



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE**

AGENCY: Labor TITLE-SERIES: 42-17
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 42-17 Amusement Rides and Amusement Attractions Safety Act

PRIMARY CONTACT

NAME: David W Mullins
ADDRESS: 1900 Kanawha Boulevard East
Capitol Complex Building 3 Room 200
Charleston, WV 25305
EMAIL: david.w.mullins@wv.gov
PHONE NUMBER: 304-558-7890

CITE STATUTORY AUTHORITY: W. Va. Code §§21-10-3 and 21-10-5(b)

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

W. Va. Code §21-10-3 authorizes the Division of Labor to propose rules for the safe installation, repair, maintenance, use, operation and inspection of all amusement rides and amusement attractions as it finds necessary for the protection of the general public. The rule must also include requirements concerning preventive maintenance, safety devices and engineering force stresses.

In accordance with its rule-making authority, the rule includes the following sections: definitions; the adoption of the American Society for Testing and Materials International ("ASTM") standards, the adoption of the National Association of Amusement Ride Safety Officials (NAARSO) Certification Program Rules, and the adoption of the National Fire Protection Association (NFPA) standards 70 and 10; permit to operate requirements, permit application requirements, permit fees and application amendments; insurance requirements; required inspections of amusement rides and attractions, conflict of interest prohibitions, and the issuance of a permit to operate; qualifications of inspectors; privileges and responsibilities of inspectors, special inspectors and limited specialty inspectors; grounds for the suspension or revocation of a certificate of competency; information required at the immediate site of operation; amusement ride assembly, set up, disassembly and operation; inflatable amusement device assembly and set up; operational testing; unscheduled cessation of operation procedures and documentation; imminent danger procedures; serious injury or fatality procedures and documentation; required reports and records; and miscellaneous safety requirements.

W. Va. Code §21-10-5(b) authorizes the Division to propose rules for the application process and minimum qualifications for the certification of special inspectors.

The rule includes a section adopting the NAARSO Certification Program Rules, a section concerning the qualifications for the certification of special inspectors and the renewal of the special inspector certification, and a section on the certification of limited specialty inspectors and renewal of the limited specialty inspector

certification.

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/15/2017

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/17/2017

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

The purpose of the rule is to comply with the Division's rule-making responsibilities for administering the Amusement Rides and Amusement Attractions Safety Act, W. Va. Code §21-10-1 et seq.

The proposed rule incorporates the HB 2948 amendments to W. Va. Code §21-10-7, passed during the 2017 regular legislative session. It includes the new time frames for taking final action on an application for a permit to operate within 30 days if the application is uncontested or within 90 days if the application is contested, defines several new terms, including complete application, contested application, final action, and coin operated, clarifies the requirements for information that must be included in a permit application to operate an amusement ride or attraction, clarifies the requirements for authorizing the inspection of amusement rides or attractions, adds a section describing the privileges, requirements and responsibilities of all categories of inspectors, adds a section establishing grounds and due process for the suspension or revocation of a certificate of competency issued to all categories of inspectors, and makes some technical changes and corrections.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The Division has incorporated the HB 2948 amendments to W. Va. Code §21-10-7 in the proposed rule which require the Division to take final action on an uncontested application for a permit to operate an amusement ride or amusement attraction within 30 days of receipt of a complete application, or within 90 days if the application is contested.

Pursuant to its W. Va. Code §21-10-3 rule-making authority, the Division also finds it necessary to clarify its requirements regarding information that must be included in a permit application to operate an amusement ride or attraction, to clarify its requirements and procedures for authorizing the inspection of amusement rides or attractions, to include a new section describing the privileges, requirements and responsibilities of all categories of inspectors, and to include a new section establishing grounds and due process for the suspension or revocation of a certificate of competency issued to all categories of inspectors.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The proposed rule will have no economic impact on the costs or revenues of state government.

B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2017 Increase/Decrease (use "-")	2018 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	-	-	-
Personal Services	-	-	-
Current Expenses	-	-	-
Repairs and Alterations	-	-	-
	-	-	-

TITLE 42
LEGISLATIVE RULE
DIVISION OF LABOR

SERIES 17
AMUSEMENT RIDES AND AMUSEMENT ATTRACTIONS
SAFETY ACT

§42-17-1. General.

1.1. Scope. -- This 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. – ~~April 22, 2015.~~

1.4. Effective Date. – ~~July 1, 2015.~~

1.5. Sunset Date. This rule shall terminate and have no further force or effect upon the expiration of 10 years from its effective date.

§42-17-2. Application and Enforcement.

2.1. Application. This rule applies to 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. “Act” means the Amusement Rides and Amusement Attractions Safety Act, W. Va. Code §21-10-1 et seq.

~~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. “Class A rated fire extinguisher” means a fire extinguisher that is rated as being effective against fires involving paper, wood, textiles and plastics.

3.4. “Class B rated fire extinguisher” means a fire extinguisher that is rated as being effective against flammable liquid fires.

3.5. "Class C rated fire extinguisher" means a fire extinguisher that is effective against fires with live electrical equipment.

3.6. "Coin operated," as used in W. Va. Code §21-10-2(a), means and is limited to a kiddie ride that is operated by inserting a coin or coins and is not equipped with a method or way to control the ride's operation, direction of travel or speed.

~~3.6.~~ 3.7. "Commissioner" ~~refers to~~ means the Commissioner of the West Virginia Division of Labor or his or her designated representatives.

3.8. "Complete application" means an application that includes all the information required in section 5 of this rule.

3.9. "Contested application" means an application that the Commissioner challenges, which can include, but is not limited to, incomplete information.

~~3.7.~~ 3.10. "Dark amusement ride" or "dark amusement attraction" means an amusement ride or amusement attraction that is enclosed so that all illumination is by artificial means.

3.11. "Days" means calendar days.

~~3.8.~~ 3.12. "Division" refers to the West Virginia Division of Labor, including all its sections and personnel.

~~3.9.~~ 3.13. "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.

~~3.10.~~ 3.14. "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.

3.15. "Final action" means the issuance or denial of an application for a permit.

~~3.11.~~ 3.16. "First aid" means the one-time treatment or observation of scratches, cuts not requiring stitches, burns, splinters and contusions.

~~3.12.~~ 3.17. "First-aid kit" means a weatherproof container with individually sealed packages for each type of item, as approved by a consulting physician.

~~3.13.~~ 3.18. "General public," as referred to in W. Va. Code § 21-10-3, means any person riding an amusement ride, using an amusement attraction, or who is situated within the vicinity of an amusement ride or amusement attraction.

~~3.14.~~ 3.19. "Immediate family" means a person's parents, spouse, sibling, child or guardian, or their spouses.

~~3.15.~~ 3.20. "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.

~~3.16.~~ 3.21. "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.

~~3.17.~~ 3.22. "Inflatable amusement device" or "air supported structure" means an inflated 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.

~~3.18.~~ 3.23. "Inspector" means an inspector employed by the Division of Labor.

~~3.19.~~ 3.24. "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.

~~3.20.~~ 3.25. "NAARSO" refers to the National Association of Amusement Ride Safety Officials, P. O. Box 638, Brandon, FL 33509.

~~3.21.~~ 3.26. "NEC" or the "National Electric Code," published by the National Fire Protection Association, are standards for the safe installation of electrical wiring and equipment in the United States.

~~3.22.~~ 3.27. "NFPA" refers to the National Fire Protection Association, located at 1 Batterymarch Park, Quincy, MA 02169.

~~3.23.~~ 3.28. "NDT" means non-destructive testing.

~~3.24.~~ 3.29. "Operator assistant" means a person assisting the ride or attraction operator in the operation of any amusement ride or attraction.

~~3.25.~~ 3.30. "Ownership interest" means a person who owns any percentage of business assets.

~~3.26.~~ 3.31. "Play dates" means the dates that an amusement ride or amusement attraction is available to the general public.

~~3.27.~~ 3.32. "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.

~~3.28.~~ 3.33. "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.

~~3.29.~~ 3.34. "Service proven" means an amusement ride or attraction, including a major modification to an amusement ride or attraction, which has been in service to the public for a minimum of 5 years, without having a significant design-related failure or significant design-related safety issue that has not been mitigated.

~~3.30.~~ 3.35. "Special inspector" means an inspector certified by the Commissioner and not employed by the Division.

~~3.31.~~ 3.36. "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:

~~4.1.1.~~ 4.1.a. F 747 - 06, "Standard Terminology Relating to Amusement Rides and Devices," except for the definitions of "serious injuries/illnesses" and "unscheduled cessation;"

~~4.1.2.~~ 4.2.b. F 770 - 11, "Standard Practice for Ownership, Operation, Maintenance, and Inspection of Amusement Rides and Devices;"

~~4.1.3.~~ 4.2.c. F 893 - 10, "Standard Guide for Auditing Amusement Rides and Devices;"

~~4.1.4.~~ 4.2.d. 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;"

~~4.1.5.~~ 4.2.e. F 1193 - 06, "Standard Practice for Quality, Manufacture, and Construction of Amusement Rides and Devices;"

~~4.1.6.~~ 4.2.f. F 2007 - 07a, "Standard Practice for Design, Manufacture, and Operation of Concession Go-Karts and Facilities;"

~~4.1.7.~~ 4.2.g. Section 14, "Fencing, Guardrails, Handrails, Gates, and Walkways for Amusement Rides and Devices" of F 2291 - 11, "Standard Practice for Design of Amusement Rides and Devices;"

~~4.1.8.~~ 4.2.h. F 2374 - 10, "Standard Practice for Design, Manufacture, Operation, and Maintenance of Inflatable Amusement Devices;"

~~4.1.9.~~ 4.2.i. Section 8, "Installation and Use," and Section 9, "Maintenance and Operations" of 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;"

~~4.1.10.~~ 4.2.j. F2376 - 08, "Standard Practice for Classification, Design, Manufacture, Construction, and Operation of Water Slide Systems;" and

~~4.1.11.~~ 4.2.k. F2460 - 11, "Standard Practice for Special Requirements for Bumper Boats."

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."

4.3. The following standard is adopted and incorporated by reference: NFPA 70: National Electrical Code, 2014 Edition, Article 522, "Control Systems for Permanent Amusement Attractions", and Article 525, "Carnivals, Circuses, Fairs, and Similar Events".

4.4. The following standards are adopted and incorporated by reference: NFPA 10: Standard for Portable Fire Extinguishers, 2013 Edition, Chapter 7, "Inspection, Maintenance and Recharging of Portable Fire Extinguishers".

§42-17-5. Registration and Permit to Operate Required; Permit Application Requirements; Permit Fee; Application Amendments.

5.1. Before beginning the operation of any amusement ride or attraction in West Virginia, the owner or operator ~~of the amusement ride or attraction shall apply in writing~~ submit a written application for a permit at least 15 days before the first intended date of use and provide all information as to the Commissioner for a permit to operate and shall register each amusement ride or amusement attraction may require on a form supplied by the Division.

~~6.4.~~ 5.2. An owner of an amusement ride or attraction shall include the following information on the permit application:

~~6.4.1.~~ 5.2.a. The name and address of the owner of the amusement ride or attraction;

~~6.4.2.~~ 5.2.b. Registration of the make, model, ~~and~~ serial number and the name and address of the manufacturer of the amusement ride or attraction;

~~6.4.3.~~ 5.2.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;

~~6.4.4.~~ 5.2.d. If required by the manufacturer of the amusement ride or attraction, the most current non-destructive testing report;

~~6.4.5.~~ 5.2.e. The completed "Notice of Scheduled Inspection" form;

5.2.f. A copy of the owner's West Virginia business registration certificate; and

~~6.4.6.~~ 5.2.g. A schedule of play dates in West Virginia for the effective period of the requested permit, to include the following information:

~~6.4.6.a.~~ 5.2.g.1. Identification of the immediate site of operation;

~~6.4.6.b.~~ 5.2.g.2. The amusement ride or attraction setup date;

~~6.4.6.c.~~ 5.2.g.3. The starting date and time of usage for the ride or attraction; and

~~6.4.6.d.~~ 5.2.g.4. The amusement ride or attraction disassembly date.

5.3. The owner's name and address on the West Virginia business registration certificate, the permit application, and the liability insurance policy shall be identical.

~~5.2.~~ 5.4. A permit to operate an amusement ride or attraction shall expire annually on December 31st ~~of each year.~~

~~5.3.~~ 5.5. A permit to operate ~~is~~ shall be valid only for the amusement rides or amusement attractions registered with the Commissioner.

~~5.4.~~ 5.6. A permit to operate ~~is~~ shall be valid only for the play dates and locations provided on the application or on an amendment to the application.

~~6.6.~~ 5.7. The owner of the amusement ride or amusement attraction shall include the permit fee as set forth in W. Va. Code §21-10-4 for each amusement ride or device included with the permit application.

~~6.3.~~ 5.8. If ~~An~~ an owner needs to amend any information on the permit application, he or she shall submit any the amendment to the application or registration to the Commissioner on a form provided by the Division at least 24 hours before the first intended date of use of the amusement ride or attraction.

~~6.3.1.~~ An owner shall submit an amendment at least 24 hours before the first intended date of use of the amusement ride or attraction.

~~6.3.2.~~ 5.9. If ~~An~~ an owner needs to amend, change or add play dates after he or she has submitted the initial permit application, he or she shall submit an the 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.

~~6.5.~~ 5.10. 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~~ with the application on a form provided by the Commissioner:

~~6.5.1.~~ 5.10.a. The planned schedule of play dates ~~of the amusement ride or attraction~~ in West Virginia, including the dates and the actual physical addresses of the immediate sites of operation locations; and

~~6.5.2.~~ 5.10.b. The name of the sponsor or land owner at each physical location where use of the amusement ride or attraction is planned.

5.11. Upon receipt of a complete uncontested application, the Commissioner shall issue a permit to operate within 30 days.

5.12. If the application is contested by the Commissioner, he or she shall have 90 days to take final action on the application.

5.12.a. The Commissioner shall promptly notify the applicant in writing, either by email or certified mail, return receipt requested, of the reasons for contesting the application and afford the applicant the opportunity to respond.

5.12.b. If, after notice, the applicant fails to respond to the Commissioner's objections, the Commissioner shall deny 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 as 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.~~

~~6.3.1. An owner shall submit an amendment at least 24 hours before the first intended date of use of the amusement ride or attraction.~~

~~6.3.2. 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:~~

~~6.4.1. The name and address of the owner of the amusement ride or attraction;~~

~~6.4.2. Registration of the make, model, and serial number and the name and address of the manufacturer of the amusement ride or attraction;~~

~~6.4.3. 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;~~

~~6.4.4. If required by the manufacturer of the amusement ride or attraction, the most current non-destructive testing report;~~

~~6.4.5. The completed "Notice of Scheduled Inspection" form; and~~

~~6.4.6. A schedule of play dates in West Virginia for the effective period of the requested permit, to include the following information:~~

~~6.4.6.a. Identification of the immediate site of operation;~~

~~6.4.6.b. The amusement ride or attraction setup date;~~

~~6.4.6.c. The starting date and time of usage for the ride or attraction; and~~

~~6.4.6.d. 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:~~

~~6.5.1. 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~~

~~6.5.2. 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 6. Insurance.

~~7.1.~~ 6.1. 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.~~ 6.2. 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.~~ 6.3. 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.~~ 6.4. 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 7. Inspection of the Amusement Ride or Attraction Required; Conflict of Interest; Issuance of a Permit to Operate.

7.1. The Commissioner shall provide written authorization to an inspector, a special inspector or a limited specialty inspector for the inspection of amusement rides or attractions.

7.1.a. The Commissioner shall include the date on which the inspector, the special inspector or the limited specialty inspector is authorized to conduct the inspection.

7.1.b. The Commissioner shall identify the specific amusement rides or attractions that the inspector, the special inspector or the limited specialty inspector is authorized to inspect.

7.1.c. If there are any changes to the Commissioner's written authorization, the inspector, the special inspector or the limited specialty inspector shall notify the Commissioner of the changes prior to the completion of the inspection.

~~8.1.~~ 7.2. An inspector, a special inspector or a limited specialty inspector shall inspect an amusement ride or attraction according to the standards adopted in section 4 of this rule and determine that it is in compliance with the ~~provisions of W. Va. Code § 21-10-1, et seq.~~ Act and this rule, before he or she can issue a permit to operate.

7.3. An inspector, a special inspector or a limited specialty inspector shall conduct each inspection of an amusement ride or attraction within the state of West Virginia.

~~8.2.~~ 7.4. An inspector, a special inspector or a limited specialty inspector shall not inspect an amusement ride or amusement attraction in the following circumstances, which the Commissioner considers to be a conflict of interest:

~~8.2.1.~~ 7.4.a. When the inspector, special inspector or limited specialty inspector, or his or her employer, his or her employee, or a member of his or her immediate family has an ownership interest in

the amusement ride, in the amusement attraction or in the business that owns, leases or operates the amusement ride or attraction; or

~~8.2.2.~~ 7.4.b. When the inspector, special inspector or limited specialty inspector, or his or her employer, his or her employee, or a member of his or her immediate family has maintained, repaired, modified, built, or engineered the amusement ride or amusement attraction.

~~8.3.~~ 7.5. A permit to operate shall be in the form of a certificate of inspection, which shall include the date or dates of the inspection.

~~8.4.~~ 7.6. 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.

7.7. An inspector, a special inspector or a limited specialty inspector shall furnish a copy of the inspection report to the Division within 7 days of the inspection.

§42-17-9 ~~8.~~ 8. Qualifications of Inspectors.

An inspector shall meet the same qualifications as those of a special inspector or a limited specialty inspector as set forth in sections ~~10 9~~ and ~~11 10~~ of this rule and as appropriate for the amusement ride or amusement attraction device being inspected.

§42-17-~~10 9.~~ 9. Qualifications for the Certification of Special Inspectors; Renewal of Special Inspector Certification.

~~10.1.~~ 9.1. A person applying for certification as a special inspector shall make application annually on a form provided by the Commissioner.

~~10.2.~~ 9.2. An applicant for certification as a special inspector shall submit evidence of the following with the application:

~~10.2.1.~~ 9.2.a. Documentation of a current NAARSO Level 1 Certification; or

~~10.2.2.~~ 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 successfully passed an examination that is substantially equivalent to a NAARSO examination; and

~~10.2.3.~~ 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.

~~10.3.~~ 9.3. A certified special inspector shall submit evidence of the following with the annual renewal application:

~~10.3.1.~~ 9.3.a. Documentation of a current NAARSO Level 1 Certification, including the continuing education requirements for a NAARSO Level 1 Certification; or

~~10.3.2.~~ 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

~~10.3.3.~~ 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.

~~§42-17-11~~ 10. Qualifications for the Certification of Limited Specialty Inspectors; Renewal of Limited Specialty Inspector Certification.

~~11.1.~~ 10.1. A person applying for certification as a limited specialty inspector shall make application annually on a form provided by the Commissioner.

~~11.2.~~ 10.2. An applicant for certification as a limited specialty inspector shall submit evidence of the following with the application:

~~11.2.1.~~ 10.2.a. Documentation of a current NAARSO Limited Specialty Certification; or

~~11.2.2.~~ 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 successfully passed an examination that is substantially equivalent to a NAARSO examination; and

~~11.2.3.~~ 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.

~~11.3.~~ 10.3. A certified limited specialty inspector shall submit evidence of the following with the annual renewal application:

~~11.3.1.~~ 10.3.a. Documentation of a current NAARSO Limited Specialty Certification, including the training requirements for a NAARSO Limited Specialty Certification; or

~~11.3.2.~~ 10.3.b. Documentation of completion of training that is the equivalent of the NAARSO training requirements for a NAARSO Limited Specialty Certification; and

~~11.3.3.~~ 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. Privileges and Responsibilities of an Inspector, Special Inspector, or a Limited Specialty Inspector.

11.1. An inspector, special inspector or limited specialty inspector who has been issued a certificate of competency by the Commissioner shall have the authority and responsibility to:

11.1.a. When authorized by the Division, conduct inspections of amusement rides and amusement attractions as required in subsection 8.1 of this rule;

11.1.b. Complete inspection reports and submit them to the Division by mail or email within 7 days of the inspection;

11.1.c. Comply with the Division's written or verbal authorization to inspect specific amusement rides and amusement attractions on the specified date;

11.1.d. If the inspection cannot be conducted on the authorized date, or if there is any other change to the Division's inspection authorization, notify the Division within 24 hours of the change;

11.1.e. Comply with the applicable ASTM standards when conducting an inspection of an amusement ride or amusement device; and

11.1.f. If the amusement ride or amusement device complies with the applicable ASTM standards, personally affix the permit to operate on each compliant amusement ride or amusement device.

11.2. A certified inspector, special inspector or limited specialty inspector shall possess and use the equipment and standards necessary to conduct inspections of amusement rides and amusement attractions.

11.3. A certified inspector, special inspector or limited specialty inspector shall have current editions of the Annual Book of ASTM Standards, Volume 15.07, and current copies of W. Va. Code §§21-10-1 through 21-1-19, and this rule available at a central location for reference and use.

§42-17-12. Suspension or Revocation of Certificate of Competency.

12.1. The Commissioner shall have the authority to suspend or revoke a certificate of competency for good cause, including, but not limited to, the following:

12.1.a. taking unfair advantage of an owner of an amusement ride or amusement attraction;

12.1.b. failure to use adequate testing equipment or as required by subsection 5.4 of this rule;

12.1.c. failure to inspect amusement rides and amusement attractions in compliance with the applicable ASTM standards;

12.1.d. failure to personally affix a permit to operate on a compliant amusement ride or amusement attraction;

12.1.e. submission of falsified reports, documents or information to the Commissioner; or

12.1.f. failure to comply with the requirements of the Act or this rule.

12.2. If the Commissioner finds that suspension or revocation of a certificate of competency is warranted, he or she shall give written notice of the reasons to the inspector, special inspector or limited specialty inspector and shall afford him or her an opportunity to respond.

§42-17-~~12~~ 13. Information Required at the Immediate Site of Operation.

In addition to the requirements of ASTM International F 1193 - 06, "Standard Specification for Quality,

Manufacture and Construction of Amusement Rides and Devices," a qualified person shall have emergency telephone numbers on file and immediately available at the site of operation.

§42-17-~~13~~ 14. Amusement Ride Assembly, Set Up, Disassembly and Operation.

The following requirements are in addition to the requirements of ASTM International F F770-11, "Standard Practice for Ownership, Operation, Maintenance and Inspection of Amusement Rides and Devices:"

~~13.1~~ 14.1. 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.

~~13.2.~~ 14.2. A qualified person shall assemble, set up and disassemble each amusement ride or attraction.

~~13.3.~~ 14.3. 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.

~~13.4.~~ 14.4. A qualified person shall remain at the controls at all times during the operation of an amusement ride or attraction.

~~13.5.~~ 14.5. An operator assistant shall remain at his or her assigned station at all times during the operation of the amusement ride or attraction.

~~13.6.~~ 14.6. Upon request from a passenger, a qualified person shall halt an amusement ride or attraction and allow the passenger to disembark.

§ 42-17-~~14~~ 15. 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 to an individual or an organization shall ensure that a qualified person assembles, and sets up each device or structure at the immediate site of operation, and clearly explains and provides written information for the safe operation and disassembly of the device or structure.

§42-17-~~15~~ 16. 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:"

~~15.1~~ 16.1. 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.

~~15.1.1.~~ 16.1.a. The Commissioner's written notice shall state a date by which the NDT must be completed.

~~15.1.2.~~ 16.1.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.

~~15.2.~~ 16.2. 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-~~16~~ 17. Unscheduled Cessation of Operation.

~~16.1.~~ 17.1. Following any unscheduled cessation of operation, the qualified person of the amusement ride or attraction shall immediately have the passengers safely unloaded from the ride or attraction.

~~16.2.~~ 17.2. If the qualified person determines that the amusement ride or attraction can safely resume operation, the qualified person shall first operate the ride or attraction without passengers to ensure that the cause of the unscheduled cessation of operation has been corrected.

~~16.3.~~ 17.3. The qualified 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-~~17~~ 18. Imminent Danger.

~~17.1.~~ 18.1. If the Commissioner 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.

~~17.2.~~ 18.2. If the qualified 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-~~18~~ 19. Serious Injury or Fatality.

~~18.1.~~ 19.1. 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 qualified person shall immediately shut down the ride or attraction and secure the safety of other passengers or patrons and the general public.

~~18.2.~~ 19.2. 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 device involved is not removed from the scene of the accident without written authorization from the Commissioner or a law enforcement officer.

~~18.3.~~ 19.3. The qualified 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.

~~18.4.~~ 19.4. The owner, operator or agent of the amusement ride or attraction shall make a verbal report of the serious injury or fatality to the Commissioner within 24 hours of its occurrence.

~~18.5.~~ 19.5. The qualified person shall document the serious injury or fatality, to include the full name, address and telephone number of the injured person, 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 person, or agent, and any other pertinent information describing the events leading up to the accident.

§ 42-17-~~19~~ 20. Reports and Records.

~~19.1.~~ 20.1. The owner of the amusement ride or attraction shall retain all reports, documents, photographs and records required by sections 16 or 18 of this rule for not less than 7 years from the date of the unscheduled cessation or serious injury or fatality.

~~19.2.~~ 20.2. 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-~~20~~ 21. Miscellaneous Safety Requirements.

~~20.1.~~ 21.1. 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 amusement attraction.

~~20.2.~~ 21.2. 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.

~~20.3.~~ 21.3. When requested by a passenger, an amusement ride or amusement attraction operator or assistant shall immediately halt the amusement ride or amusement attraction and allow the passenger to disembark.

~~20.4.~~ 21.4. Use of automotive equipment or other transportation devices for anchoring an amusement ride or amusement attraction while the amusement ride or amusement attraction is in operation:

~~20.4.1.~~ 21.4.a. 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.

~~20.4.2.~~ 21.4.b. 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:

~~20.4.2.a.~~ 21.4.b.1. All vehicle batteries shall be disconnected and removed from the vehicle;

~~20.4.2.b.~~ 21.4.b.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;

~~20.4.2.e.~~ 21.4.b.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;

~~20.4.2.d.~~ 21.4.b.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;"

~~20.4.2.e.~~ 21.4.b.5. All vehicle wheels shall be chocked; and

~~20.4.2.f.~~ 21.4.b.6. The manufacturer's recommendations for anchoring the amusement ride or amusement device shall be followed at all times.

~~20.5.~~ 21.5. Electrical Systems.

~~20.5.1.~~ 21.5.a. The following wiring systems are approved:

~~20.5.1.a.~~ 21.5.a.1. A three phase five wire system that is grounded at the power source and constructed in accordance with the NFPA 70, 2014 National Electrical Code, Article 522 and Article 525: Provided, That a three phase four wire system that is grounded at the power source and constructed in accordance with the NFPA 70, 2014 National Electrical Code, Article 522 and Article 525 is approved for any area of the state where a three phase five wire system is unavailable; and

~~20.5.1.b.~~ 21.5.a.2. A single phase four wire system that is grounded at the power source and constructed in accordance with the NFPA 70, 2014 National Electrical Code, Article 522 and Article 525.

~~20.5.2.~~ 21.5.b. When a permanent amusement ride or amusement attraction that has been service proven experiences a failure of its electrical service, all repairs, upgrades, or new service shall comply with the NFPA 70, 2014 National Electrical Code, Article 522.

~~20.5.3.~~ 21.5.c. For an amusement ride or amusement attraction in which water is a major medium, there shall be ground fault interruption circuitry for wiring systems of 240 volts or less, or 30 amps or less.

~~20.5.4.~~ 21.5.d. The owner or operator of an amusement ride or amusement attraction shall ensure that all electrical equipment and devices are guarded against access by unauthorized persons.

~~20.5.5.~~ 21.5.e. For a dark amusement ride or amusement attraction, the track or buss bar supplying voltage to the individual cars shall be maintained at 30 volts or less.

~~20.6.~~ 21.6. Fire Extinguishers and Smoke and Fire Detectors.

~~20.6.1.~~ 21.6.a. One Class A, B, and C rated fire extinguisher with a capacity of at least 10 pounds shall be placed on all generator units and fuel-powered amusement rides and attractions.

~~20.6.2.~~ 21.6.b. One Class A, B, and C rated fire extinguisher with a capacity of at least 5 pounds shall be placed at all non-fuel powered amusement rides and attractions.

~~20.6.3.~~ 21.6.c. A dark amusement ride or an amusement attraction shall have a minimum of 1 smoke and fire detector per 500 square foot area.

~~20.6.3.a.~~ 21.6.c.1. A dark amusement ride or amusement attraction owner or operator shall inspect each smoke and fire detector, and shall maintain them in good working condition.

~~20.6.3.b.~~ 21.6.c.2. A dark amusement ride or amusement attraction owner or operator shall inspect each smoke and fire detector before beginning operation in this state and every 30 days thereafter.

~~20.6.3.e.~~ 21.6.c.3. A dark amusement ride or amusement attraction owner or operator shall document each inspection in the ride or attraction maintenance log.

~~20.6.4.~~ 21.6.d. A dark amusement ride or amusement attraction owner or operator shall place at least one Class A, B, and C rated, 10 pound fire extinguisher at each entrance and exit of the ride or attraction and at each operator station that is not located directly at an entrance or exit.

~~20.6.5.~~ 21.6.e. The amusement ride or amusement attraction owner is responsible for the inspection, maintenance and recharging of fire extinguishers in accordance with NFPA 10, 2013 Edition, Chapter 7.