

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

Form #4

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OFFICE OF THE
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

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



Authorized Signature

#4.60

**TITLE 42
LEGISLATIVE RULE
DIVISION OF LABOR**

**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 amusement 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 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 rule is vested with the West Virginia Division of Labor.

§42-17- 3. Definitions.

3.1. "Amusement rides and devices" 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 amusement 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 amusement ride passengers, amusement ride operators or the general public.

3.12. "Inflatable amusement device" or "air supported structure" means an amusement ride or amusement 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 amusement ride or amusement attraction operator in the operation of any amusement ride or amusement 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 amusement 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.

The following standards are adopted and incorporated by reference:

4.1. ASTM International F 698 - 94 (Reapproved 2000), "Standard Specification for Physical Information to be Provided for Amusement Rides and Devices."

4.2. ASTM International F 747 - 06, "Standard Terminology Relating to Amusement Rides and Devices."

4.3. ASTM International F 770 - 11, "Standard Practice for Ownership, Operation, Maintenance, and Inspection of Amusement Rides and Devices."

4.4. ASTM International F 846 - 92 (Reapproved 2009), "Standard Guide for Testing Performance of Amusement Rides and Devices."

4.5. ASTM International F 853 - 05, "Standard Practice for Maintenance Procedures for Amusement Rides and Devices."

4.6. ASTM International F 893 - 10, "Standard Guide for Auditing Amusement Rides and

Devices.”

4.7. 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. ASTM International F 1193 - 06, “Standard Practice for Quality, Manufacture, and Construction of Amusement Rides and Devices.”

4.9. 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. ASTM International F 2374 - 10, “Standard Practice for Design, Manufacture, Operation, and Maintenance of Inflatable Amusement Devices.”

4.11. 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. ASTM International F2376 - 08, “Standard Practice for Classification, Design, Manufacture, Construction, and Operation of Water Slide Systems.”

4.13. ASTM International F2460 - 11, “Standard Practice for Special Requirements for Bumper Boats.”

4.14. 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 amusement attraction in West Virginia, the owner of the amusement ride or amusement 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 amusement attraction expires annually on December 31st.

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 amusement attraction shall submit an application for a permit to the Commissioner and shall register each amusement ride or amusement 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 amusement 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 amusement attraction shall include the following information on the application:

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

6.4.c. Documentation of the liability insurance policy or a bond covering the amusement ride or amusement 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 amusement 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 amusement attraction setup date;

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

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

6.5. In addition to the requirements set forth in this section, the owner of a mobile amusement ride or amusement 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 amusement 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 amusement attraction is planned.

6.6. The owner of the amusement ride or amusement attraction shall include the permit fee of \$100.00, as set forth in W. Va. Code § 21-10-4, 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, or a bond, cash, or other security, for injury to persons arising out of the use of an amusement ride or amusement 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 amusement 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, bond, or other security, unless it obligates the issuer to give written notice to the Commissioner at least 30 days before any proposed cancellation, suspension or non-renewal of the policy, bond, or other security.

§42-17-8. Inspection of the Amusement Ride or Amusement 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 amusement 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 amusement attraction or shall post the certificate of inspection in close proximity to the amusement ride or amusement 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 the Commissioner determines is the equivalent of a NAARSO Level 1 Certification and documentation that he or she has of successfully passed an examination that the Commissioner determines 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 the Commissioner determines 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 the Commissioner determines is the equivalent of a NAARSO Limited Specialty Certification and documentation that he or she has of successfully passed an examination that the Commissioner determines 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 the Commissioner determines 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 amusement attraction.

12.3. At all times during the operation of an amusement ride or amusement 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 amusement attraction at all times during the operation of the ride or amusement attraction.

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

12.6. Upon request from a passenger, a qualified person shall halt an amusement ride or amusement 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” a qualified person who rents or leases an inflatable amusement device or air-supported structure for use by an individual, an organization or an event, shall have a qualified person assemble and set up each device at the immediate site of operation. The qualified person 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. Upon receipt of a written notice from the Commissioner, a qualified person of an amusement ride or amusement attraction shall perform a NDT of any hidden shaft in an amusement ride or amusement attraction.

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

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

14.2. If the qualified person fails to comply with any testing requirements, the Commissioner may refuse to issue a permit to operate or may revoke an existing permit to operate and require the operation of an amusement ride or amusement 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 qualified person of the amusement ride or amusement attraction shall immediately have the passengers safely unloaded from the amusement ride or amusement attraction.

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

15.1.c. The qualified person shall document any unscheduled cessation of operation, including the identification of the amusement ride or amusement attraction, the name of the operator or operator's assistant operating the amusement ride or amusement attraction during the unscheduled cessation, and a complete description of the incident, including the date, time, weather conditions, location, amusement 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 amusement attraction presents an imminent danger, he or she shall immediately give written notification to the amusement ride or amusement attraction owner, operator or agent, and the event sponsor, if applicable, advising them that the amusement ride or amusement attraction shall be immediately removed from service.

15.2.b. If the qualified person does not immediately remove the amusement ride or

amusement attraction from service, the inspector shall immediately report the imminent danger to the Commissioner.

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

15.3. Serious Injury or Fatality.

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

15.3.b. A qualified person 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 amusement attraction 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 qualified person who witnessed the accident or who operated the amusement ride or amusement attraction when the accident occurred shall be available to be interviewed by the Commissioner.

15.3.d. The qualified person shall make a verbal report of the injury or fatality to the Commissioner within 24 hours of its occurrence.

15.3.e. The qualified person shall document the accident, to include the full name, address and telephone number of the injured person, a description of the injuries, identification of the amusement ride or amusement 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 amusement 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.