

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

Form #3

Do Not Mark In This Box

2011 JUL 28 AM 11:29

WEST VIRGINIA
SECRETARY OF STATE

**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: 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: _____

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

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

July 28, 2011

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

David W. Mullins, Commissioner, West Virginia Division of Labor, State Capitol Complex, Building 6, Room B-749, Charleston, WV 25305
304.558.7890 x 111 (phone); 304.558.2273 (fax); david.w.mullins@wv.gov

- g. **IF DIFFERENT FROM ITEM 'f',** please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Jennifer Burgess, Director, Safety Section, West Virginia Division of Labor, State Capitol Complex, Building 6, Room B-749, Charleston, WV 25305
304.558.7890 x 120 (phone); 304.558.2415 (fax); jennifer.w.burgess@wv.gov

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 or comment period:

June 27, 2011 through July 27, 2011

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

July 28, 2011

d. Attach findings and determinations and reasons:

Attached

WEST VIRGINIA DIVISION OF LABOR

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

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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 ASTM International 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 International 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 JUL 28 AM 11:29

SERIES 17
AMUSEMENT RIDES AND AMUSEMENT ATTRACTIONS
SAFETY ACT

WEST VIRGINIA
DIVISION OF STATE

§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 International," refers to the organization formerly known as 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 person" means an owner, operator or agent or an employee of an owner, operator, or agent who has the documented training and 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 International F 698 - 94 (Reapproved 2000), "Standard Specification for Physical Information to be Provided for Amusement Rides and Devices."

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

4.3. The following standard is adopted and incorporated by reference: ASTM International F 770 - 11, "Standard Practice for Ownership, Operation, Maintenance, and Inspection of Amusement Rides and Devices."

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

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

4.6. The following standard is adopted and incorporated by reference: ASTM International F 893 - 10, "Standard Guide for Auditing Amusement Rides and Devices."

4.7. The following standard is adopted and incorporated by reference: ASTM International F 1159 - 03a, "Standard 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 International F 1193 - 06, "Standard Practice for Quality, Manufacture, and Construction of Amusement Rides and Devices."

4.9. The following standard is adopted and incorporated by reference: Section 14, "Fencing, Guardrails, Handrails, Gates, and Walkways for Amusement Rides and Devices" of ASTM International F 2291 - 11, "Standard Practice for Design of Amusement Rides and Devices."

4.10. The following standard is adopted and incorporated by reference: ASTM International F 2374 - 10, "Standard Practice for Design, Manufacture, Operation, and Maintenance of Inflatable Amusement Devices."

4.11. The following standard is adopted and incorporated by reference: Section 8, "Installation and Use," and Section 9, "Maintenance and Operations" of ASTM International F2375 - 09, "Standard Practice for Design, Manufacture, Installation and Testing of Climbing Nets and Netting/Mesh used in Amusement Rides, Devices, Play Areas and Attractions."

4.12. The following standard is adopted and incorporated by reference: ASTM International F2376 - 08, "Standard Practice for Classification, Design, Manufacture, Construction, and Operation of Water Slide Systems."

4.13. The following standard is adopted and incorporated by reference: ASTM International F2460 - 11, "Standard Practice for Special Requirements for Bumper Boats."

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

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

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

- 6.4.f.1. Identification of the immediate site of operation;
- 6.4.f.2. The amusement ride or attraction setup date;
- 6.4.f.3. The starting date and time of usage for the ride or attraction; and
- 6.4.f.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 International F 698-94(Reapproved 2000), “Standard Specification for 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 International F 770-11, “Standard Practice for Ownership, Operation, Maintenance and Inspection of Amusement

Rides and Devices:"

12.1. An owner, operator or agent shall document his or her own training and experience and each qualified person's training and experience as set forth in Section 4 of ASTM International F770-11, and shall provide this documentation to the Commissioner upon request.

12.2. A qualified person shall assemble, set up and disassemble each amusement ride or attraction.

12.3. At all times during the operation of an amusement ride or attraction, an owner, agent or operator shall have the number of qualified persons present at the immediate site of operation as required or recommended by the manufacturer and shall always have at least 1 qualified person present per amusement ride or attraction at all times during the operation of the ride or attraction.

12.4. A qualified person shall remain at the controls at all times during the operation of an amusement ride or attraction.

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

12.6. Upon request from a passenger, a qualified person shall halt an amusement ride or attraction and allow the passenger to disembark.

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

In addition to the requirements of ASTM International F 2374 - 10, "Standard 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 International F 770-11, "Standard Practice for Ownership, Operation, Maintenance and Inspection of 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.

SUMMARY OF COMMENTS RECEIVED **AGENCY RESPONSES AND AMENDMENTS**

Comment from Ken Martin

Mr. Martin suggested that the Division incorporate by reference the following updated and additional ASTM International standards in the proposed rule:

- F770-11, “Standard Practice for Ownership, Operation, Maintenance and Inspections of Amusement Rides and Devices;”
- F893-10, “Standard Guide for Auditing Amusement Rides and Devices;”
- F2291-11, “Standard Practice for Design of Amusement Rides and Devices;”
- F2374-10, “Standard Practice for Design, Manufacture, Operation and Maintenance of Inflatable Amusement Devices;”
- F2375-09, “Standard Practice for Design, Manufacture, Installation and Testing of Climbing Nets and Netting/Mesh Used in Amusement Rides, Devices, Play Areas and Attractions;” and
- F2460-11, “Standard Practice for Special Requirements for Bumper Boats.”

Agency Response and Amendments

The Division accepted the comments made by Mr. Martin and has amended the proposed rule with Mr. Martin’s suggestions.

Comment from Ken Martin

Mr. Martin suggested including a provision in the proposed rule that would allow “the most recent version” of the ASTM standards to be incorporated by reference.

Agency Response

A legislative rule cannot prospectively adopt future amendments to standards incorporated by reference. When a standard incorporated by reference is revised in the future, the legislative rule can be amended to incorporate the revision at that time. Accordingly, no amendment was made to the proposed rule.

Comment from Robert W. Johnson

1. Mr. Johnson advised that “ASTM” has officially changed its name to “ASTM International” and no longer uses the name American Society for Testing and Materials.

Agency Response and Amendments

After research, the Division confirmed that ASTM has officially changed its name to “ASTM International” and has changed the organization’s name accordingly in the proposed rule where referenced.

Comment from Robert W. Johnson

2. Mr. Johnson suggested that the Division remove the term “air supported structure” from the definitions because the ASTM standard does not refer to “air supported structures” and because the Division’s definition might could be construed to put these amusement devices under building code standards.

Agency Response

The term “air supported structure” is used in various places in the ASTM standards, including the definitions section. The Division believes there is enough clarifying language in the definition to prevent confusion with building codes and elected to leave the definition unchanged.

Comment from Robert W. Johnson

3. Mr. Johnson commented that he did not understand the logic behind the definition of “limited specialty inspector” since there is already a definition of “inspector” and “special inspector.” He suggested combining this definition with that of “special inspector” for such devices and include “zip lines.” He also questioned the requirement for “e & o” insurance and whether that is different from insurance requirements for other categories of inspectors.

Agency Response

The term “limited specialty inspector” was included in the definitions to reflect a relatively new classification used by the National Association of Amusement Ride Safety Officials (NAARSO), the premier training and education entity for training and certifying amusement ride/attraction inspectors. A limited specialty inspector can be distinguished from an inspector and a special inspector because a limited specialty inspector can only inspect certain types of amusement rides and attractions. The insurance requirements are identical for all classes of inspectors. In addition, the regulation of ziplines was passed by the 2011 Legislature (*see* W. Va. Code § 21-15-1, *et seq.*) and the corresponding rules have been proposed in a separate rule

Comment from Robert W. Johnson

4. Mr. Johnson suggested adding the term “owner” to the definition of “Qualified Employee” because many small owners are “hands-on” in their business.

Agency Response and Amendments

The Division agrees with Mr. Johnson and has modified the definition of “Qualified Employee” to a definition of “Qualified Person” that includes an owner, operator or agent.

Comment from Robert W. Johnson

5. Mr. Johnson suggested using the definition of “unscheduled cessation of operation” found in the ASTM standards, which is “a rare, unusual, or irregular stopping...”.

Agency Response

The Division believes the definition proposed in the rule is clearer in that it includes events such as weather, which are not necessarily “rare” or “unusual”.

Comment from Robert W. Johnson

6. Mr. Johnson suggested that the Division consult with someone from ASTM because it is continually introducing, updating and revising its standards.

Agency Response

The Division consulted with ASTM while compiling the proposed rule and plans to monitor ASTM’s activities for updates and revisions. The Division also has plans to join the organization so updates and revisions will be readily available.

Comment from Robert W. Johnson

7. Mr. Johnson asked whether a carnival company that has only one event in the State is subject to the annual permit fee or the fee is pro-rated, and whether the Division would consider pro-rating the annual fee on a monthly basis for operators from out-of-state who may enter the State on a one-time basis and operate in the State for less than 30 days.

Agency Response

This would require a change in statute since the current provision requiring a permit to operate applies to all companies regardless of the extent of the business they do in West Virginia. In addition, the Division believes such a change in the statute would be very difficult to manage administratively.

Comment from Robert W. Johnson

8. Mr. Johnson suggested that the Division add that “only one ride be operated by a qualified operator or qualified employee”.

Agency Response

The Division believes this is what the proposed rule states. W.Va. Code St. R § 42-17-12.3, as proposed, states, “...and shall always have at least 1 qualified employee present per amusement ride at all times during the operation of the ride”.

Comment from Robert W. Johnson

9. Mr. Johnson questioned why the Commissioner “may order a non-destructive test [“NDT”] of any hidden shaft in an amusement ride or attraction” when the manufacturer determines the schedule for NDTs, which can be quite costly.

Agency Response

The proposed rule would allow the Commissioner to order an NDT in the very rare event that an incident or accident occurs where an NDT is the only way to obtain information for an investigation that is not otherwise available.

Comment from Robert W. Johnson

10. Mr. Johnson questioned why “the Commissioner would interview the owner, operator or operator assistance or qualified employee who witnessed the accident or operation the amusement ride or attraction when the accident occurred.” He suggested instead that the Division use the words “Commissioner or his/her designee.”

Agency Response

The definition of “Commissioner” in the proposed rule includes the language suggested by Mr. Johnson.

Comment from Robert W. Johnson

11. Mr. Johnson suggested that because storage space in a mobile office is limited, at least 3 years of records be maintained in the mobile office of the amusement ride company but allow the remainder of the 7 years of records to be produced within 72 hours.

Agency Response

The proposed rule does not require that records to be maintained in a mobile office.

Burgess, Jennifer W

From: Ken Martin [kenneth.r.martin@verizon.net]
Sent: Wednesday, July 20, 2011 11:40 AM
To: Burgess, Jennifer W
Cc: Hunter, Mary L.
Subject: proposed update of regulation
Attachments: F 893 - 10 Auditing Amusement Rides and Devices.pdf; F 770-11 Ownership Operation Maintenance.pdf; F 2374-10 Inflatable Standard.pdf; F 2375 - 09 Netting Standard.pdf; F 2460 - 11 Bumper Boats.pdf; F 2291 - 11 Amusement Ride Design.pdf

Ms. Burgess,

I would like to add my thoughts regarding West Virginia's update to the amusement ride regulations and the role the ASTM plays. The recent notice of upgrading to the most current standard is already out of date, as new updated standards have already superseded the ones listed on the West Virginia web site.

An ASTM standard could be updated several times a year or in some cases not for many years. I would suggest modifying the code to read something to the effect of "most recent version".

I have been a member of ASTM F-23 members for many years. I am also one of the founding members of the Inflatable task group. I urge you to join ASTM and follow the process. Should the State be interested in contracting or appointing someone to follow and keep the Division updated, I would gladly offer my name as a suggestion.

I have attached a few of the most recent standards for your benefit.

Best Regards,

Ken Martin

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Burgess, Jennifer W

From: Mullins, David W
Sent: Monday, July 11, 2011 9:41 PM
To: Burgess, Jennifer W
Subject: Fw: Proposed Amendments WVA Title 42, Series 17 Code

Follow Up Flag: Follow up
Flag Status: Flagged

From: boboaba@aol.com [mailto:boboaba@aol.com]
Sent: Monday, July 11, 2011 03:14 PM
To: Mullins, David W
Subject: Proposed Amendments WVA Title 42, Series 17 Code

RE: Comments on Proposed Amendments to Title 42, Series 17, Amusement Rides and Amusement Attractions Safety Act.

Dear Mr. Mullins:

Having received a copy of your proposed Amendments to Title 42, Series 17, I would like to make the following suggestions and comments.

The OABA is the national trade association representing the portable amusement industry, which includes carnivals, circuses, independent ride owners, food and game concessionaires, and others who make their living supporting America's fairs, expositions, festivals and other community events.

I have tried to explain the following comments as they related to specific changes in each of the applicable regulation sections, so please excuse my ignorance of your regulations, should I have missed the interpretation and meaning of the changes you are proposing. As a member of ASTM and having worked on many of the F 24 Committee standards, I do have a pretty good understanding of these amusement industry standards. Also, please do not hesitate to contact me should you have any questions.

- 1) 42-17-3. Definitions. 3.2. "ASTM" has officially changed their name to "ASTM International" and no longer uses American Society for Testing and Materials. Suggest you use this new, ASTM name in your definitions.
- 2) 42-17-3. Definitions. 3.12. "Inflatable amusement device" or "air supported structure". Suggest you remove the term "air supported structure" as the ASTM standard does not refer to "air supported structures" because this implies buildings, temporary enclosures supported by air, etc. that may put amusement devices of this type under building code standards that should not apply.
- 3) 42-17-3. Definitions. 3.13. "Limited specialty inspector" I don't understand the logic behind this classification of inspector, when you already have "inspector" and "special inspector" in your regulations. Couldn't this definition be combined with "special inspector" for such devices and include "zip lines", which are growing in popularity? Further in your document, 42-17-9 speaks to the "Qualifications for the Certification of Special Inspectors" and I see where there is and "E&O" insurance requirement of \$100 thousand dollars. Is this different than other categories of inspectors?

4) 42-17-3. Definitions. 3.18. "Qualified employee" suggest that you add the term "owner" to this definition as this person who owns the amusement ride or attraction may be involved in the "assembly, set-up, operate, and disassembly of an amusement ride or attraction." Many small owners, especially those in the rental of inflatable devices are small business owners who may be "hands-on" in their own business, and may fit this definition. Also, how does the State determine the qualifications of training or experience of such employee? Does the owner sign an affidavit and list the "qualified employees" who meet such training and experience, or does the State inspector review the employee files to ascertain such qualifications? In my State of Florida, the State uses an affidavit that the amusement owner signs off on listed each employee who has had the minimum qualifications of training required by the State.

5) 42-17-3. Definitions. 3.21. "Unscheduled cessation of operation" Suggest that the definition found in ASTM F 747 be utilized, which is " a rare, unusual, or irregular stopping of an amusement ride operation, intentional or otherwise, that is considered abnormal or potentially hazardous in nature, or both, due to its cause, method or result."

6) 42-17-4. Adoption of Standards. ASTM as you may is continually introducing, updating or revising its Standards and may suggest that someone from ASTM, such as Len Morrissey be consulted with respect to the updated guidelines to insure relevancy and completeness. Maybe someone has done this already?

7) 42-17-5. Registration and Permit Required. If a carnival company only does one event in the State, are they subject to the annual permit fee, or is pro-rated? Would there be any consideration to pro-rated the annual fee on the monthly basis for operators from out-of-state who may enter the State on a one time basis and operate in the State for less than 30 days? This may add to State tourism, State tax revenue and help raise additional funds for community philanthropic events (VFW, Rotary, Jaycees, etc.), church events, or civic events (fire departments, etc.).

8) 42-17-11. Amusement Ride Assembly, Set Up, Disassembly and Operation. Would it be appropriate to add that the only "one ride be operated by a qualified operator or qualified employee" as we have had incidents where an operator can operate more than one ride and not pay attention to riders when he/she is operating more than one ride?

9) 42-17-14. Operational Testing. 14.1. Suggests that the Commissioner may order an NDT test of any hidden shaft in an amusement ride or attraction. ASTM specifies that a ride or attraction manufacturer dictates when NDT testing is necessary on such devices. Is this NDT requirement apply when there is no original manufacturer in existence and an incident takes place on this device? As we know, NDT inspections, other than "eyeball" inspections, such as mag particle, etc. should be completed by a certified, NDT inspector and can be costly.

We assume that the Commissioner would have a good and justifiable reason for ordering such test(s)?

10) 47-17-15. 15.3. Serious Injury or Fatality. I found it unusual that the Commissioner would interview 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. Usually this is done by and with local law enforcement. I would be curious to understand the meaning of this change? Perhaps the words "Commissioner or his/her designee" might be appropriate in this instance.

11) 47-17-15. 15.4. Reports and Records. 15.4.a. Noting that the reports must be kept for not less than 7 years, and since the mobile amusement industry usually has portable offices where such

documentation is kept, they may not have adequate storage facilities in these small mobile trailers to keep all such records, unless there is a provision to keep such records in "electronic" format. I might suggest that at least three (3) years of records be maintained in the mobile office and that additional records for the additional "not less than 7" year requirement period be produced within 72 hours upon request by the Commissioner.

Thank you for reviewing these comments in the interest of patron safety with respect to enhanced safety on amusement rides, devices and attractions. Again, I would be glad to discuss these comments with you or the appropriate person. Will you be holding a public hearing on such regulation changes?

Respectfully submitted,

Robert W. Johnson, President
Outdoor Amusement Business Association, Inc.
1035 S. Semoran Blvd., Suite 1045A
Winter Park, Florida
(407) 681-9444



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Thank You.