

ARTHUR COCCODRILLI, CHAIRMAN
ALVIN C. BUSH, VICE CHAIRMAN
DAVID M. BARASCH, ESQ.
DAVID J. DEVRIES, ESQ.
JOHN F. MIZNER, ESQ.
KIM KAUFMAN, EXECUTIVE DIRECTOR
MARY S. WYATTE, CHIEF COUNSEL
LESLIE A. LEWIS JOHNSON, DEPUTY CHIEF COUNSEL



PHONE: (717) 783-5417
FAX: (717) 783-2664
irrc@irrc.state.pa.us
<http://www.irrc.state.pa.us>

INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

August 22, 2007

Honorable Dennis C. Wolff, Secretary
Department of Agriculture
211 Agriculture Building
2301 North Cameron Street
Harrisburg, PA 17110

Re: Regulation #2-102 (IRRC #2616)
Department of Agriculture
Amusement Rides and Attractions Erected Permanently or Temporarily at Carnivals, Fairs
and Amusement Parks

Dear Secretary Wolff:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
Executive Director
wbg
Enclosure

cc: Honorable Michael W. Brubaker, Chairman, Senate Agriculture and Rural Affairs
Committee
Honorable Michael A. O'Pake, Minority Chairman, Senate Agriculture and Rural Affairs
Committee
Honorable Michael K. Hanna, Sr., Majority Chairman, House Agriculture and Rural Affairs
Committee
Honorable Arthur D. Hershey, Minority Chairman, House Agriculture and Rural Affairs
Committee

Comments of the Independent Regulatory Review Commission

on

Department of Agriculture Regulation #2-102 (IRRC #2616)

Amusement Rides and Attractions Erected Permanently or Temporarily at Carnivals, Fairs and Amusement Parks

August 22, 2007

We submit for your consideration the following comments on the proposed rulemaking published in the June 23, 2007 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Department of Agriculture (Department) to respond to all comments received from us or any other source.

1. Section 139.1. Scope. - Implementation procedures; Clarity.

Subsection (a) is being amended to state that Chapter 139 applies to amusement rides and attractions erected permanently or temporarily at "carnivals, fairs, amusement parks or any other location" in Pennsylvania. Subsection (b) is being amended to state that Chapter 139 applies to new and existing "commercially used" amusement rides and attractions. The definition of "commercially used" includes amusement rides and attractions that are offered for a "rental fee."

The Department has explained that this regulation governs the rental of inflatable devices, such as moon bounces and similar devices. We have two concerns.

First, who is responsible for ensuring the safety of users of rented inflatable devices or similar devices? To illustrate, if a neighborhood association rents a moon bounce for an event, would the association be responsible for ensuring the moon bounce is properly operated? What if such a group does not require payment for people to use the device? In other words, their use of the device is not commercial. What is the responsibility of the company that owns the moon bounce and rents it out? How would the Department enforce this regulation in these situations?

Second, how and when do inspections occur for inflatable devices and other amusement rides or attractions that are rented out to private groups or families? Do the inspections occur when the rides or attractions are rented and erected? This should be explained in the final-form regulation.

2. Section 139.2. Definitions. - Statutory authority; Consistency with statute; Clarity.

Class I amusement ride or amusement attraction

This definition includes the words "live animal ride." However, the definition of "amusement ride" in the Amusement Ride Inspection Act (Act) (4 P.S. § 402) uses the words "any device that carries, suspends or conveys passengers" and does not include the word "animal." Would a live

animal have to be registered and inspected? The Department should explain its statutory authority for including a “live animal ride” in this definition.

At the end of Paragraph (iii) in this definition, there is a typographical error in the *Pennsylvania Bulletin*. This paragraph ends with the phrase “... in accordance with section 14(a)(1) of the act (4 P.S. § 414(a)(2)).” This reference is incorrect. It should read, “...in accordance with section 14(a)(1) of the act (4 P.S. § 414(a)(1)).”

Professional engineer

The proposed regulation is adding a definition for this term which reads:

An individual licensed and registered under the Engineer, Land Surveyor and Geologist Registration Law (63 P. S. §§ 148—158.2) or a successor statute to engage in the practice of engineering.

It is unclear whether this definition would include out-of-state engineers who are allowed to practice temporarily in the state pursuant to Section 5(b) of the Engineer, Land Surveyor and Geologist Registration Law (Law) (63 P. S. § 152(b)). Amusement park owners may have facilities and rides in other states. If they have an engineer from another state, who complies with Section 5(b) of the Law and is familiar with Pennsylvania law and standards, could this engineer provide verification for their rides pursuant to Section 139.4(d)(7)(ii)? The regulation needs to clarify whether an out-of-state engineer may perform the required tasks for the owner or lessee.

Qualified inspector

This term is defined in the existing provisions of Chapter 139. The proposed regulation includes the new terms “affiliated qualified inspector” and “general qualified inspector.” In the text of the proposed regulation, it appears that the existing term “qualified inspector” refers to both an “affiliated qualified inspector” and “general qualified inspector.” If this is the case, then the existing definition of “qualified inspector” should be amended to make it clear that this term includes “affiliated qualified inspectors” and “general qualified inspectors.”

3. Section 139.4. Registration. - Implementation procedures; Reasonableness; Clarity.

Under Subsection (d)(7)(ii)(B), professional engineers must confirm that the materials and construction of rides or attractions conform to “normal engineering practices, procedures, standards and specifications.” In addition, Subsection (d)(7)(ii)(C) uses the term “accepted engineering practices.” These requirements or standards are vague. It would be difficult for professional engineers to know exactly what it is that they are confirming and it would be difficult for the Department to enforce these provisions. Since Subsection (d)(7)(ii)(D) states that the ride or attraction meets the requirements of the ASTM International (formerly the American Society for Testing Materials), what is the need for Subsections (d)(7)(ii)(B) and (C)? These phrases should either be defined or replaced with more definitive requirements. In the alternative, this subsection could be deleted.

4. Section 139.9. Qualified inspectors. - Implementation procedures; Clarity.

Under Subsection (g), the Department will “promptly” report results to an applicant. This provision is vague. The final-form regulation should include a more definitive time frame for reporting results to an applicant.

Subsection (l) includes provisions that allow the Department to reduce the hours of continuing education required for certain types of rides or attractions via a publication of notice in the *Pennsylvania Bulletin* without a rulemaking or amendment to the regulation. The subsection states that this action would be considered for rides or attractions “of a comparatively simple design or operation.” This is very similar to the definition for “Class I” rides or attractions. Hence, it is unclear what would justify a reduction in the requirement. This subsection needs to be refined to provide more information about the bases or criteria that would be used to reduce the continuing education requirement for certain rides or amusements.

5. Section 139.11. Accident reporting. - Reasonableness; Consistency with statute; Implementation procedures; Clarity.

The definition of “serious injury or illness” in the Act also includes situations when “offsite medical treatment ... may be required at a future date.” As a practical matter, it is questionable whether an operator or owner would have the expertise to know if future medical treatment would be necessary or required. Hence, how could he or she report these situations? The Department should clarify whether a report is required. If the injured or ill party is not transported offsite for medical treatment within a few minutes or on the same day of the accident, then why is an owner, operator or lessee required to report the injury or illness?

Subsections (b)(5)-(7) use words such as “dead or injured person,” “death or injury,” or “apparent injuries.” However, the word “illness” is missing. If the accident report is to include information about a serious injury or illness that may be associated with a ride or amusement, then these provisions should be amended to also require a summary or description of the apparent serious illness.

6. Section 139.12. Variances. - Statutory authority; Consistency with statute; Reasonableness; Clarity.

This section is being deleted in its entirety in the proposed regulation. However, Section 409 of the Act (4 P.S. § 409) allows any owner or lessee to apply in writing for an order for a variance from any rule, regulation or standard. If the section is removed in its entirety, then Chapter 139 will provide no procedure for anyone who may wish to apply for a variance. The regulation should include a reference to Section 409 of the Act for owners or lessees who may need to apply for a variance.

7. Section 139.42. Structures. - Reasonableness; Clarity.

As amended, the first sentence of this section reads:

Permanent buildings, enclosed structures and rides intended to be used for or as an amusement ride or amusement attraction shall be constructed to conform to the

Pennsylvania Construction Code Act unless exempted under that statute or its attendant regulations,

The Pennsylvania Construction Code Act applies to buildings and similar structures, but it does not include standards or requirements for amusement rides or attractions. These are covered by the standards of the ASTM International. The language in the final-form regulation should clearly indicate that this section applies only to buildings, facilities or structures not manufactured as part of an amusement ride or attraction. The references to "rides" and ride or attraction in the first sentence should be stricken.

8. Section 139.43. Passenger-carrying rides. - Reasonableness; Clarity.

Paragraph (8) includes the phrase "clearance envelope." It is our understanding that this term is addressed or defined in the standards of the ASTM International. Hence, a reference to the ASTM International standards should be included in this paragraph in the final-form regulation.

9. Section 139.72. Erection/disassembly of amusement rides and attractions. - Clarity.

Paragraph (2) uses the term "high voltage lines." One commentator requested clarification of this term. The final-form regulation should include a specific or technical description of "high voltage lines."

10. Section 139.75. Fire protection and prevention. - Reasonableness; Clarity.

Subsection (a) includes the following language:

Approved U. L. fire extinguishers shall be provided at [**gas driven**] **gasoline-driven** rides and otherwise where necessary to secure reasonable and adequate protection from fire hazards.

The phrase "and otherwise where necessary to secure reasonable and adequate protection from fire hazards" is vague. What is the intent or objective? It is unclear how this phrase would be enforced as a binding standard on regulated parties. It should be clarified in the final-form regulation.

11. Section 139.76. Ride and attraction operators and attendants. - Clarity.

Subsection (6) reads:

There shall be **sufficient** numbers of operators and attendants, and this number shall meet or exceed the number of operators recommended by the manufacturer of the ride, device or attraction. (Emphasis added.)

It is our understanding that the phrase "sufficient numbers of operators and attendants" will always be enforced as meeting or exceeding the number of operators recommended by the manufacturer. If this is the case, the phrase "sufficient numbers of operators and attendants" is unnecessary and should be deleted. The final-form regulation need only state that the numbers of operators and attendants shall meet or exceed the manufacturer's recommendations.

12. Section 139.77. Maintenance of amusement rides and attractions. - Implementation procedures; Clarity.

Existing Subsection (e)(8) (which is being changed to (f) in the proposed regulation) contains the following sentences:

The record shall be kept and made available to the Department and qualified inspector for at least 1 year. Additional retention periods for this documentation may be advisable.

The first sentence is appropriate and provides a specific directive for the regulated community. The second sentence is a recommendation rather than an enforceable directive or rule. A regulation is not the proper vehicle for making recommendations. Regulations establish binding norms of general applicability and future effect. Unless the Department intends to enforce the provisions related to additional record retention periods, they should be deleted. They would be more appropriately placed in a policy statement or guidance document.

13. Section 139.79. Records. - Consistency; Clarity.

This section requires regulated owners or lessees to maintain certain records. The existing language in Subsection (b) states:

A complete maintenance and testing history file for each amusement ride and attraction shall be maintained at the ride or by the owner and be available to the Department or the qualified inspector.

How long must the regulated parties retain these files in order to make them available for the Department or a qualified inspector? Records discussed in existing Section 139.77(e)(8) are required to be retained for a year. The final-form regulation should include a similar directive for the records discussed in this section.

AUG-22-2007 WED 09:00 AM

Facsimile Cover Sheet

RECEIVED

2007 AUG 22 AM 9:18

INDEPENDENT REGULATORY
REVIEW COMMISSION



Phone: (717) 783-5417

Fax #: (717) 783-2664

E-Mail: irre@irre.state.pa.us

INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

To: April Orwig
Agency: Department of Agriculture
Phone: 2-2853
Fax: 5-8402
Date: August 22, 2007
Pages: 7

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Department of Agriculture's regulation #2-102 (IRRC #2616). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: April Orwig Date: _____