.3.a. An owner shall submit an amendment at least 24 hours before the first intended date of use of the amusement ride or attraction.

6.3.b. An owner shall submit an amendment no later than 11:00 a.m. on Friday for weekend play dates or no later than 11:00 a.m. on Thursday if Friday is a legal holiday.

6.4. An owner of an amusement ride or attraction shall include the following information on the application:

6.4.a. The name and address of the owner of the amusement ride or attraction;

6.4.b. Registration of the make, model, and serial number and the name and address of the manufacturer of the amusement ride or attraction;

6.4.c. Documentation of the liability insurance policy covering the amusement ride or attraction in an amount not less than that specified by W. Va. Code §21-10-12;

6.4.e. If required by the manufacturer of the amusement ride or attraction, the most current non-destructive testing report;

6.4.f. The completed "Notice of Scheduled Inspection" form; and

6.4.g. A schedule of play dates in West Virginia for the effective period of the requested permit, to include the following information:

6.4.g.1. Identification of the immediate site of operation;

6.4.g.2. The amusement ride or attraction setup date;

6.4.g.3. The starting date and time of usage for the ride or attraction; and

6.4.g.4. The amusement ride or attraction disassembly date.

6.5. In addition to the requirements set forth in this section, the owner of a mobile amusement ride or attraction shall include the following information on the application on a form provided by the Commissioner:

6.5.a. The planned schedule of play dates of the amusement ride or attraction in West Virginia, including dates and actual physical addresses of the immediate sites of operation; and

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

6.6. The owner of the amusement ride or amusement attraction shall include the permit fee with the permit application.

§42-17-7. Insurance.

7.1. Before a permit can be issued, the owner shall provide the Commissioner with a Certificate of Insurance documenting liability coverage for injury to persons arising out of the use of an amusement ride or attraction, in an amount not less than that specified by W. Va. Code §21-10-12.

7.2 The Commissioner may, at his or her discretion, require the owner of the amusement ride or attraction to submit the complete insurance policy or contract.

7.3. An owner shall ensure that the insurance policy is issued by a carrier licensed or approved to transact business by the WV Offices of the Insurance Commissioner

7.4. The Commissioner shall not accept any policy of insurance unless it obligates the insurer to give written notice to the Commissioner at least 30 days before any proposed cancellation, suspension or non-renewal of the policy.

§42-17-8. Inspection of the Amusement Ride or Attraction Required; Issuance of a Permit to Operate.

8.1. An inspector, a special inspector or a limited specialty inspector shall inspect an amusement ride or attraction and determine that it is in compliance with the provisions of W. Va. Code § 21-10-1, *et seq.* and this rule, before he or she can issue a permit to operate.

8.2. A permit to operate shall be in the form of a certificate of inspection, which shall include the date or dates of the inspection.

8.3. An inspector, a special inspector or a limited specialty inspector shall affix a copy of the certificate of inspection on the amusement ride or attraction or shall post the certificate of inspection in close proximity to the amusement ride or attraction where it is readily visible to the general public.

§42-17-9. Qualifications for the Certification of Special Inspectors; Renewal of Special Inspector Certification.

9.1. A person applying for certification as a special inspector shall make application annually on a form provided by the Commissioner.

9.2. An applicant for certification as a special inspector shall submit evidence of the following with the application:

9.2.a. Documentation of a current NAARSO Level 1 Certification; or

9.2.b. Documentation of education, training and experience that is the equivalent of a NAARSO Level 1 Certification and documentation that he or she has of successfully passed an examination that is substantially equivalent to a NAARSO examination; and

9.2.c. Evidence of insurance against errors and omissions in an amount of not less than \$100,000.00 per occurrence, issued by 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.

9.3. A certified special inspector shall submit evidence of the following with the annual renewal application:

9.3.a. Documentation of a current NAARSO Level 1 Certification, including the continuing education requirements for a NAARSO Level 1 Certification; or

9.3.b. Documentation of completion of continuing education that is the equivalent of the NAARSO continuing education requirements for a NAARSO Level 1 Certification; and

9.3.c. Evidence of insurance against errors and omissions in an amount of not less than \$100,000.00 per occurrence, issued by 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.

§42-17-10. Qualifications for the Certification of Limited Specialty Inspectors; Renewal of Limited Specialty Inspector Certification.

10.1. A person applying for certification as a limited specialty inspector shall make application annually on a form provided by the Commissioner.

10.2. An applicant for certification as a limited specialty inspector shall submit evidence of the following with the application:

10.2.a. Documentation of a current NAARSO Limited Specialty Certification; or

10.2.b. Documentation of education, training and experience that is the equivalent of a NAARSO Limited Specialty Certification and documentation that he or she has of successfully passed an examination that is substantially equivalent to a NAARSO examination; and

10.2.c. Evidence of insurance against errors and omissions in an amount of not less than \$100,000.00 per occurrence, issued by 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.

10.3. A certified limited specialty inspector shall submit evidence of the following with the annual renewal application:

10.3.a. Documentation of a current NAARSO Limited Specialty Certification, including the training requirements for a NAARSO Limited Specialty Certification; or

10.3.b. Documentation of completion of training that is the equivalent of the NAARSO training requirements for a NAARSO Limited Specialty Certification; and

10.3.c. Evidence of insurance against errors and omissions in an amount of not less than \$100,000.00 per occurrence, issued by 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.

§42-17-11. Information Required at the Immediate Site of Operation.

In addition to the requirements of ASTM F 698-94(Reapproved 2000), "Physical Information to be Provided for Amusement Rides and Devices," the owner, operator, operator's assistant or agent shall have emergency telephone numbers on file and immediately available at the site of operation.

§42-17-12. Amusement Ride Assembly, Set Up, Disassembly and Operation.

The following requirements are in addition to the requirements of ASTM F 770-06a, "Standard Practice for Ownership and Operation of Amusement Rides and Devices:"

12.1. An owner, operator or agent shall have a qualified employee assemble, set up and disassemble each amusement ride and shall have a qualified employee present at the immediate site of operation at all times during which an amusement ride or attraction is in use.

12.2. Upon request from a passenger, an operator, operator assistant, or qualified employee shall halt an amusement ride and allow the passenger to disembark.

12.3. An owner, agent or operator shall have the required number of qualified employees present at all times during the operation of the amusement ride as required or recommended by the amusement ride manufacturer and shall always have at least 1 qualified employee present per amusement ride at all times during the operation of the ride.

12.4. An operator or qualified employee shall remain at the controls at all times during the operation of an amusement ride.

12.5. An operator assistant shall remain at his or her assigned station at all times during the operation of the amusement ride.

§ 42-17-13. Inflatable Amusement Device or Air-Supported Structure Assembly and Set Up.

In addition to the requirements of ASTM F 2374 - 07a, "Practice for Design, Manufacture, Operation, and Maintenance of Inflatable Amusement Devices" an owner, operator or agent who rents or leases an inflatable amusement device or air-supported structure for use by an individual, an organization or an event, the owner, operator or agent shall have a qualified employee assemble and set up each device at the immediate site of operation, and who shall clearly explain and provide clearly written information for the safe operation and disassembly of the device or structure.

§42-17-14. Operational Testing.

The following requirements are in addition to the requirements of ASTM F 770-06a, "Practice for Operation Procedures for Amusement Rides and Devices,"

14.1. The owner, operator, or agent of an amusement ride or attraction may be required to perform an NDT of any hidden shaft in an amusement ride or attraction upon receipt of a written notice from the Commissioner.

14.1.a. The Commissioner's written notice shall state a date by which the NDT must be completed.

14.1.b. The owner, operator or agent shall provide proof of the required NDT testing to the Commissioner, the special inspector, or a limited special inspector.

14.2. If the owner, operator or agent fails to comply with any testing requirements, the Commissioner can refuse to issue an operating permit or can revoke an existing permit and require the operation of an amusement ride or attraction to cease.

§ 47-17-15. Unscheduled Cessation of Operation; Imminent Danger; Serious Injury or Fatality; Reports and Records.

15.1. Unscheduled Cessation of Operation.

15.1.a. Following any unscheduled cessation of operation, the operator or qualified employee of the amusement ride or attraction shall immediately have the passengers safely unloaded from the ride or attraction.

15.1.b. If the operator or qualified employee determines that the amusement ride or attraction can safely resume operation, the operator or qualified employee shall first operate the ride or attraction without passengers to ensure that the cause of the unscheduled cessation of operation has been corrected.

15.1.c. The operator or qualified employee shall document any unscheduled cessation of operation, including the identification of the ride or attraction, the name of the operator or operator's assistant operating the ride or attraction during the unscheduled cessation, and a complete description of the incident, including the date, time, weather conditions, location, ride speeds, number of passengers, etc.

15.2. Imminent Danger.

15.2.a. If the Commissioner, a special inspector or a limited specialty inspector determines that an amusement ride or attraction presents an imminent danger, he or she shall immediately give written notification to the amusement ride or attraction owner, operator or agent, and the event sponsor, if applicable, advising them that the amusement ride or attraction shall be immediately removed from service.

15.2.b. If the owner, operator or qualified employee does not immediately remove the amusement ride or attraction from service, the inspector shall immediately report the imminent danger to the Commissioner.

15.2.c. If the owner, operator or qualified employee does not immediately remove the amusement ride or attraction from service, the Commissioner may seek a temporary or permanent restraining order or injunction to prohibit the continuing operation of the ride or attraction.

15.3. Serious Injury or Fatality.

15.3.a. If a member of the general public is involved in an amusement ride or attraction accident that results in a serious injury or a fatality, the owner, operator or operator's assistant or qualified employee shall immediately shut down the ride or attraction and secure the safety of other passengers or patrons and the general public.

15.3.b. An owner, operator or operator's assistant or qualified employee shall ensure that the scene of a serious injury or fatality is left intact from the time of the accident and shall ensure that the amusement ride or device involved is not removed from the scene of the accident without written authorization from the Commissioner or a law enforcement officer.

15.3.c. The owner, operator or operator assistant or qualified employee who witnessed the accident or who operated the amusement ride or attraction when the accident occurred shall be available to be interviewed by the Commissioner.

15.3.d. The owner, operator or agent of the amusement ride or attraction shall make a verbal report of the injury or fatality to the Commissioner within 24 hours of its occurrence.

15.3.e. The owner, operator or agent shall document the accident, to include the full name, address and telephone number of the injured person(s), a description of the injuries, identification of the amusement ride or attraction involved, the names and addresses of the owner, operator or operator's assistant, qualified employee, or agent, and any other pertinent information describing the events leading up to the accident.

15.4. Reports and Records.

15.4.a. The owner of the amusement ride or attraction shall retain all reports, documents, photographs and records required by this section of the rule for not less than 7 years from the date of the unscheduled cessation, imminent danger notification, or serious injury or fatality.

15.4.b. If an owner or operator violates any provision of this section of the rule, the Commissioner may permanently revoke the permit to operate.