

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

Do Not Mark In This Box

2012 AUG 31 PM 2:59

Form #3

**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 Section 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

**QUESTIONNAIRE**

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: August 31, 2012

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Division of Labor  
State Capitol Complex  
Building 6, Room B-749  
Charleston, WV 25305  
304.558.7890 x 111

LEGISLATIVE RULE TITLE: \_\_\_\_\_  
Amusement Rides and Amusement Attractions Safety Act

1. Authorizing statute(s) citation W Va Code Section 21-10-3

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
July 30, 2012

b. What other notice, including advertising, did you give of the hearing?  
Notice of the proposed rule and comment period was put on the Division of Labor's website.  
Copies of the proposed rule were emailed to stakeholders.

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
August 30, 2012

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

Attached     x     No comments received \_\_\_\_\_

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

August 31, 2012

- 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

david.w.mullins@wv.gov

304.558.7890 x 111 (phone) 304.558.2273 (fax)

- 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)

John R. Junkins, Deputy Commissioner

West Virginia Division of Labor

same as above

john.r.junkins@wv.gov

304.558.7890 x 146 (phone) 304.558.2273 (fax)

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.

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b. Date of hearing or comment period:

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

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d. Attach findings and determinations and reasons:

Attached 

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# 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:

- deleting certain ASTM International standards that have been superceded or incorporated into other ASTM standards;
- clarifying current practices in the event of an unscheduled cessation of operation of an amusement ride or amusement attraction, imminent danger, or serious injury or fatality;
- adding certain miscellaneous safety provisions that prohibit an operator or assistant from operating an amusement ride or attraction while under the influence of alcohol or a controlled substance, require an operator or assistant to report the use of prescribed medication while under a doctor's care that could affect his or her ability to safely operate an amusement ride or amusement attraction, that require an operator or assistant to allow a passenger to disembark upon request, and to prohibit the use of automotive equipment for anchoring an amusement ride or amusement attraction, unless prior approval is given by the Commissioner and certain other requirements are met.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Amusement Rides and Amusement Attractions Safety Act

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 proposed amendments and revisions to 42 CSR 17 will have no 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)
<b>1. Estimated Total Cost</b>	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
<b>2. Estimated Total Revenues</b>	0.00	0.00	0.00

Rule Title: Amusement Rides and Amusement Attractions Safety Act

Rule Title:

Amusement Rides and Amusement Attractions Safety Act

**3. Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

N/A

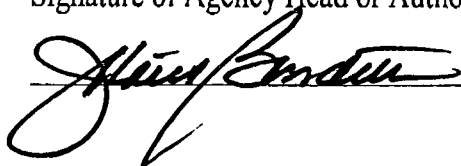
**MEMORANDUM**

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.

N/A

Date: August 31, 2012

Signature of Agency Head or Authorized Representative



TITLE 42  
LEGISLATIVE RULE  
DIVISION OF LABOR

2012-11-01 PM 3:00

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. --

**§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 ride and 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 ASTM International standards are adopted and incorporated by reference:

~~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. 4.1.1. The following standard is adopted and incorporated by reference: ASTM International F 747 - 06, “Standard Terminology Relating to Amusement Rides and Devices,” except for the definitions of “serious injuries/illnesses” and “unscheduled cessation;”~~

~~4.3. 4.1.2. 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. 4.1.3. The following standard is adopted and incorporated by reference: ASTM International F 893 - 10, “Standard Guide for Auditing Amusement Rides and Devices;”~~

~~4.7. 4.1.4. 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. 4.1.5. 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;"~~

4.1.6. F 2007 - 07a, "Standard Practice for Design, Manufacture, and Operation of Concession Go-Karts and Facilities;"

~~4.9. 4.1.7. 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. 4.1.8. 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. 4.1.9. 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. 4.1.10. 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;" and~~

~~4.13. 4.1.11. The following standard is adopted and incorporated by reference: ASTM International F2460 - 11, "Standard Practice for Special Requirements for Bumper Boats."~~

~~4.14. 4.2. 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 31<sup>st</sup> 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,”~~ 1193 - 06, “Standard Specification for Quality, Manufacture and Construction of 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~~ person shall 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.

**~~§ 42-17-15. 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 person of the amusement ride or attraction shall immediately have the passengers safely unloaded from the ride or attraction.

~~15.2. 15.1.b.~~ If the operator or qualified employee person determines that the amusement ride or attraction can safely resume operation, the operator or qualified employee person shall first operate the ride or attraction without passengers to ensure that the cause of the unscheduled cessation of operation has been corrected.

~~15.3. 15.1.c.~~ The operator or qualified employee person 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.

**~~§ 42-17-16. 15.2. Imminent Danger.~~**

~~16.1. 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 person does not immediately remove the amusement ride or attraction from service, the inspector shall immediately report the imminent danger to the Commissioner.

16.2. ~~15.2.c.~~ If the ~~owner, operator or~~ qualified employee person 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.

**§ 42-17-17.** ~~15.3.~~ **Serious Injury or Fatality.**

17.1. ~~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 person shall immediately shut down the ride or attraction and secure the safety of other passengers or patrons and the general public.

17.2. ~~15.3.b.~~ An ~~owner, operator or operator's assistant or~~ A qualified employee 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 device involved is not removed from the scene of the accident without written authorization from the Commissioner or a law enforcement officer.

17.3. ~~15.3.c.~~ The ~~owner, operator or operator assistant or~~ qualified employee person 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.

17.4. ~~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.

17.5. ~~15.3.e.~~ The ~~owner, operator or agent~~ qualified person 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 person, or agent, and any other pertinent information describing the events leading up to the accident.

**§ 42-17-18.** ~~15.4.~~ **Reports and Records.**

18.1. ~~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.

18.2. ~~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.

**§ 42-17-19.** **Miscellaneous Safety Requirements.**

19.1. A qualified person shall not permit a ride or attraction operator or assistant who is, or who reasonably appears to be, under the influence of alcohol or a controlled substance, to operate or

assist in the operation of the amusement ride or attraction.

19.2. An amusement ride or amusement attraction operator or assistant who is under a doctor's care and who is taking a prescribed medication that could affect his or her ability to safely operate the ride or attraction shall immediately report this information to the qualified person.

19.3. When requested by a passenger, an amusement ride or amusement attraction operator or assistant shall immediately halt the ride or attraction and allow the passenger to disembark.

19.4. Use of automotive equipment or other transportation devices for anchoring an amusement ride or amusement attraction while the ride or attraction is in operation.

19.4.1. If the amusement ride or amusement attraction was not designed by the manufacturer to be anchored with automotive equipment or other transportation devices, the use of such equipment or devices is prohibited.

19.4.2. If the amusement ride or amusement attraction was designed by the manufacturer to be anchored with automotive equipment or other transportation devices, the qualified person shall obtain prior approval from the Commissioner for the use of such equipment or devices and ensure that the following precautions are used at all times while the ride or attraction is in operation:

19.4.2.1. All vehicle batteries shall be disconnected and removed from the vehicle;

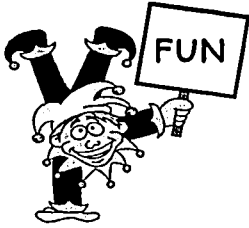
19.4.2.2. A steering wheel locking device such as a club shall be placed on the vehicle's steering wheel and shall remain in the locked position;

19.4.2.3. Vehicles shall remain locked and all keys, including the key to the steering wheel locking device, shall be stored in a locked box in a secure location away from the vehicle;

19.4.2.4. There shall be a sign placed in the vehicle window that states "Do Not Move Vehicle Until The [name of the amusement ride or amusement device] Is No Longer In Operation And Has Been Unattached;"

19.4.2.5. All vehicle wheels shall be chocked; and

19.4.2.6. The manufacturer's recommendations for anchoring the amusement ride or amusement device shall be followed at all times.



# H & H ENTERPRISES

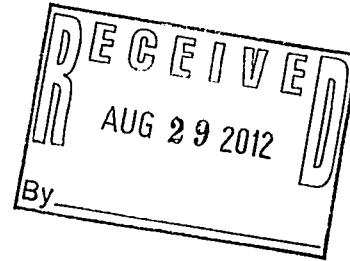
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August 27, 2012

WV Division of Labor  
Attn: David Mullins  
Building 6, Room B-749  
Charleston, WV 25305



RE: Proposed Legislative Rule Changes

This letter is to express my concerns with the proposed changes for Legislative Rule 42-17 for the upcoming year of 2013.

1. The rule references WV Code 21-10-1 which differs in many ways from the Rule 42-17. I understand that the rule and code do not copy each other, but there are references in each that do not match and could create an issue should enforcement be needed. I think you need to have the attorneys compare the two and make the needed changes to make the Rule enforceable should that issue ever arise.
2. Definitions. You are referencing 3 sets of definitions. You use ASTM, WV Code and the Legislative Rules. Definitions play an important part to the operators, as having more than one definition only creates an issue in which one someone used to make their decisions. You need to adapt one set and be consistent throughout the documents both WV Code and Legislative Rules.

Air Supported Structures are not mentioned in the WV Code and they need to be referenced in some way to clarify them and their meaning. They are also not mentioned in the Rules definitions but the term is used in its own subsection of the Rule 42-17-13

Serious Injury in the Rule has one definition and the ASTM has another. Then you go on to reference the ASTM number 747-06 and exclude the definition they have for Serious Injury. So now even more confusion is created.

Serious injury needs to adapt the ASTM rule since it requires overnight stay. Many minor injuries occur on rides that do not require overnight stays as the ASTM requires and if this rule is adapted as currently written it will create a huge amount of paperwork for the ride operators and the department.

### Example

John is on a ride and bangs his lip and gets a bloody mouth. Mom freaks out and takes John to the ER because she is worried it worse than it is. This is a minor injury and requires nothing on our part but to address the issue internally with the customer or injured party. This is how the Department has operated for the 19 years I have been in business and I am sure prior to that they followed the same guidelines. The only injuries the Department wanted us to report was major.

And major injuries required us to follow the full Rule regarding shutting down the ride, securing the location, reporting to the Department and requiring an on site inspection prior to reopening etc.

ASTM lists 2 types of injuries in Standard 747-06 and the Department needs to adapt both of those, add minor injuries to the Rules definitions and not exclude them from the Rule as currently proposed.

Having to treat all injuries as serious and not having 2 or more classifications will only create undo stress on the operators and on the department and other agencies as you list in 42-17-17. With the way the Rules and definitions are now, when John gets the busted lip, you will be required to come onsite and do a visit and inspection before we could open the ride up again or move it. I totally understand that is not what you intend to do here but excluding the ASTM definition and using your own definition does just that.

Unscheduled Cessation of operation again has one definition and the ASTM has another. Again, you go on to reference the ASTM number 747-06 and exclude the definition they have for Unscheduled Cessation. So now even more confusion is created.

Unscheduled Cessation needs to also follow the ASTM definition and weather needs to be excluded not included. Weather creates issues every day in the amusement business and sometimes it requires us to shut the rides until the rain, wind or other condition passes then the rides are able to be operated again without incident. Again, including weather as part of the unscheduled cessation definition will only increase the amount of paperwork for the operator and department.

### Example

Camden Park as an example. It starts to rain or storm. They shut the ride down until the storm passes. Then test the ride and reopen it to the public. This is most likely how it happens now. With the proposed rule and using your exclusion of ASTM definition and using the departments definitions, we would be required to document all shut downs no matter what the issue. This is just a ludicrous request. And I am sure that is why ASTM adapted their standard to not include weather.

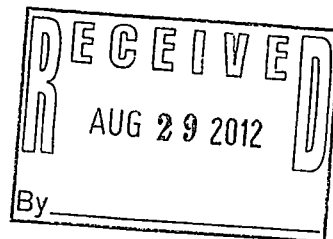
### 3. Adoption of Standards

This section has been mention above in the examples, but I would still like to be informed as to why and how the decision was made to exclude parts of ASTM and include others. This needs to me either you are on board with ASTM or you are not. As a ride operator we need to have a clear and inform set of rules to follow, not something that can be interpreted different ways by different people. I would like some explanation as to why we are excluding certain definitions and including others.

### 4. Permit fees.

Since we are looking at making changes again this year, I think it is time to address the permit dates. As ride operators in our state know, and I am sure you are totally aware of also, West Virginias climate creates play date issues until about April or so. The sticker/permit dates need to be changed to July to June. This is when the most rides are in our state for inspection and operation. Having it from January to December is just a crazy process that could be eliminated by changing the valid dates. In the past is was inspection date to inspection date and that worked fine, but I understand the department wanted a more uniform system and that is fine but all I am saying is the date range needs adjusted to accommodate the ride season for West Virginia's climate and seasons.

*-this was set up  
by the  
operators  
shut down  
being written  
months*

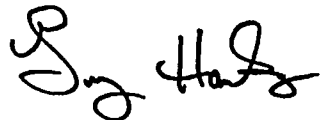


*Admin:  
the winter is  
the time for  
con perform the  
inspection - 2012-13  
have*

i look forward to discussing the above mentioned issues with you PRIOR to this rule being introduced for passage. Please contact me when you can meet regarding my concerns so that we may address them in person and discuss how to proceed.

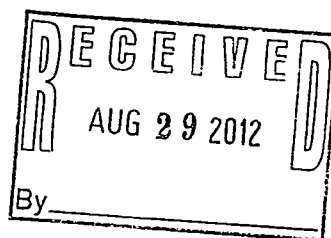
Should you have any additional questions feel free to contact me.

Sincerely,



**Greg Harkins**  
President  
H & H Enterprises  
[gregharkins@bringingfuntoyou.com](mailto:gregharkins@bringingfuntoyou.com)

CC: Keith Burdette  
Bonnie Brown  
Melissa Richardson



**SUMMARY OF COMMENTS RECEIVED**  
**and**  
**AGENCY RESPONSES**

**Comment from Greg Harkins**

Mr. Harkins commented that some provisions in the Amusement Rides and Amusement Attractions Safety Act and the proposed rule do not match, and suggested that a comparison be made to ensure proper enforcement.

**Agency Response**

The Division of Labor has amended and is submitting the proposed rule in response to comments made by Mr. Harkins last year that were unfortunately not received until long after the public comment period had ended.

No previous issues have been raised with the Division concerning contradictions or discrepancies between the statute and the rule. Without specific references that identify how the statute and the proposed rule do not match, the Division is unable to make a response.

Accordingly, no amendments have been made to the proposed rule.

**Comment from Greg Harkins**

Mr. Harkins commented that there are 3 sets of definitions: those incorporated from the ASTM standards, those in the statute, and those in the proposed rule. He commented that there should be one set of definitions in order to avoid confusion.

Mr. Harkins specifically mentioned the definitions of “air-supported structures,” “serious injury,” and “unscheduled cessation of operation.”

**Agency Response**

For there to be one set of definitions as Mr. Harkins suggests, the statute would need to be amended to incorporate the definitions in the proposed rule and the definitions from the ASTM standards that are incorporated by reference into the proposed rule.

While Mr. Harkins is correct that the statute does not specifically reference or contain a definition of an air-supported structure, the Division included a definition of “inflatable amusement device or air-supported structure” in the proposed rule because the Division believes that an air-supported structure is an amusement ride or an amusement attraction, which is defined generally in W. Va. Code §§21-10-2(a and b). In addition, ASTM standard F2374-10, “Standard Practice for Design, Manufacture, Operation, and Maintenance of Inflatable Amusement Devices,” was incorporated by reference into the rule last year.

In response to comments made by Mr. Harkins last year, the Division excluded the definitions of “serious injuries/illnesses” and “unscheduled cessation” from the definitions it incorporated by reference in ASTM F747-06. The Division believes that the definitions of those terms are more clear and offer more protection to the general public in the proposed rule than the ASTM definitions. In addition, the definitions of “serious injury” and “unscheduled cessation” are not new in the proposed rule. The definition of “serious injury” has been in the rule since 1988. “Unscheduled cessation of operation” was added last year.

Accordingly, no amendments have been made to the proposed rule.

#### **Comment from Greg Harkins**

Mr. Harkins commented that he would like to understand why the Division has incorporated some ASTM standards into the proposed rule by reference and not others.

#### **Agency Response**

The ASTM standards incorporated by reference into the proposed rule are found in Volume 15.07, “Sports Equipment and Facilities; Pedestrian/Walkway Safety and Footwear; Amusement Rides and Devices; Snow Skiing.”

The Division incorporated by reference only those sections from the ASTM standards that are within its responsibilities as mandated in W. Va. Code §21-10-1, *et seq.*

The only new ASTM standard in the proposed rule was included as a result of comments made by Mr. Harkins last year and pertains to go-karts.

Accordingly, no amendments have been made to the proposed rule.

#### **Comment from Greg Harkins**

Mr. Harkins commented that he would like the Division to consider revising the dates of the annual permits it issues from January through December to July through June.

#### **Agency Response**

Every amusement ride or amusement attraction in West Virginia is required to be inspected annually at least 15 days before its date of first use by the public. The height of the busy season for amusement rides and amusement attractions is in the summer months.

The January to December permit cycle was established by the Division to accommodate its needs, the needs of private inspectors and the needs of amusement ride and amusement attraction owners. If the permit cycle were changed to July through June, there could be a significant delay in having the required inspections completed in a timely manner.

Accordingly, no amendments have been made to the proposed rule.