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COMMONWEALTH OF PENNSYLVANIA



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April 3, 2008

Kim Kaufman, Director  
Independent Regulatory Review Commission  
333 Market Street, 14<sup>TH</sup> Floor  
Harrisburg, PA 17120

**Re: ADVANCE NOTICE OF FINAL RULEMAKING  
7 Pa. Code Chapter 139  
Amusement Rides and Attractions Erected Permanently  
or Temporarily at Carnivals, Fairs and Amusement Parks  
I.D. No. 2-102**

Dear Mr. Kaufman:

The Pennsylvania Department of Agriculture (Department) intends to provide interested persons a second opportunity to offer comments with respect to the proposed revisions to the above-referenced regulations.

The proposed rulemaking was published in the June 30, 2007 edition of the *Pennsylvania Bulletin* (37 Pa.B. 2823), and afforded the public a 30-day comment period. Comments were received from several amusement park operations, as well as from the Independent Regulatory Review Commission.

In the process of drafting the proposed rulemaking, the Department made a commitment to the Amusement Ride Safety Advisory Board that it would offer this second comment period. To this end, the Department will publish an "Advance Notice of Final Rulemaking" in the April 19, 2008 edition of the *Pennsylvania Bulletin*. This notice will: (1) refer readers to the Department's website ([www.agriculture.state.pa.us](http://www.agriculture.state.pa.us)), where a draft of the final-form regulation will be available for viewing or downloading; and (2) afford persons until 4:00 p.m. on Tuesday, May 6, 2008 within which to deliver additional written comments to the Department.

I have enclosed a copy of the draft final-form regulation for your convenience. If I may be of further information or assistance, please advise.

Sincerely,

A handwritten signature in black ink, appearing to read "Dwight-Jared Smith".

Dwight-Jared Smith  
Assistant Counsel

## DRAFT Final-Form Regulation

This document is a Draft Final-Form Regulation of the Pennsylvania Department of Agriculture (PDA). It would amend the current regulations relating to amusement rides and amusement attractions.

PDA published its proposed rulemaking on June 23, 2007, at 37 *Pennsylvania Bulletin* 2823. The proposed rulemaking may be viewed at the *Pennsylvania Bulletin* website: [www.pabulletin.com](http://www.pabulletin.com).

PDA received a number of comments with respect to the proposed rulemaking, and made a number of changes to the draft final-form regulation as a result. Language that is proposed to be *added* to the final-form regulation is capitalized. Language that is proposed to be *deleted* from the final-form regulation is struck-through.

Interested persons are invited to comment on this document. Written comments should be in writing, and should be delivered to the following individual **no later than 4:00 p.m. on Tuesday, May 6, 2008:**

Pennsylvania Department of Agriculture  
Bureau of Ride and Measurement Standards  
ATTN: John Dillabaugh, Director  
2301 North Cameron Street  
Harrisburg, PA 17110-9408

The text of the draft final-form regulation follows.

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### FINAL RULEMAKING

#### Title 7 – AGRICULTURE DEPARTMENT OF AGRICULTURE [7 PA. CODE CH. 139]

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

The Department of Agriculture (Department) hereby amends Chapter 139 (relating to amusement rides and attractions erected permanently or temporarily at carnivals, fairs and amusement parks) to read as set forth in Annex A.

*Statutory Authority*

The Amusement Ride Inspection Act (Act) (4 P. S. §§ 401 - 419) provides the legal authority for this final-form regulation.

Section 4 of the Act (4 P. S. § 404) prescribes the powers and duties of the Department with respect to amusement rides and authorizes the Department to adopt regulations necessary to its administration of the provisions of the Act.

#### *Purpose of the Final-Form Regulation*

The final-form regulation updates the Department's amusement ride and amusement attraction regulations to reflect developments in the amusement ride and amusement attractions industry in the 21 years since current regulations were last updated, moves these regulations into greater conformity with well-regarded National industry standards for the safe erection and operation of amusement rides and amusement attractions (the American Society for Testing Materials International F-24 Committee Standards) and provides a clearer set of standards for the regulated community.

The amusement ride and amusement attraction industry is a vital, evolving industry. Amusement rides that are common today, such as inflatable bounce rides, climbing walls and water rides, were not in widespread use when the current regulations were last amended. In addition, as the Department has carried-out its responsibilities in administering and enforcing the current regulations over the years, it has identified provisions that are unclear, that are inconsistent with the act or that are not as comprehensive or detailed as their counterpart provisions in the American Society for Testing Materials International F-24 Committee Standards.

#### *Comments and Responses*

A notice of proposed rulemaking was published at 37 *Pennsylvania Bulletin* 2823 (June 23, 2007), affording the public, the Legislature and the Independent Regulatory Review Commission (IRRC) the opportunity to offer comments. Comments were received from IRRC, Hersheypark, Kennywood Entertainment, Inc. (Kennywood) and the Pennsylvania State Association of Township Supervisors. A summary of these comments and the Department's responses follows:

*Comment 1:* While offering a number of specific comments addressed below, Kennywood also offered general support for the Department's effort to provide needed regulatory guidance to park operators. The Pennsylvania Association of Township Supervisors also offered its agreement with the need for an updating the amusement ride regulations.

*Response:* The Department acknowledges these comments, and agrees the final-form regulation will provide helpful guidance to the regulated community.

*Comment 2:* With respect to proposed § 139.1 (relating to scope), IRRC asked "...who is responsible for ensuring the safety of users of rented inflatable devices or similar devices?" To focus its question, IRRC offered the example of a neighborhood

association that rents an amusement ride for an event, and raised questions as to *who* would be responsible for the proper operation of the ride, whether the ride would be considered a “commercially used” ride if the riders were not charged a fee to use the ride, and the extent to which the entity that rented the ride to the neighborhood association remains responsible for its operation.

*Response:* An owner of an amusement ride that is to be operated within this Commonwealth is required to register the ride with the Department, inspect it regularly in accordance with the Act, obtain required minimum insurance coverage in accordance with the Act, and see that the ride is erected and operated in accordance with the manufacturer’s instructions. Entities that rent amusement rides to third parties take various approaches to meeting these requirements. Some transport the ride to the site, erect it and provide trained operators for the ride. Some deliver the ride, provide written instructions as to erection and operation, and retrieve the ride at the end of the rental. Some leave pick-up, delivery, erection, operation and return entirely to the person who rents the ride, and provide instructions. Whatever the approach of the entity that rents and amusement ride, basic responsibility for compliance with the Act and its attendant regulations rests with the ride owner.

The Department acknowledges that the ride rental industry – particularly the segment of that industry that rents inflatable bounce rides – is a comparatively new segment of the amusement ride industry and is not squarely addressed in the Act. The Act (at 4 P.S. § 409) describes the circumstances under which the Department is authorized to issue a variance from any rule, regulation or standard relating to amusement rides. The Department has issued a variance with respect to certain entities that rent inflatable bounce rides, modifying certain pre-operation inspection and itinerary requirements and acknowledging that it shall monitor and – if necessary – revise the variance if necessary. The Department intends to seek to have the Act more specifically address this segment of the amusement ride industry on the next occasion it is amended.

Under the example provided by IRRC in this comment, the rented ride would be a “commercially used” amusement ride even if the riders were not charged a fee. The proposed definition of the term “commercially used” is set forth in § 139.2 (relating to definitions). Under that definition, the rented ride in the hypothetical would be “... offered for use by persons in consideration of payment of a ... rental fee ... as a condition of use of the ride or attraction.” The entity that owns the ride and rents it to a third person makes the payment of a rental fee a condition of that third person’s use of the ride, so the use of that ride is a “commercial use.”

With respect to IRRC’s question as to the extent to which the entity that rents a ride to a third party remains responsible for its operation, the entity that rents the ride to a third party is required to have the minimum insurance coverage required under the Act, and is ultimately responsible for the safe operation of its ride.

*Comment 3:* With respect to inflatable amusement rides and other rented amusement rides, IRRC sought clarification as to how and when inspections occur for inflatable devices and other amusement rides or attractions that are rented out to private groups or families. IRRC asked whether these inspections occur when the rides or attractions are rented and erected, and recommended this be explained in the final-form regulation.

*Response:* All amusement rides – including rented amusement rides – must be inspected in accordance with the requirements of the Act (at 4 P.S. § 407), unless they are exempted from these requirements in accordance with a variance issued by the Department under authority the Act (at 4 P.S. § 409). A variance issued by the Department on July 17, 1998 defines an “inflatable bounce ride rental entity,” and exempts certain inflatable rides from the inspection and itinerary requirements imposed by the Act, but requires the inflatable bounce ride rental entity to file an inspection affidavit with PDA, reflecting that the ride has been inspected no more than one month in advance of the rental.

*Comment 4:* Kennywood noted the increase in Halloween and Fall Harvest seasonal attractions in recent years, and recommended that the final-form regulation make clear that these attractions fall within the scope of the Act. The referenced attractions include “haunted houses,” corn mazes and other attractions. Kennywood believes that a number of these attractions do not comply with the Act and its attendant regulations. Kennywood also offered that enforcement should be without regard to whether the attractions are temporary or part of established amusement parks, or whether operated by for-profit or non-profit entities.

*Response:* For the reasons that follow, the Department declines to attempt to modify or expand upon the statutory definition of an amusement ride or an amusement attraction, but acknowledges that these definitions present enforcement challenges for the Department.

The Department agrees that there has been a proliferation of the type of rides and attractions described in this comment. As is the case with amusement ride rental entities (See Comment and Response 2, above), this new and growing segment of the amusement industry is not squarely addressed in the Act; and the Department intends to seek to have the Act more specifically address this segment of the amusement ride industry on the next occasion it is amended.

The Act defines what constitutes an “amusement ride” and what constitutes an “amusement attraction,” and the Department’s authority is limited by those definitions. Although a “haunted house” in a building or structure clearly falls within the definition of an “amusement attraction,” there are such things as “haunted trails,” “haunted forests,” “haunted corn mazes” and similar attractions that are held entirely outdoors. If no building or structure is involved in the attraction, it would not fit within the Act’s definition of an “amusement attraction.” This is illustrative of some of the enforcement issues the Department faces in this general area. Against this backdrop, the Department pursues registration of every “haunted house” and other operation that constitutes an “amusement ride” or “amusement attraction,” of which it is aware, and will work with the commentator to identify any such ride or attraction that is not operated in compliance with the Act.

The Department agrees with the commentator that enforcement of the Act should be without regard to whether the subject amusement ride or amusement attraction is temporary or part of an established amusement park, or whether operated by a for-profit or non-profit entity.

*Comment 5:* Kennywood recommended the final-form regulation define what constitutes an “accident” for purposes of reporting accidents involving serious injury or illness, or death. The commentator offered that: “Overstating the number of real accidents could mislead the media and the legislature as to the safety of the rides.” The commentator also offered the following definition:

“*Accident*” - A mechanical, electrical or structural defect or malfunction that results in the failure of the ride or attraction to operate as designed or intended; failure by the ride operator to follow standard operating procedures resulting in an injury to a rider.

*Response:* The Department declines to add the recommended definition.

The Act (at 4 P.S. § 413) requires the reporting of: “... any *accident* which involves serious injury or illness or death to an individual or individuals *as a result of the operation* of an amusement ride or attraction.” Although “serious illness or injury” is defined in the Act, “accident” and “operation” are not.

Proposed § 139.2 adds a definition of “operation” which includes the loading, unloading and movement of amusement rides and attractions, but would exclude that portion of a passenger line that extends beyond the gate or rail that is required to surround the ride under ASTM International F-24 Committee standards. This provides greater clarity, and would not require the reporting of accidents that occur in waiting lines that extend outside the immediate enclosure of the ride or attraction.

The Department is aware that the ASTM International F-24 Committee is currently considering whether to establish a definition of an “accident,” but is not aware of whether this definition will actually be established. PDA will leave this word undefined in the regulation. If the ASTM International F-24 Committee subsequently defines the term and there is no contrary definition in the Act or its attendant regulations, the ASTM International F-24 Committee definition shall control.

*Comment 6:* Hersheypark recommended that a definition of “attraction” be added to the final-form regulation.

*Response:* The Department declines to implement this recommendation. The term “amusement attraction” is defined in the Act (at 4 P.S. § 402), and is the term that is relevant throughout Chapter 139. Every reference to the term “attraction” in the final-form regulation refers to an amusement attraction – and that phrase is defined by statute and repeated in proposed § 139.2.

*Comment 7:* Hersheypark recommended that a definition of “amusement ride and devices” be added to the final-form regulation.

*Response:* The Department declines to implement this recommendation because the phrase is not used in the final-form regulation. The phrase is used and defined in the ASTM International F-24 Committee Standards, but is not used in the Act or the final-form regulation and is not needed.

*Comment 8:* IRRC noted that the definition of “Class I amusement ride or attraction” in proposed § 139.2 includes live animal rides within that definition. IRRC also noted that the definition of an “amusement ride” in the Act (at 4 P.S. § 402) uses the words “any device that carries, suspends or conveys passengers” and does not include the word “animal.” Against this backdrop, IRRC asked whether a live animal would need to be registered and inspected as an amusement ride under the Act, and requested an explanation of the Department’s authority to address live animal rides.

*Response:* The Department does not require the registration or inspection of a live animal ride unless the ride entails attaching an animal to a device – in which case the device is an “amusement ride” that is registered and inspected. The typical live animal ride that is registered and regulated under the Act resembles a live-animal merry-go-round: a fixed central vertical axle with individual animals tethered or otherwise attached to spoke-like appendages extending from the central axis, restricting the animals to a specific course and direction. When the live animal ride employs a device as described above, it must be registered and inspected. Live animal rides that entail simply letting the rider steer the animal or having an attendant lead the animal through the ride are not registered or inspected under the Act. The Department believes its interpretation of the types of live animal rides that must be regulated as “amusement rides” is consistent with the Act.

*Comment 9:* IRRC also noted a typographical error in the definition of “Class I amusement ride or attraction” in proposed § 139.2, and suggested the parenthetical phrase at the end of Paragraph (iii) be revised to read “(4 P.S. § 414(a)(1))” instead of “(4 P.S. § 414(a)(2)).”

*Response:* The Department accepts this suggestion, and has implemented the recommended change in the final-form regulation.

*Comment 10:* Hersheypark asked that the final-form regulation contain definitions of the terms “general inspector” and “independent inspector.”

*Response:* Proposed § 139.2 (relating to definitions) defines the terms “affiliated qualified inspector” and “general qualified inspector;” and those terms are used throughout the final-form regulation. While an affiliated qualified inspector may only inspect rides and attractions owned or leased by designated entities, a general qualified inspector may inspect rides and attractions without regard to who owns or leases them. Although the Department declines to implement the commentator’s recommendation, it believes the substance of that recommendation is embodied in the definition and use of the terms “affiliated qualified inspector” and “general qualified inspector.”

*Comment 11:* Kennywood noted that proposed § 139.2 contains a definition of “operation” that would (in the context of amusement rides and amusement attractions) include the loading and unloading of guests while the ride is in a stationary position. The commentator added:

... Reporting bumps, bruises, twisted ankles or other events while loading or unloading a ride will only serve to inflate the number of accidents. Such events are more a reflection on the physical condition of the guests and their ability to pay attention than on ride safety. We do not think the number of guests encountering problems boarding rides is any more or less than for passengers boarding buses, planes or other transportation vehicles. The legislature does not compile data in those cases. We request that events while loading and unloading rides be eliminated from the definition of "Operation."

*Response:* The Department notes that the ability to load and unload riders in a safe, efficient and rapid manner is a consideration in the design of any amusement ride or amusement attraction, and is frequently addressed in the ASTM International F-24 Committee Standards. For this reason, the Department believes it reasonable to adopt a definition of "operation" that includes some aspects of the loading and unloading process. The referenced definition seeks to limit the scope of what constitutes the "operation" by excluding activities that take place *outside* the fence or protective barrier that is required to surround an amusement ride under ASTM F-24 Committee standards.

*Comment 12:* Hersheypark offered a comment that is related to the preceding comment by Kennywood. The commentator suggested language be added to the definition of "operation" in proposed § 139.2 to address situations where the ASTM International F-24 Committee Standards do not require a fence or barrier, and offered language.

*Response:* The Department accepts this comment, and has added language to the definition of "operation" to implement the commentator's suggestion. Bureau: work in ".....any device which limits or identifies control access to the ride."

*Comment 13:* Hersheypark recommended that the definition of "permanent structure" in proposed § 139.2 be better defined, and offered language that would clearly include ride stations and similar structures in the definition.

*Response:* Although the Department agrees the commentator's idea would add some clarification, the definition of the term "permanent structure" is prescribed by the Act (at 4 P.S. § 402), and the Department cannot stray from that language in the final-form regulation.

*Comment 14:* IRRC and Kennywood offered similar comments on the definition of the term "professional engineer" in proposed § 139.2. IRRC offered that the proposed definition is unclear as to whether it 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 (63 P. S. § 152(b)). IRRC noted that an amusement park might have affiliated parks in other states, and asked whether an out-of-state engineer who complies with the referenced statutory provision and is familiar with Act and its attendant regulations could provide verification for their rides pursuant to



proposed subparagraph 139.4(d)(7)(ii) (relating to registration). IRRC recommended the final-form regulation clarify whether an out-of-state engineer may perform the required tasks for the owner or lessee.

Kennywood requested that consideration be given to allowing the referenced engineer's verification to be provided by any professional engineer licensed in any state and who is a member of the National Society of Professional Engineers.

*Response:* The Department has revised the referenced definition to clearly state that the term "professional engineer" does not include engineers who are exempt from registration and licensure under § 5(b) of the Engineer, Land Surveyor and Geologist Registration Law (63 P. S. § 152(b)). The exemption allows out-of-state engineers to engage in the practice of engineering within this Commonwealth for up to 30 days each calendar year without having to be licensed and registered, as long as the standards of their home jurisdiction are "at least equal to the standards of the Commonwealth." There are many jurisdictions that do not have professional qualification standards that equal or exceed those of Pennsylvania. The Department believes that the best and simplest way to verify that another jurisdiction's professional qualification standards for engineers are at least equal to those of this Commonwealth is for the out-of-state engineer to have a license (a temporary license would suffice) issued through the State Registration Board for Professional Engineers, Land Surveyors and Geologists.

With respect to Kennywood's request that membership in the National Society of Professional Engineers determine whether an engineer is a "professional engineer," the Department declines to implement this request, since this membership in this organization is not proof that a member meets Pennsylvania's standards for engineers.

*Comment 15:* IRRC noted that the final-form regulation would add and define two new terms – "affiliated qualified inspector" and "general qualified inspector." IRRC suggested that the definition of "qualified inspector" in § 139.2 be revised make it clear that the term includes "affiliated qualified inspectors" and "general qualified inspectors."

*Response:* Although the definition of "qualified inspector" is prescribed by the Act, the Department agrees that IRRC's suggested change would add clarity, and has included the recommended language in the final-form regulation.

*Comment 16:* Kennywood offered several comments with respect to the definition of "serious injury or illness" in proposed § 139.2. The term is used in proposed § 139.11 (relating to accident reporting), which would require owners or lessees of amusement rides to report accidents involving serious injury or illness. The commentator expressed concern that a ride owner or lessee might not *know* that a particular rider who is injured in connection with the operation of an amusement ride sustained serious injury or illness. The commentator requested that language be added to clarify that there is no reporting requirement unless the park operator has knowledge of the event prior to the time the patron leaves the park, or until the operator receives medical records verifying that offsite medical treatment was administered. The commentator adds:

... This modification will clarify reporting for telephone calls or letters reporting alleged injuries or illness received days or weeks after an event where the operator lacks any prior knowledge. We request clarification that any offsite medical treatment must be administered or recommended by a licensed physician. This will eliminate the uncertainty of who must recommend treatment in order for it to be a "serious injury or illness." Many parks hire first aid professionals to provide on site assistance. In almost every case the first aid provider will suggest to a guest that they follow up with their own physician if any problems arise. This recommendation should not by itself elevate a minor injury to a "serious injury."

*Response:* The term "serious injury or illness" is prescribed by the Act ((at 4 P.S. § 402). The Department shares the commentator's concern that – from the perspective of the ride owner or lessee that is required to report "serious injury or illness" – the statutory definition of that term appears to make the owner or lessee responsible to report serious injuries or illnesses of which it might not be aware. In practice, though, the Department does not hold an owner or lessee accountable to report (or report within the required 48-hour window) serious injuries or illnesses of which it is not aware. The Department expects an owner or lessee to pass along the required report of "serious injury or illness" once it acquires knowledge that the injury or illness falls within the statutory definition. In the longer term, the Department intends to consider revisions to this definition on the next occasion the act is amended.

*Comment 17:* IRRC offered several comments with respect to proposed § 139.4 (relating to registration). Proposed clause 139.4(d)(7)(ii)(B) would require confirmation from a professional engineer that the materials and construction of a ride or attraction conforms to "normal engineering practices, procedures, standards and specifications." In addition, proposed subsection (d)(7)(ii)(C) uses the term, "accepted engineering practices." IRRC offered that both of these standards are vague, and that: "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." IRRC recommended these standards either be better-defined or deleted. IRRC bases the option to delete on subsection (d)(7)(ii)(D), which would require a ride or attraction to meet ASTM International F-24 Committee Standards.

*Response:* The Department declines to delete or revise the referenced language. The Department consulted with the mechanical engineer member of the Amusement Ride Safety Advisory Board on this subject. Terms such as "accepted engineering practices" and "normal engineering practices" are commonly used and widely understood throughout the various technical engineering disciplines (i.e., mechanical, electrical, civil, structural, etc...). The Department does not seek to constrict or limit the professional engineer.

*Comment 18:* Hersheypark reviewed proposed subsection 139.4(e) and recommended language be added to address or require Amusement Ride Safety Advisory Board (Board) review of proposed amusement ride or amusement attraction registrations. The

commentator asks: “What is the mission of the Ride Advisory Board relating to ride review?”

*Response:* For the reasons that follow, the Department declines to implement the commentator’s recommendation.

The duties of the Board do not include a *formal* role in the Department’s review and approval of amusement rides and amusement attractions under the Act. In summary, the statutory duties of the Board (as per 4 P.S. § 406) are to:

... advise, consult, make recommendations and propose reasonable rules, regulations and standards to the department for the prevention of conditions detrimental to the public in the use of amusement rides and attractions as the board finds necessary for the protection and safety of the public...

The Board comprises a knowledgeable cross-section of interests and experience relating to amusement rides and attractions. The Board’s statutory role is to consult and advise. The Department views the Board as an invaluable resource, and seeks-out this body with respect to *each* application for approval of an amusement ride or amusement attraction. Although the Board is not an adjudicatory or decision-making body, the Department presents every proposed amusement ride or amusement attraction registration to the Board, and seeks its advice and recommendation. The final decision with respect to a registration application lies with the Department, though. The Department cannot, by regulation, expand upon the scope of the duties imposed on the Board under the Act.

*Comment 19:* Hersheypark noted that proposed subsection 139.4(h) would require that the Department-issued registration plate be affixed to each amusement ride or attraction in a location where the plate is visible to the riding public, and suggested that language be added to allow the plate to be affixed or posted other than on the ride or attraction if necessary to make the plate visible to the riding public.

*Response:* The Department accepts this suggestion, and has implemented it in the final-form regulation.

*Comment 20:* Kennywood noted that proposed § 139.5 (relating to insurance) would delete current regulatory language that allows for required insurance coverage to be provided through businesses eligible to do business under the Surplus Lines Insurance Law. The commentator stated that some of its current insurance coverage is provided through “non-admitted surplus lines carriers,” and that the regulation would serve to exclude these providers from being able to provide coverage. The commentator suggested that the regulation should “... allow surplus line carriers who have an insurance rating by A. M. Best of B+ or higher.”

*Response:* The Department agrees that subject of surplus lines insurance needs to be referenced in the final-form regulation. Although the Act (at 4 P.S. § 414(b)) authorizes required insurance coverage to be obtained through any insurer or surety that is eligible to do business under the Surplus Lines Insurance Law, the Surplus Lines Insurance Law

was *repealed* by the act of December 18, 1992 (P.L. 1519, No. 178). The subject matter of the repealed Surplus Lines Insurance Law is currently found in 40 P.S. §§ 991.1601 – 991.1625. The Department has inserted this appropriate legal reference in the final-form regulation.

*Comment 21:* Hersheypark and Kennywood both offered essentially the same comment with respect to proposed paragraph 139.5(c)(3). The concern is with whether that paragraph means that all of a particular owner or lessee’s rides have to be listed individually on the required certificate of insurance. Hersheypark noted that this would be difficult to administer by both the owner and the Department, and Kennywood noted that the Department would have this information on the registration forms it requires with respect to these rides.

*Response:* The Department agrees with the commentators, and has added language to this paragraph to clearly allow a certificate of insurance to either list all insured rides or clearly state that all rides owned, operated or leased by the insured are subject to the insurance policy.

*Comment 22:* Hersheypark noted that proposed subsection 139.7(b) (relating to inspection) might be read as requiring rides to be inspected year-round, rather than only during seasons when the rides are in operation for the riding public. Hersheypark also noted that the current paragraph 139.7(b)(1) – which is proposed for deletion – uses the phrase “during a season for operation for use by the general public” to limit the period within which regular inspections are required, and suggested this phrase be worked into the final-form regulation to add clarity.

*Response:* The Department accepts this suggestion, and has implemented it in the final-form regulation.

*Comment 23:* Hersheypark reviewed proposed subsection 139.9(a), (relating to qualified inspectors) and observed that it requires amusement ride inspections to be completed by qualified inspectors. The commentator expressed concern that this might be read as requiring that only “qualified inspectors” conduct the numerous daily inspections performed at amusement parks.

*Response:* The Department believes that a full reading of the referenced provision would avoid confusion on the part of the regulated community. The referenced subsection requires that a qualified inspector perform any inspections of amusement rides or amusement attractions “... required under the act.” The numerous daily inspections performed at amusement parks are not the regular inspections required under the Act – so they need not be performed by persons who are “qualified inspectors” for purposes of the Act.

*Comment 24:* IRRC noted that proposed subsection 139.9(g) would require the Department to “promptly” report the results of a Qualified Inspector Test to the applicant.

The commentator recommended that the final-form regulation include a more definitive time frame for reporting results to an applicant.

*Response:* The Department accepts the comment, and has implemented IRRC's recommendation in the final-form regulation by requiring the test to be scored the test results reported to the applicant within 30 days of the test.

*Comment 25:* Hersheypark noted that proposed subparagraph 139.9(k)(1)(i) would require a qualified inspector who is seeking renewal of certification to provide the Department a variety of information and material to prove compliance with continuing education requirements. The commentator suggested that since proposed subsection 139.9(l) would require continuing education courses to be approved by the Department, a course completion certificate – reflecting completion of one of these Department-approved continuing education courses – should be all the documentation the Department requires to verify that continuing education requirements have been met.

*Response:* The Department accepts this comment, and has implemented it in the final-form regulation.

*Comment 26:* IRRC noted that proposed subsection 139.9(l) includes provisions that would 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. IRRC offered the following:

... 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.

*Response:* The distinction between "Class I" amusement rides and "Class II" amusement rides exists only for the purpose of determining the appropriate minimum liability insurance coverage for these rides. The classification of amusement rides as "Class I" or "Class II" is made in the provision of the Act (at 4 P.S. § 414) addressing required insurance coverage – and nowhere else.

The Department seeks to separate insurance issues from continuing education requirements. There is not a perfect correlation between the two. Also, given the constant innovation in the amusement ride industry, the Department seeks to preserve some reasonable leeway with respect to the minimum hours of continuing education required with respect to a particular type of ride.

In response to IRRC's suggestion, though, the Department has revised this subsection to provide that continuing education would never be less than 16 hours.

*Comment 27:* Hersheypark reviewed proposed subsection 139.9(1), emphasized the importance of continuing education, and reminded the Department that its own inspectors should comply with the minimum continuing education requirements. The commentator also recommended that the minimum training for a general qualified inspector be reduce from the proposed 48-hour minimum to 40 hours. The commentator noted that "... larger seminars generally last 3 to 5 days with 8 hours of instruction per day," and suggested that 48 hours would require attendance at more than one such seminar.

*Response:* The Department declines to implement this recommendation. The proposed 48-hour minimum will likely require that a general qualified inspector attend more than one seminar during the 3-year certification period preceding recertification; and this is by design. The Department believes continuing education is important, and that requiring a general qualified inspector to attend more than one training course during a period of certification is reasonable.

*Comment 28:* Several comments were received with respect to proposed § 139.10 (relating to advisory board), which the Department proposes to delete. Kennywood sought confirmation that the composition and duties of the Board would remain as prescribed by the Act (at 4 P.S. §§ 405 and 406). Hersheypark offered that: "... The mission and responsibility of the Advisory Board needs to be included and annotated in the rulemaking," and asked why the section is proposed for deletion. Hersheypark also offered that:

The integration between the Department of Agriculture and the experience of the board member is paramount to the successes of the amusement industry. Deleting any reference to the Advisory Board suggests that safety of the industry is not important.

Hersheypark also recommended that the regulation continue to specify that seats on the Board be reserved for the President and Chairman of the Pennsylvania Amusement Park Association.

*Response:* As proposed, the Department would simply delete § 139.10 and allow the language of the Act (at 4 P.S. §§ 405 and 406) speak for itself. The Department believes that the referenced statutory language is self-executing, that the current regulatory provision is somewhat out-of-step with the Act, and that it would serve no regulatory purpose to simply repeat the exact language of the Act.

In light of the comments offered with respect to proposed § 139.10, though, the Department has revised that section in the final-form regulation to restate the exact composition of the Board, as prescribed by the Act. The Department concedes that the inclusion of a reference to the Board's composition and function can do no harm; but the Department cannot by regulation limit or expand the composition or duties of the Board.

*Comment 29:* IRRC reviewed proposed § 139.11 (relating to accident reporting), and noted that the definition of the term "serious injury or illness" in the Act (at 4 P.S. § 402) includes situations where "offsite medical treatment ... may be required at a future date."

IRRC observed that, in practice, an owner or operator might have no idea that a person sought or received “offsite medical treatment” after sustaining an injury or illness related to the operation of an amusement ride or amusement attraction. IRRC questioned whether the Department expected or required a report under these circumstances. IRRC recommended that the final-form regulation clarify the circumstances under which a report is required, and raised the question:

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?

*Response:* The Department agrees that the requested clarification would be helpful, and has implemented this recommendation in § 139.11(a) of the final-form regulation by adding language specifying that the department would not hold an owner or lessee responsible to report a death or serious injury or illness of which it is unaware.

*Comment 30:* IRRC noted the absence of the word “illness” in proposed paragraphs 139.11(b)(5) – (7), and recommended this term be worked into the language of these provisions.

*Response:* The Department accepts IRRC’s recommendation, and has revised the final-form regulation accordingly.

*Comment 31:* The Act (at 4 P.S. § 413) requires that an accident report include a description of the amusement ride involved and the nature of the injuries or the cause of death. Kennywood took note of this, and asked whether the Department would exceed its statutory authority by requiring an accident report to provide more detail than is described in the preceding sentence. The commentator also questioned whether the Health Insurance Accountability and Portability Act of 1996 (HIPAA) would prohibit the disclosure of names of ill or injured persons and the nature of their injuries. The commentator also offered the following:

We believe that such information should remain confidential. We suggest that the regulations indicate that the operator retain all additional information related to the accident and that the inspector shall be permitted to review such records during any follow up inspections.

*Response:* The Department declines to revise the referenced section in response to this comment. The Department believes the Act does not limit the types of information the Department might reasonably require in an accident report. Where the Act states (at 4 P.S. § 413(a)) that an accident report “shall include” certain information, the Department interprets this phrase as meaning “shall include, but is not limited to.” The Department is also satisfied that it is not an entity to which HIPAA is applicable, in that it is not a health care provider as designated in that statute.

*Comment 32:* Kennywood reviewed proposed § 139.11 and requested that language requiring an owner or lessee to report certain “serious illness” to the Department be deleted. The commentator stated that:

... Based upon all the information presented, any individual who exits a ride and begins to experience motion sickness, illness or vomiting, which is not uncommon at an amusement facility, would require an accident report to be filed, this would dramatically increase the number of “false” accident reports.

*Response:* The Department declines to make the requested revision. An illness does not become reportable as a “serious illness” unless the illness requires offsite first aid, offsite medical treatment, observation by a licensed physician, or admission to a hospital. In the examples presented by the commentator, the illnesses would rarely be reportable.

*Comment 33:* The Act (at 4 P.S. § 407(d)) requires that when a death results from the operation of an amusement ride, it not be reopened “... until declared safe by the insurance company of the operator.” Proposed subsection 139.11(c) repeats this requirement. Kennywood took note of this provision, and offered that Kennywood’s insurance carriers would not declare a ride safe to reopen after a fatal accident. The commentator suggested that the final-form regulation simply require that an operator provide the Department a current certificate of insurance prior to reopening a ride after a fatal accident.

*Response:* The Department cannot implement the commentator’s suggestion, since the referenced requirement that the insurance carrier declare a ride safe after a fatal accident is prescribed by the Act.

*Comment 34:* IRRC noted that proposed § 139.12 (relating to variances) would be deleted in its entirety, and recommended the regulation retain a reference to the provision of the Act that describes variances (at 4 P.S. § 409) for owners or lessees who may need to apply for a variance. Kennywood noted this proposed deletion, and sought assurance that the referenced statutory language relating to variances would continue to apply.

*Response:* The Department accepts IRRC’s comment, and has replaced § 139.12 with the relevant *verbatim* text from the Act. This revision also addresses Kennywood’s comment.

*Comment 35:* IRRC and Kennywood offered related comments with respect to proposed subsection 139.42(a) (relating to structures). Both commentators noted that the Pennsylvania Construction Code Act applies to buildings and similar structures, and that it does not include standards or requirements for amusement rides or attractions (which are addressed in the ASTM International F-24 Committee Standards). IRRC recommended that the final-form regulation be revised to clearly indicate that § 139.42 applies only to buildings, facilities or structures not manufactured as part of an amusement ride or attraction, and that the references to “rides” and ride or attraction in the first sentence be stricken.



*Response:* The Department agrees with the commentators. Language has been added to the final-form regulation to reflect that the Pennsylvania Construction Code Act is only applicable to shelters and buildings that are not part of the amusement ride or attraction.

*Comment 36:* IRRC recommended that proposed paragraph 139.43(8) (relating to passenger-carrying rides) be revised to include a reference to the ASTM International F-24 Committee Standards, since the term “clearance envelope” is a term-of-art from those standards. Hersheypark raised a comment with respect to this same paragraph, seeking clarification as to how existing rides might be exempted (“grandfathered”) from the referenced “clearance envelope” requirement.

*Response:* The Department accepts IRRC’s suggestion, and has included the requested reference in the final-form regulation.

With respect to Hersheypark’s concerns, the Department offers that the clearance requirements prescribed in this paragraph are reasonable and would be immediately applicable to an amusement ride or amusement attraction. If a ride or attraction has been constructed at a time when the ASTM International F-24 Committee Standard for a “clearance envelope” was something other than as currently prescribed by those standards, the earlier standard would apply, in accordance with proposed subsection 139.41(c) (relating to general).

*Comment 37:* IRRC and Hersheypark offered essentially the same comment with respect to proposed paragraph 139.72(2) (relating to erection/disassembly of amusement rides and attractions). Each sought clarification of what constitutes a “high voltage line.”

*Response:* The Department accepts the comment, and has made the recommended clarification in the final-form regulation. Language has been added to link this provision to the definition of “high voltage line” as defined in the National Electric Code.

*Comment 38:* With respect to proposed paragraph 139.72(3), Kennywood sought clarification as to whether preexisting amusement rides would be “grandfathered” from having to meet the requirement that means of egress be at least 36 inches in width.

*Response:* The Department believes this 36-inch standard is reasonable, and is consistent with current ASTM International F-24 Committee Standards for amusement ride egress. If a particular ride was designed or constructed with a narrower means of egress at a time when ASTM International F-24 Committee Standards did not require this width, the owner or operator may apply to the Department for a variance in accordance with § 139.12 (relating to variances).

*Comment 39:* IRRC recommended that proposed subsection 139.75(a) (relating to fire protection and prevention) be revised to clarify the phrase “and otherwise where necessary to secure reasonable and adequate protection from fire hazards.” IRRC added:

... 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.

*Response:* The Department accepts IRRC's recommendation, and has added language to the final-form regulation to clarify that the objectives of fire extinguisher placement are to have extinguishers accessible and in use within 20 seconds of a person spotting a fire, and sufficiently removed or protected from potential exploding or highly-flammable material to prevent their damage or destruction in the initial explosion or flames.

*Comment 40:* IRRC offered the following comment with respect to proposed paragraph 139.76(6) (relating to ride and attraction operators and attendants):

... 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.

*Response:* The Department accepts this suggestion, but has also added language to the final-form regulation to reflect that in the event a manufacturer does not provide recommended minimum numbers of operators or attendants, or these numbers are lesser than those prescribed in ASTM International E-24 Committee Standards, the existing standards calling for the highest number of operators or attendants shall apply.

*Comment 41:* With respect to proposed paragraph 139.77(e)(8) (relating to maintenance of amusement rides and attractions), IRRC recommended the final-form regulation delete the following sentence: "Additional retention periods for this documentation may be advisable."

*Response:* The Department has made the recommended revision in the final-form regulation. In addition, the Department has expanded the period for which records must be kept and made available to the Department to three years.

*Comment 42:* Hersheypark sought clarification as to whether paragraphs 139.79(a)(2)(i) and (ii) (relating to records) were proposed for deletion in the proposed regulation.

*Response:* Since the Department does not propose to change or delete the referenced paragraphs, the text of these paragraphs was not printed when the proposed rulemaking was published for comment. These paragraphs will remain unchanged.

*Comment 43:* With respect to proposed § 139.79, IRRC noted that this section requires owners or lessees to maintain certain records. The commentator offered:

... 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.

*Response:* The Department accepts this recommendation, and has revised the final-form regulation accordingly. Since the Department has revised paragraph 139.77(e)(8) to require a *three-year* record retention period, though, the new language establishes that same interval as the record retention period required under § 139.79.

#### *Affected Individuals and Organizations*

The final-form regulation will impact upon the amusement ride and amusement attraction industry, as well as upon the riding public. There are approximately 7,400 registered amusement rides and amusement attractions that are either located within this Commonwealth or that are brought into this Commonwealth (for events such as fairs and carnivals) each year. There are approximately 675 owners or lessees of these rides and attractions. This community of ride and attraction owners and lessees will be impacted by this final-form regulation, as would the riding public.

#### *Fiscal Impact*

*Commonwealth*--The final-form regulation imposes no costs and has no fiscal impact on the Commonwealth.

*Political subdivisions*--The final-form regulation imposes no costs and has no fiscal impact upon political subdivisions.

*Private sector.* The final-form regulation might impose some new costs on amusement ride or amusement attraction owners or operators. The final-form regulation might require some owners or operators to hire additional operators or attendants for their rides and attractions to meet or exceed the minimum number recommended by the ride or attraction manufacturer. The other changes that would be established by the final-form regulation would not have appreciable fiscal impact upon the private sector. Since this final-form regulation would move the Commonwealth's standards into greater conformity with the ASTM International F-24 Committee Standards and these standards are the widely-accepted industry standards for amusement ride and amusement attraction design, construction and operation, the related industry is either already in compliance with these standards or can readily come into compliance with these standards without appreciable costs.

*General public.* The final-form regulation would impose no costs and have no fiscal impact on the general public. The final-form regulation would enhance public safety.

#### *Paperwork Requirements*

The final-form regulation will not impact upon the paperwork generated by the Department or the regulated communities.

#### *Effective Date*

The final-form regulation will be effective upon publication in the *Pennsylvania Bulletin*.

#### *Contact Person*

Individuals who need information about the final-form regulation should contact the Pennsylvania Department of Agriculture, Bureau of Ride and Measurement Standards, Division of Ride Safety, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attention: Joe Filoromo.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 13, 2007, the Department submitted a copy of the notice of proposed rulemaking, published at 37 Pa.B. 2823, to the IRRC and the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs for review and comment.

Under section 5(c) of the Regulatory Review Act, the Department provided IRRC and the referenced Committees with copies of all comments received during the public comment period.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on \_\_\_\_\_, the final-form regulation was deemed/approved by the House Committee and on \_\_\_\_\_, the final-form regulation was deemed/approved by the Senate Committee. Under section 5.1(g) of the Regulatory Review Act, the final-form regulation was approved by IRRC on \_\_\_\_\_.

#### *Findings*

The Department finds that:

(1) Public notice of intention to adopt this final-form regulation has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law; and all comments that were received were considered.

(3) The modifications that were made to this regulation in response to comments received do not enlarge the purpose of the proposed regulation published at 37 *Pennsylvania Bulletin* 2823 (June 23, 2007).

(4) The adoption of the final-form regulation in the manner provided in this order is necessary and appropriate for the administration of the authorizing statute.

*Order*

The Department, acting under the authorizing statute, orders the following:

(1) The current regulations of the Department of Agriculture at 7 Pa. Code Chapter 139 (relating to amusement rides and attractions erected permanently or temporarily at carnivals, fairs and amusement parks) are revised to read as set forth in Annex "A."

(2) The Secretary of Agriculture shall submit this order, 37 Pa.B. 2823 and Annex "A" to the Office of General Counsel and the Office of Attorney General for approval as required by law.

(3) The Secretary of Agriculture shall certify and deposit this order, 37 Pa.B. 2823 and Annex "A" with the Legislative Reference Bureau as required by law.

(4) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

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DENNIS C WOLFF, Secretary

DRAFT - Final-Form Results

Annex A

TITLE 7. AGRICULTURE  
PART V-D. AMUSEMENT RIDES AND AMUSEMENT ATTRACTIONS  
CHAPTER 139. AMUSEMENT RIDES AND ATTRACTIONS [ERECTED  
PERMANENTLY OR TEMPORARILY AT CARNIVALS, FAIRS AND  
AMUSEMENT PARKS]

Subchapter A. REGISTRATION AND INSPECTION

§ 139.1. Scope.

(a) This chapter prescribes policies and procedures relating to administration of safety standards for installation, assembly, repair, maintenance, use, operation, disassembly and inspection of amusement rides and amusement attractions erected permanently or temporarily at carnivals, fairs [and], amusement parks or any other location in this Commonwealth.

(b) This chapter applies to new and existing commercially used amusement rides and attractions subject to the act.

(c) This chapter does not apply to:

\* \* \* \*

(2) Single passenger, coin-operated, manually, mechanically[,] or electrically operated rides except where admission is charged for the use of the equipment.

\* \* \* \*

(6) Ski lifts, elevators or rides to the extent they are registered and regulated by [the Department of Labor and Industry] any other agency of the Commonwealth.

(7) Amusement attractions, and amusement rides regulated by another Commonwealth agency and waterslides, to the extent that they are regulated by the Department of [Environmental Resources] Health for [water quality,] pool design, sanitary facilities[, lifeguards] and similar features.

§ 139.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \*

Affiliated qualified inspector--A qualified inspector with a Department-issued certificate and credential card authorizing that person to act as a qualified inspector only with respect to the amusement rides or amusement attractions of the owner or lessee designated on that certificate and credential card. An affiliated qualified inspector is not a general qualified inspector.

\* \* \* \*

Amusement ride--A device that carries, suspends or conveys passengers along, around[,] or over a fixed or restricted route or course[,] or within a defined area, for the purpose of giving its passengers amusement, pleasure, thrills[,] or excitement.

ASTM--American Society for Testing Materials. This organization is currently named and known as ASTM International.

ASTM International--The organization formerly known as ASTM or the American Society for Testing Materials.

ASTM International F-24 Committee Standards--The ASTM standards promulgated by the ASTM International F-24 Committee, as published in the current annual book of ASTM International Standards Volume 15.07, or its successor document.

ASTM standards--[ASTM Standards on Amusement Rides and Devices F698-83, F747-82, F770-82, F846-83, F853-83 and F893-84, published October 1984, in pamphlet format in the *Annual Book of ASTM Standards*] Standards promulgated by the ASTM entitled Standard Guide for the Classification of Amusement Ride and Device Related Injuries and Illnesses, designation ASTM F 1305, or its successor, which provide procedures for the uniform classification of data related to amusement ride and device injuries and illnesses.

Attendant--A person having responsibility for some aspect of the operation of an amusement ride or attraction, but who is not an operator.

\* \* \* \* \*

Class I amusement ride or amusement attraction--A type of amusement ride or amusement attraction with respect to which the following apply:

(i) The ride or attraction is on the Department's most current list of approved rides.

(ii) The ride or attraction is a comparatively simple ride such as bumper cars, bumper boats, a multi-passenger coin-operated kiddie ride, go-carts, a live animal ride, a manually powered ride, a miniature train, an inflatable bounce ride, slide or similar device.

(iii) The Department has, on its most current list of approved rides, designated the ride or attraction as belonging within "Class I" for purposes of establishing the appropriate required minimum liability insurance coverage required with respect to that ride or attraction, in accordance with section 14(a)(1) of the act (~~4 P. S. § 414(a)(2)~~) (4 P.S. § 414(A)(1)).

Class II amusement ride or amusement attraction--A type of amusement ride or amusement attraction with respect to which the following apply:

(i) The ride or attraction is on the Department's most current list of approved rides.

(ii) The Department has, on its most current list of approved rides, designated the ride or attraction as belonging within "Class II" for purposes of establishing the appropriate required minimum liability insurance coverage required with respect to that ride or attraction, in accordance with section 14(a)(2) of the act.

Commercially used--In the context of amusement rides and amusement attractions, the term includes any ride or attraction offered for use by persons in consideration of payment of a ticket fee, an entry fee, a rental fee or any other fee or charge as a condition of use of the ride or attraction.

Department--

- (i) The Department of Agriculture of the Commonwealth.
- (ii) The term includes employees of the Department.

\* \* \* \* \*

General qualified inspector--A qualified inspector with a Department-issued certificate and credential card authorizing that person to act as a qualified inspector, without limiting the exercise of that inspection authority to the amusement rides or amusement attractions of a particular owner or lessee. A general qualified inspector is not an affiliated qualified inspector.

Inspection--Inspection by a qualified [certified] inspector of an amusement ride, device or attraction for compliance with the act and this chapter.

Kiddy ride or kiddie ride--An amusement ride or attraction designed primarily for use by children up to 12 years of age.

Lessee--A person who leases an amusement ride or attraction from its owner, or from an authorized representative of an owner.

Major modification--A change in either the structural or operational characteristics of [the ride or device which will] an amusement ride or amusement attraction which can alter its performance from that specified in the manufacturer's design criteria.

\* \* \* \* \*

National Electrical Code--The National Electrical Code NFPA No. [70-1984] 70-E, as revised, amended or corrected.

New amusement ride or amusement attraction--An amusement ride or attraction of a design not [previously] previously operated in this Commonwealth and for which no regulations have been adopted.

Operation--

(i) When used in the context of an amusement ride or attraction, the term includes the loading of persons onto the ride or attraction, the physical movement of the ride or--in the case of nonmechanical rides (such as slides) or attractions--the movement of persons on or through the ride or attraction, and the unloading of persons from the ride or attraction.

(ii) The term does not include the portion of a patron line that extends outside of any fence, wall, guardrail or gate that limits access to the amusement ride or amusement attraction and that is required IN ORDER FOR THE RIDE OR ATTRACTION to meet the ASTM International F-24 Committee Standards.

(III) THE TERM DOES NOT INCLUDE THAT PORTION OF A PATRON LINE THAT EXTENDS OUTSIDE OR BEYOND ANY DEVICE OR OBJECT THAT LIMITS OR IDENTIFIES CONTROL ACCESS FOR THE RIDE OR ATTRACTION IF A FENCE, WALL, GUARDRAIL OR GATE IS NOT REQUIRED IN ORDER FOR THE RIDE OR ATTRACTION TO MEET ASTM INTERNATIONAL F-24 COMMITTEE STANDARDS.

\* \* \* \* \*

Owner--

(i) A person who owns an amusement ride or attraction[, or the lessee if the amusement ride or attraction is leased].

(ii) The term excludes the Commonwealth or its political subdivisions.

Pennsylvania Construction Code Act--35 P. S. §§ 7210.101--7210.1103.

Permanent structure--A structure, enclosure or arrangement of parts, used or intended to be used[, ] for or as an amusement ride or attraction, that is erected to remain a lasting part of the premises.



Person--Includes a corporation, partnership, limited liability company, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person.

Professional engineer--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. THE TERM DOES NOT INCLUDE ANY PERSON WHO IS EXEMPT FROM LICENSURE AND REGISTRATION UNDER SECTION 5(B) OF THE ENGINEER, LAND SURVEYOR AND GEOLOGIST REGISTRATION LAW (63 P.S. § 152(B)).

Qualified inspector—A person certified by the Department who by education, training or experience is knowledgeable with amusement ride operating manuals and the psychological effects each ride has upon a passenger. Such person shall also be experienced in the erection and dismantling of amusement rides and shall be familiar with the specific equipment with that particular operator. THE TERM INCLUDES AFFILIATED QUALIFIED INSPECTORS AND GENERAL QUALIFIED INSPECTORS.

\* \* \* \* \*

Serious injury or illness--[Permanent or prolonged impairment of the body in which part of the body is made functionally useless or substantially reduced in efficiency.]

(i) An injury or illness that requires one or more of the following:

(A) Offsite emergency first aid.

(B) Offsite medical treatment, whether it is administered or recommended or may be required at a future date.

(C) Observation by a licensed physician.

(D) Admission to a hospital.

(ii) The term also includes an injury or illness that results in death, dismemberment, significant disfigurement or permanent loss of the use of a body organ, member, function or system.

Temporary structure--A structure, enclosure or arrangement of parts used, or intended to be used[,] for or as an amusement ride or attraction, that is relocated from time to time with or without disassembly.

Working day--A day other than a Saturday, Sunday, National holiday or holiday of the Commonwealth.

### **§ 139.3. Compliance.**

(a) General requirement. Owners [and ride operators operating], lessees and operators of amusement rides or attractions in this Commonwealth shall comply with this chapter.

(b) Use of nonconforming rides or attractions prohibited. An amusement ride or amusement attraction which is not in compliance with this chapter may not be used or occupied except as provided in subsection (c).

(c) Nonconforming individual units. Where only individual units of a ride, such as cars, seats or other carriers are defective and not in [complaiance] compliance with this chapter, the units shall either be removed from the operating area of the ride or shall be taken out of service and clearly marked with a sign reading "Out of Service" if the defects or removal do not jeopardize the safety of the entire ride or attraction.

**§ 139.4. Registration.**

(a) Registration required. An owner intending to operate or use an amusement ride or an amusement attraction in this Commonwealth during a calendar year shall register the amusement ride or amusement attraction with the Department prior to operation.

(b) Duration of registration. [An amusement ride or attraction which has undergone major modification shall be registered and inspected by a qualified inspector before its operation for use by the public.] Registration of an amusement ride or an amusement attraction shall expire as of the earlier of the following:

(1) January 1 of the year immediately following the year with respect to which the registration is issued.

(2) The date upon which the registered amusement ride or amusement attraction undergoes a major modification.

(c) [Registration includes the following:

(1) Owner's name, address and telephone number.

(2) Type of activity, park, carnival or fair.

(3) List of each ride or attraction by ride name, manufacturer's name and serial number.

(4) Name of owner's insurance company.]

Obtaining a registration application. A person may obtain an amusement ride or amusement attraction registration application form by contacting the Department as described in § 139.14 (relating to contacting the Department). The Department will provide the form upon request, and make the form available for download through the Department's website: [www.agriculture.state.pa.us](http://www.agriculture.state.pa.us).

(d) Contents of registration application form. A registration application form will require the following information:

(1) The name, address, e-mail address and telephone number of the owner.

(2) The name, address, e-mail address and telephone number of the lessee, if different than the owner.

(3) If the amusement ride or amusement attraction has previously been registered, the registration number appearing on the registration plate issued by the Department and attached to that ride or attraction.

(4) A description of the type of enterprise involved, whether a carnival, fair, park, rental company, go-cart track, water park, nonseasonal operation, or other.

(5) A list of each amusement ride or amusement attraction with respect to which registration is sought, by name, manufacturer's name and serial number.

(6) The name, address, e-mail address and telephone number of the insurance carriers providing the owner, lessee or operator the liability coverage required under section 14 of the act (4 P. S. § 414) and § 139.5 (relating to insurance).

(7) With respect to each identified amusement ride or attraction, verification of one of the following:

(i) The amusement ride or amusement attraction is of a type appearing on the Department's most current list of approved rides.

(ii) Written verification under seal of a professional engineer, acknowledging familiarity with the ride or attraction at issue, acknowledging familiarity with the requirements of the act and this chapter and confirming all of the following:

(A) The ride or attraction is designed to carry all loads safely, and to withstand normal stresses to which it may be subjected.

(B) The structural materials and construction of the ride or attraction conform to normal engineering practices, procedures, standards and specifications.

(C) Data pertinent to the design, structures, and factors of safety and performance are in accordance with accepted engineering practices.

(D) The manufacturer or fabricator of the ride or attraction otherwise meets the applicable design and construction requirements of the act, the ASTM International F-24 Committee Standards and this chapter.

(8) An acknowledgment by the applicant that, if the registration is approved, it is the responsibility of the applicant to apprise the Department, in writing, of changes to the information provided on the registration application during the registration period.

(9) An acknowledgment by the applicant that, if registration is approved, the registration shall automatically cease as of the date of any major modification, and the ride shall be reregistered with the Department.

(10) The signature of the applicant for registration, verifying that representations in the application are accurate and complete, and making that verification subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(e) Department action on registration application. The Department will, within 30 days of receiving a correct and complete registration application form, mail the applicant one of the following:

(1) Written confirmation of registration and, if necessary, a registration plate to be affixed to the amusement ride or attraction.

(2) Written denial of registration, with an explanation of the reasons for denial.

(3) A detailed request for additional information or clarification the Department deems necessary to ensure the amusement ride or amusement attraction meets the requirements in subsection (d)(7)(ii)(A)--(D). This request may also include a requirement the ride or attraction be made available to the Department or persons authorized by the Department, at a time or location mutually agreeable to the applicant and the Department, for inspection and testing. Once the requested information is delivered to the Department or the requested testing and inspection is conducted, the Department will have an additional 30-day period within which to review the registration application.

(f) Responsibility of registrant. A person who registers an amusement ride or amusement attraction in accordance with this section shall, during the registration period, be responsible to apprise the Department, in writing, of changes to the information provided on the registration application. In addition, the registrant shall affix the registration plate provided by the Department to the amusement ride or amusement attraction in a location where the plate is plainly visible to the riding public, and shall promptly request a replacement plate when necessary.

(g) Refusal or revocation of registration. If the Department issues a written denial of registration as described in subsection (e)(2), it will afford the applicant an opportunity for an administrative hearing on the denial. If the Department has reason to believe an amusement ride or amusement attraction that is registered does not meet the requirements for registration, it will issue a written revocation of registration, and will afford the applicant an opportunity for an administrative hearing on the denial.

(h) Registration plate. The Department will issue a registration plate, bearing a unique registration number, with respect to each amusement ride or amusement attraction registered in accordance with this section. The registration plate remains the property of the Department after it is issued. The registrant shall be responsible to ensure that the registration plate remains affixed to the registered amusement ride or amusement attraction in a location where the plate is plainly visible to the riding public. The registration plate is intended as a permanent means of identifying the amusement ride or attraction, and shall remain affixed to the ride or attraction from one registration period to the next. IF THE REGISTRATION PLATE CANNOT BE AFFIXED TO THE REGISTERED AMUSEMENT RIDE OR AMUSEMENT ATTRACTION IN A LOCATION WHERE THE PLATE IS PLAINLY VISIBLE TO THE RIDING PUBLIC, IT MAY BE AFFIXED TO A SIGN, PLACARD OR SURFACE AT THE POINT OF INGRESS TO THE RIDE OR ATTRACTION, SO AS TO BE PLAINLY VISIBLE TO THE RIDING PUBLIC, AND SHALL PHYSICALLY ACCOMPANY THE RIDE OR ATTRACTION AT ALL TIMES. Although the Department will not charge a fee for the issuance of a registration plate, it will charge a registrant \$30 to replace a lost or obliterated registration plate. This charge reflects the reasonable cost to the Department of replacing a registration plate.

(i) Inspection of amusement rides or amusement attractions. The Department may inspect any amusement ride or attraction, or any device or location it reasonably believes to be an amusement ride or attraction, to determine whether the ride or attraction is properly registered. The inspection shall be conducted in accordance with § 139.7(d) (relating to inspection).

### **§ 139.5. Insurance**

(a) General requirement. A person may not operate an amusement ride or amusement attraction unless a policy of insurance is in effect insuring the owner, lessee or operator against liability for injury to persons arising out of the use of an amusement ride or attraction [within the owner's control]. The insurance policy shall be procured from an insurer or surety authorized to do business in this Commonwealth [or eligible to do business under section 7 of the act of January 24, 1966 (1965) (P. L. 1509, No. 531), referred to as the Surplus Lines Insurance Law and shall be in the following amounts:] OR ELIGIBLE TO DO BUSINESS UNDER THE SURPLUS LINES INSURANCE PROVISIONS ESTABLISHED UNDER SECTION 19 OF THE ACT OF DECEMBER 18, 1992 (P.L 1519, NO. 178)(40 P.S. §§ 991.1601 – 991.1625).

(1) [For an attraction or amusement ride qualified to meet a Class I designation according to a list maintained by the Department, including bumper cars, bumper boats, coin-operated kiddie rides, go-carts, live animal rides, manually powered rides, miniature trains, moon walks, slides and similar devices--] If the ride or

attraction is a Class I amusement ride or attraction, the minimum limits of the policy must be \$100,000 per occurrence and \$300,000 in the aggregate.

(2) [For an attraction or amusement ride qualified to meet a Class II designation according to a list maintained by the Department--] If the ride or attraction is a Class II amusement ride or amusement attraction, the minimum limits of the policy must be \$250,000 per occurrence and \$500,000 in the aggregate.

(b) Certificate of insurance. [A] An owner or operator shall deliver a valid certificate of insurance [shall be furnished] to the Department prior to the operation of [a] an amusement ride or amusement attraction for use by the public. The certificate of insurance shall be delivered to the Department in accordance with § 139.14 (relating to contacting the Department). The owner or operator is responsible for assuring that the insuring company notifies the Department immediately upon cancellation or change of coverage [and the certificate shall acknowledge the notification responsibility].

(c) Content of certificate of insurance. A certificate of insurance must set forth the following:

(1) The identity of the insured.

(2) The identity, address and telephone number of the insurance company issuing the policy.

(3) Identification of the amusement rides and amusement attractions covered by the policy. THIS MAY CONSIST OF A ROSTER IDENTIFYING EACH RIDE THAT IS INSURED UNDER THE POLICY, OR AN ACKNOWLEDGMENT THAT ALL OF THE AMUSEMENT RIDES AND AMUSEMENT ATTRACTIONS OF A DESIGNATED OWNER OR OPERATOR ARE COVERED BY THE POLICY.

(4) The policy limits per occurrence.

(5) The policy limits in the aggregate.

(6) The effective dates of coverage.

(7) An acknowledgment that the Department, as certificateholder, is to be notified by the insurance carrier in the event of cancellation of coverage.

#### **§ 139.6. Itinerary.**

The owner or operator of an amusement park, carnival, fair, or other itinerant amusement ride or amusement attraction registered with the Department shall [file] deliver an itinerary [with] to the Department [no less than] at least 15 days prior to the operation of a ride or attraction for use by the public in this Commonwealth. This delivery may be accomplished by mail, e-mail, personal delivery or fax transmission to the fax number provided in § 139.14 (relating to contacting the department). The itinerary [shall] must include the following:

(1) The name of the amusement ride or amusement attraction owner.

\* \* \* \* \*

(3) The carnival, fair [or], activity sponsor and, if available, the name and telephone number of a contact person for the event.

(4) The address and telephone number of the activity site, the fax number of the site (if available) and an e-mail address for the site (if available).

\* \* \* \* \*

**§ 139.7. Inspection.**

(a) General inspection requirement. An owner or lessee of an amusement ride or amusement attraction shall have the ride inspected in accordance with section 7 of the act (4 P. S. § 407) and this chapter.

(b) Occasions when inspection is required. An amusement ride or amusement attraction shall be inspected as follows:

<u>Location</u>	<u>Type</u>	<u>Interval</u>
<u>Any location</u>	<u>Amusement ride or amusement attraction</u>	<u>Prior to operation for the riding public, and on a monthly basis thereafter DURING A SEASON OF OPERATION FOR USE BY THE RIDING PUBLIC</u>
<u>Amusement park</u>	<u>Amusement ride or amusement attraction</u>	<u>Prior to operation for the riding public, and on a monthly basis thereafter DURING A SEASON OF OPERATION FOR USE BY THE RIDING PUBLIC</u>
<u>Fair or carnival</u>	<u>Amusement ride or amusement attraction</u>	<u>Prior to operation for the riding public at each new location</u>
<u>Any location</u>	<u>New amusement ride or amusement attraction</u>	<u>Prior to operation for the riding public</u>
<u>Any location</u>	<u>Amusement ride or amusement attraction that has undergone major modification</u>	<u>Prior to operation for the riding public</u>

(c) Qualified inspector to conduct inspection. The amusement ride or amusement attraction owner or lessee shall engage a qualified inspector [certified by the Department] to perform the inspections required by the act and this chapter. [Rides or attractions to be operated by the owner shall be] The owner or lessee shall make the amusement ride or amusement attraction available to the qualified inspector [and the owner will be held]. The owner or lessee shall be solely responsible for all expenses in connection with the inspection. The qualified inspector shall, at the conclusion of an inspection, issue the owner or lessee the original plus one copy of a complete inspection affidavit form, as described in § 139.8 (relating to inspection affidavits), and retain a copy for the qualified inspector's records.

[(b) The owner or lessee shall have inspection performed by a qualified inspector on the following:

- (1) An amusement park ride or attraction on a 30 operating day basis during a season for operation for use by the public.
- (2) A fair, carnival ride and attraction before its operation at a new location.
- (3) A new or modified amusement ride and attraction before its operation for use by the public begins.]

(d) Inspection by the Department. The Department may inspect any amusement ride or amusement attraction (including the operation of that amusement ride or amusement attraction), or any device or location it reasonably believes to be an amusement ride or amusement attraction, to determine whether the ride or attraction is properly registered, whether the ride or attraction has been inspected by a qualified inspector, whether the

qualified inspector has performed a competent inspection of the ride or attraction and whether the ride or attraction otherwise complies with the requirements of the Act and this chapter. The inspection may be unannounced or with advance notice to the owner or lessee. The Department will endeavor to conduct these inspections at reasonable times and with a minimum intrusion, unless otherwise necessary to safeguard the public.

(e) Responsibility of owner, lessee or operator to allow inspection. An owner, lessee or operator shall allow the Department to inspect an amusement ride or amusement attraction, and may not hinder or impede the Department in the performance of the inspection.

(f) Responsibility of owner, lessee or operator to produce records. At the request of the Department, an owner, lessee or operator shall produce documentation as to both the operation and maintenance of an amusement ride or amusement attraction.

### **§ 139.8. Inspection affidavits.**

(a) Inspection affidavit required. [The] An owner or lessee shall, with respect to each amusement ride or amusement attraction that is to be operated for use by the public, file a written affidavit with the Department, affirmed by a qualified inspector, that the amusement ride or amusement attraction [complies with the act and this chapter. The affidavit shall be filed for each amusement ride and attraction which is to be operated for use by the public] has been inspected in accordance with the requirements of the act and this chapter, and meets those requirements. A single inspection affidavit may pertain to multiple amusement rides or amusement attractions.

(b) Filing the inspection affidavit. [The affidavit shall be filed by mail] An owner or lessee shall file an inspection affidavit with the Department within 48 hours of the inspection[, and a copy shall be available upon request at the ride or attraction site when the ride is being operated for public use]. Filing shall be accomplished in accordance with § 139.14 (relating to contacting the Department).

(c) Copy of inspection affidavit to be retained for inspection onsite. An owner or lessee shall be responsible to ensure that a copy of the inspection affidavit described in subsection (b) is retained at the site where the amusement ride or amusement attraction is being operated for public use. The inspection affidavit shall be made available for inspection upon request of the Department. The Department may retain the onsite copy of the inspection affidavit, provide the owner, lessee, operator or attendant a receipt for the same, and allow the amusement ride or amusement attraction to continue being operated for public use.

(d) Notice of compliance to be posted. [The] An owner [of the] or lessee of an amusement ride or amusement attraction shall post a notice advising the public of compliance with the act. This notice is in addition to any registration plate issued in accordance with § 139.4 (relating to registration). The notice shall be posted at a place readily observed by the public and [shall] consist of a sign made of [substantial and, if exposed to the elements, of weatherproof] durable material [with] suitable for the location where it is posted. The notice must be on a bright green background [and], with white lettering. The size of the letters [may not be less than] must be at least 1/2 inch in height and 1/8 inch width stroke reading:

THIS RIDE HAS (OR ALTERNATE--THE RIDES IN THIS PARK, CARNIVAL, FAIR, ETC. HAVE) [HAS] BEEN INSPECTED AS REQUIRED BY THE PENNSYLVANIA AMUSEMENT RIDE INSPECTION ACT.

**§ 139.9. Qualified inspectors.**

(a) [It is the policy of the Department to accept voluntary registration of an individual or an agency registration of an individual if there is acceptable evidence that the individual has a thorough working knowledge of pertinent statutes relating to amusement rides and attractions and this chapter.] General. The Department will certify persons who meet the requirements of this section to act as qualified inspectors. Any inspection of an amusement ride or amusement attraction required under the act shall be conducted by a qualified inspector who is certified by the Department with respect to the category of amusement ride or amusement attraction that is being inspected. Persons who have been certified by the Department as qualified inspectors prior to \_\_\_\_\_ (*Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.*) may continue to inspect amusement rides and attractions under authority of that certification, but shall meet the requirements of this section when the qualified inspector next renews the certification in accordance with subsection (k).

(b) [The Department will hold examinations as qualified amusement ride/attraction inspectors, at times determined by the Department. Persons desiring to take the examination shall forward their applications to the Department, on forms provided by the Department, in a reasonable time prior to the day of examination and include a fee of \$50 for a 3-year certification period.] Certification categories. The Department will categorize amusement rides and attractions, and will be guided by ASTM categorizations of amusement rides and attractions in this categorization process. The Department will establish specific written tests or hands-on tests, or both, with respect to each category. These categories may address water rides, climbing walls, kiddie rides, train rides, hydraulics, inflatable rides or any other category described in ASTM standards and designated by the Department. The Department will publish the current list of certification categories on its website ([www.pda.state.us](http://www.pda.state.us)). The Department may categorize an amusement ride or amusement attraction in a manner other than as categorized by ASTM if there is no applicable ASTM categorization or the Department, in its discretion, believes another categorization is more appropriate.

(c) [Only applicants who meet the Department's requirements for education, training and are experienced in the erection and dismantling of amusement rides will be permitted to take the examination. The examination will consist of two parts, class I and class II, and those found competent through examination will be awarded a certificate and a credential card authorizing them to inspect amusement rides/attractions according to a listing maintained by the Department for each class. A certified inspector does not become an employe, agent or authorized representative of the Department, nor may he represent himself to be.] Application. A person may apply to the Department to become a qualified inspector. A qualified inspector application form may be obtained by contacting the Department through any means described in § 139.14 (relating to contacting the Department). The qualified inspector application form will require the following information:

- (1) The name, address and telephone number of the applicant.



(2) The e-mail address of the applicant (if it exists).

(3) The name, address and telephone number of the particular owner or lessee with respect to which the applicant seeks to become an affiliated qualified inspector, if the applicant seeks to be an affiliated qualified inspector.

(4) A detailed description of the education, training or experience of the applicant with respect to the safe erection, operation and dismantling of the amusement rides and attractions.

(5) The specific categories of amusement rides or amusement attractions with respect to which certification is sought.

(6) Verification that the applicant is at least 18 years of age as of the date of the qualified inspector application form.

(7) The signature of the applicant, verifying that representations made in the application are true and correct, and made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(d) [Credential cards will be issued for a 3-year period. Credential cards will be renewed for 3 years following written application to do so, and upon Department confirmation that the applicant has been active in the inspection of amusement rides and has attended an industry sponsored school, such as the A.R.E.A. Safety and Maintenance Seminar or its equivalent, during the 3-year period. If an applicant for credential card renewal has not remained sufficiently active in the inspection of amusement rides, reexamination may be required.] Application fee. The application fee with respect to a qualified inspector application form is \$50. This fee is not refundable, and shall be paid by check or money order made payable to the "Commonwealth of PA" in that amount.

(e) [Credential cards will be issued in the name of the inspector identifying the scope of the inspector's authority, such as being limited only to specific owners of equipment. Separate cards are required for each affiliation or for independent status.] Filing the application. An applicant shall submit a complete qualified inspector application form to the Department by mailing or delivering the form, together with the fee described in subsection (d), to the address in § 137.14 (relating to contacting the Department).

(f) [The Secretary may suspend a credential card for cause, but no certificate may be revoked until the inspector has been granted a hearing.] Department review and action. The Department will promptly review an application to determine whether the application form is complete and will, within 30 days of receiving the application, provide the applicant the following by mail or electronic means:

(1) An acknowledgment of receipt of the complete application.

(2) A schedule showing dates, times and locations of upcoming Qualified Inspector Tests, and instructions for scheduling the applicant to sit for the test.

(3) Written instructions as to how the applicant may download a Qualified Inspector Test study packet from the Department's internet website, receive a test study packet by e-mail or request the Department mail the applicant a test study packet.

(g) Qualified Inspector Test. The Qualified Inspector Test shall be a written test or a hands-on test, or both, measuring the experience and ability of the applicant with respect to the safe erection, operation and dismantling of amusement rides or attractions that are in the category of amusement ride or amusement attraction with respect to which certification is sought. The test may address multiple categories of amusement rides and

attractions. The Department will score a Qualified Inspector Test within 30 days after it is administered. The passing score for the test shall be 70% or higher. The Department will promptly report the results to the applicant by mail or electronic means WITHIN 30 DAYS OF THE DATE OF THE QUALIFIED INSPECTOR TEST.

(h) Qualified inspector's certificate and credential card.

(1) If an applicant passes the Qualified Inspector Test, the Department will issue a certificate and a credential card identifying the applicant as a qualified inspector of amusement rides and attractions, specifying whether the person is an affiliated qualified inspector or a general qualified inspector, and setting forth the following:

(i) The name of the qualified inspector and, on the credential card only, a photograph of the qualified inspector.

(ii) The date of certification and the expiration date.

(iii) The particular owner or lessee with respect to which the applicant is authorized to act as an affiliated qualified inspector, if the application does not specify an affiliation, if issued to an affiliated qualified inspector.

(iv) The categories of amusement rides or attractions with respect to which the applicant is certified as a qualified inspector.

(2) The certificate and credential card will remain the property of the Department and shall, upon the written request of the Department, be surrendered to the Department. The applicant shall be responsible to coordinate with the Department to obtain the photograph required for the issuance of the credential card.

(i) Powers of affiliated qualified inspectors and general qualified inspectors.

(1) An affiliated qualified inspector may do the following:

(i) Conduct an inspection of an amusement ride or amusement attraction that is both of the following:

(A) Owned or leased by a person designated on the affiliated qualified inspector's certificate and credential card.

(B) Within a category with respect to which the qualified inspector is certified.

(ii) Issue inspection affidavits as described in § 139.8 (relating to inspection affidavits).

(iii) Charge a fee for conducting an inspection, but not a fee that varies with whether an amusement ride or amusement attraction passes or fails the inspection.

(2) A general qualified inspector may do the following:

(i) Conduct an inspection of an amusement ride or amusement attraction that is within a category with respect to which the qualified inspector is certified.

(ii) Issue inspection affidavits as described in § 139.8.

(iii) Charge a fee for conducting an inspection, but not a fee that varies with whether an amusement ride or amusement attraction passes or fails the inspection.

(j) Duration of certification. A qualified inspector's certification will expire 3 years from the date of certification, unless revoked or suspended earlier by the Department.

(k) Renewal of current certificate and credential card.

(1) A qualified inspector may renew certification by delivering to the Department, at the address in § 139.14 and prior to the expiration of the current certificate and credential card, a complete renewal form. A person may obtain this form by contacting the Department through any means described in § 139.14. The renewal form will require the information described in subsection (c)(1)--(7), and the following:

(i) ~~Information to verify~~ A COPY OF A COURSE COMPLETION CERTIFICATE VERIFYING that the applicant has met the continuing education requirement in subsection (l). This information must include course dates, locations and descriptions, copies of course completion certificates and other information necessary to demonstrate attendance at the course and successful completion of the course requirements.

(ii) A nonrefundable \$50 application fee, by check or money order made payable to the "Commonwealth of Pennsylvania" in that amount.

(2) The Department will, within 30 days of receipt of a complete renewal form, mail or deliver to the applicant approval or denial of the requested renewal, or a request for additional information. If the Department denies the renewal it will provide written notice of the basis for denial. A renewed certificate will be valid for the period described in subsection (j).

(l) Continuing education requirement. As a prerequisite to renewal of certification under subsection (k), an affiliated qualified inspector shall attend at least 24 hours of relevant Department-approved continuing education training in the area of safe amusement ride and attraction erection and operation during the period of certification. A general qualified inspector shall attend at least 48 hours of this training during the period of certification. If a qualified inspector fails to comply with this continuing education requirement, certification will expire as of the expiration date on the qualified inspector's current certificate and credential card. If the Department determines that amusement rides or amusement attractions belonging to a particular category established under subsection (b) are of a comparatively simple design or operation to reasonably justify a requirement of fewer hours of continuing education for qualified inspectors of that particular category of amusement ride or amusement attraction than are otherwise required under this subsection, it may establish this continuing education requirement by publishing notice of this requirement in the *Pennsylvania Bulletin*, posting notice of this requirement on its website and providing all qualified inspectors for the subject category of amusement ride or amusement attraction with written notice of this requirement. THIS REDUCED CONTINUING EDUCATION REQUIREMENT SHALL NOT ENTAIL FEWER THAN 16 HOURS OF CONTINUING EDUCATION.

(m) Revocation or suspension of certification. The Department may revoke the certification of a qualified inspector for cause, after providing the qualified inspector written notice and opportunity for a hearing. A revocation will be for a specific period of time determined by the Department. The circumstances justifying revocation include the following:

(1) Allowing another person to conduct an amusement ride or amusement attraction inspection under authority of the certificate or credential card.

(2) Issuing an inspection affidavit without first conducting a thorough inspection of the amusement ride or amusement attraction that is the subject of the inspection affidavit.

(3) Issuing an inspection affidavit with respect to an amusement ride or amusement attraction that does not meet the requirements of the act and this chapter.

(4) Representing a qualified inspector to be an employee or agent of the Department.

(5) Inspecting an amusement ride or amusement attraction that is not in the category of amusement ride or amusement attraction with respect to which the qualified inspector is certified.

(6) Basing an inspection fee amount upon whether an inspection affidavit is issued with respect to the amusement ride or amusement attraction inspected.

(7) Altering or defacing a certificate or credential card for the purpose of obscuring or misrepresenting the information on either document.

(8) Other violations of the act or this chapter.

**§ 139.10. ~~{Advisory Board} (Reserved).~~**

~~{(a) For the purpose of advising the Secretary when determining factual interpretations amending or repealing this chapter and for evaluating petitions for exception or variance from this chapter, the Governor will appoint an Advisory Board on Amusement Ride/Attraction Safety consisting of nine members. Members will include the following: THE AMUSEMENT RIDE SAFETY ADVISORY BOARD IS ESTABLISHED UNDER AUTHORITY OF THE ACT. TO EXERCISE THE POWERS AND PERFORM THE DUTIES ASCRIBED TO IT IN THE ACT. THE BOARD IS APPOINTED BY THE GOVERNOR, AND CONSISTS OF TEN MEMBERS, AS FOLLOWS:~~

~~(1) A representative of the amusement ride manufacturers.~~

~~(2) The President TWO REPRESENTATIVES of the Pennsylvania State Showman's SHOWMEN'S Association.~~

~~(3) The Chairman TWO REPRESENTATIVES of the Pennsylvania Amusement Park Association.~~

~~(4) The President of the Pennsylvania Amusement Park Association.~~

~~—(5) The President A REPRESENTATIVE of the Pennsylvania STATE ASSOCIATION OF County Fairs Association.~~

~~(6) (5) A mechanical engineer.~~

~~(7) (6) Two public representatives.~~

~~(8) The Secretary OR HIS DESIGNEE, who will be designated by the Governor as the Chairman.~~

~~(b) The Board will be known as the Amusement Ride Safety Advisory Board.~~

~~—(e) The Board will hold public hearings at a time and place that the Board specifies to carry out its responsibilities.]~~

**§ 139.11. Accident reporting.**

(a) Report required. [When an owner submits an accident report to the owner's insurance company, a copy of those reports which involve physical injuries or death to an

individual as a result of the operation of an amusement ride or attraction shall be sent to the Department by the owner at the same time. The notice shall indicate the description of the amusement ride or attraction by which the injury or death occurred and the nature of the injuries or cause of death.] An owner or lessee shall file an accident report with the Department with respect to any accident which results in death or serious injury or illness as a result of the operation of an amusement ride or amusement attraction. The accident report form shall be faxed or delivered to the Department, at the address or fax number in § 139.14 (relating to contacting the Department), within 48 hours after the owner, lessee or operator is aware of the death, serious injury or illness. THE REPORTING REQUIREMENT DESCRIBED IN THIS SUBSECTION APPLIES FROM THE TIME THE OWNER OR LESSEE ACQUIRES KNOWLEDGE THAT SUCH A DEATH HAS OCCURRED, OR THAT THE INJURY OR ILLNESS IS A SERIOUS INJURY OR ILLNESS, AS THAT TERM IS DEFINED IN § 139.2 AND THE ACT (ACT 4 P.S. § 402).

(b) Accident report form. [When a serious injury, death or fire occurs as a result of the operation of an amusement ride or attraction, the operators shall immediately close the attraction or ride and the owner shall so notify the Department within a reasonable period of time. The attraction or ride may not be reused until it has been inspected, repaired or declared safe by a qualified inspector. In the event of death, the ride or attraction may not be reopened until declared safe by the insurance company of the owner. This declaration shall be in writing to the Department. In the case of a verbal declaration from the insurance carrier, a written declaration shall be submitted to the Department.] An accident report required under the act and this section shall be made on a form provided by the Department. The accident report form may be downloaded from the Department's website, or a supply of accident report forms may be obtained from the Department by request directed to the Department in accordance with § 139.14. The following information shall be included in an accident report:

(1) The name and address of the operator of the amusement ride or amusement attraction at which the death or serious injury or illness occurred.

(2) The name and address of the owner or lessee of the amusement ride or amusement attraction at which the death or serious injury or illness occurred.

(3) A description of the ride involved, including registration number, name of ride, manufacturer and manufacturer's serial number.

(4) A detailed description of the incident giving rise to the death or serious injury or illness.

(5) The name and address of the dead, ILL or injured person.

(6) A general summary of the apparent ILLNESS OR injuries sustained by each dead, ILL or injured person.

(7) The names and addresses of all known witnesses to the incident giving rise to the death, ILLNESS or injury.

(8) The signature of the owner or lessee, verifying the accuracy of the injury report form subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(c) Duty of owner, lessee or operator to close ride or attraction pending reinspection. [Documents concerning accident reports, the disclosure of which may lead to the disclosure of the institution, progress or result of investigation undertaken by an agency

in the performance of its official duties, may not be deemed public record under the act of June 18, 1984 (P. L. 384, No. 81) (65 P. S. § 66.1), known as the Right-to-Know Act.]

(1) When a death, a serious injury or illness or a fire occurs as a result of an operation of an amusement ride or amusement attraction, the owner, operator or lessee shall immediately close the ride or attraction until it has been inspected and declared safe by a qualified inspector.

(2) If the serious injury described in paragraph (1) results in death, dismemberment, significant disfigurement or permanent loss of the use of a body organ, the required inspection shall be performed by a qualified inspector who is an employee of the Department, and the ride or attraction may not be reopened until it has been inspected and approved to reopen, in writing, by the Department.

(3) If the serious injury described in paragraph (1) results in death, the ride or attraction may not be reopened until the written approval described in paragraph (2) is obtained and the ride or attraction is declared safe by the insurance company of the owner. This declaration shall be by writing delivered to the Department.

**§ 139.12. {Variances} (Reserved).**

[Where the literal application of this chapter may cause undue hardship, the affected party may file a written request for relief with the Secretary. The petition shall set forth in detail the grounds upon which the request is based and whether or not a personal hearing is desired. The Secretary may, upon application, grant exceptions or variances but only where it is clearly evident that it is needed to prevent undue hardship--that is, financial, and the like--existing conditions prevent practical compliance and where it is clearly evident that reasonable safety is assured.]

**(A) APPLICATION.**—ANY AFFECTED OWNER OR LESSEE OF AMUSEMENT RIDES OR ATTRACTIONS MAY APPLY IN WRITING TO THE DEPARTMENT FOR AN ORDER FOR A VARIANCE FROM ANY RULE, REGULATION OR STANDARD.

**(b) EXCEPTIONS.**—THE SECRETARY MAY GRANT EXCEPTIONS FROM THE RULES, REGULATIONS AND STANDARDS ADOPTED BY THE DEPARTMENT PURSUANT TO THIS ACT IF:

(1) IT IS EVIDENT THAT THE ACTION IS NECESSARY TO PREVENT UNDUE HARDSHIP; OR

2) EXISTING CONDITIONS PREVENT PRACTICAL COMPLIANCE AND REASONABLE SAFETY OF THE PUBLIC CAN, IN THE OPINION OF THE SECRETARY, BE ASSURED.

**§ 139.13. Penalties.**

(a) *Civil penalties.*

(1) A person who willfully or repeatedly violates the act or this chapter is subject to a civil penalty not to exceed \$2,000 [for] with respect to each violation.

(2) If the Department elects to pursue a civil penalty, it will provide the person who is the proposed subject of that civil penalty with written notice of the proposed adjudication assessing the civil penalty, and afford that person 7 working days from receipt of that notice within which to deliver to the

Department a written request for an administrative hearing on the proposed civil penalty.

(3) A written request for an administrative hearing must specify those portions of the proposed adjudication with respect to which the person requesting the hearing takes issue, the basis for the objection and other relevant facts or arguments not addressed in the proposed adjudication. The administrative hearing will be limited to these objections, additional facts or arguments. Any portion of the proposed adjudication that is not specifically objected to will be deemed admitted at the administrative hearing.

(4) The Department will, in accordance with section 11(a) of the act (4 P. S. § 411(a)), grant an administrative hearing within 7 days of receiving a written request for an administrative hearing. The Department will grant this hearing by mailing or delivering a notice to the person making the request, setting forth the date, time and location of the administrative hearing. An administrative hearing is "granted" for purposes of section 11(a) of the act if the referenced notice is mailed or delivered within the 7-day period, regardless of whether the actual scheduled date of the administrative hearing is before or after the expiration of the referenced 7-day period.

(5) If a timely request for an administrative hearing is not received, the Department will issue the proposed adjudication as its final adjudication, and deliver that final adjudication to the subject of that document.

(b) Criminal penalties. An owner or lessee of an amusement ride or amusement attraction who willfully violates the act or this chapter where the violation causes death to a member of the public exposed to the violation, commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine not exceeding \$2,500 or to a term of imprisonment not exceeding 1 year, or both. If the conviction is for a violation committed after a first conviction, the offender shall be sentenced to pay a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 1 year, or both.

\* \* \* \* \*

#### **§ 139.14. Contacting the Department.**

(a) Methods of contact. For purposes of the act and this chapter, the Department may be contacted as follows:

(1) By mail to the following address:

Pennsylvania Department of Agriculture  
ATTN: Bureau of Ride and Measurement Standards  
2301 North Cameron Street  
Harrisburg, PA 17110-9408

(2) By telephone to (717) 787-2291.

(3) By fax to (717) 783-4158.

(4) By e-mail to: ra-amusementrides@state.pa.us.

(b) Obtaining forms. Forms and documents referenced in this chapter may be obtained by mailing, faxing or telephoning a request to the Department, or may be available from the Department's website, at: [www.agriculture.state.pa.us](http://www.agriculture.state.pa.us)

(c) Filing documents with the Department. A document required to be filed with the Department under this chapter will be considered "filed" as of the date of postmark, fax transmission, e-mail delivery or actual delivery, whichever occurs first.

(d) Delivering documents to the Department. A document required to be delivered to the Department under this chapter will be considered "delivered" as of the date it is received at the Department, whether by mail delivery, e-mail, personal delivery, facsimile transmission or other electronic means.

## Subchapter B. DESIGN AND CONSTRUCTION

### § 139.41. General.

(a) Design and construction. Manufacturers and fabricators of amusement rides and attractions shall design and construct the amusement rides, devices[,] and structures to carry all loads safely and to withstand normal stresses to which they may be subjected. Structural materials and construction of rides and attractions [shall] must conform to recognized engineering [practices] practices, procedures, standards and specifications. This information shall also be furnished by the owner or operator for existing rides and attractions if required by the Department. Stress analysis and other data pertinent to the design, structure, factors of safety or performance characteristics shall be in accordance with accepted engineering practices.

(b) ASTM International F-24 Committee Standards. Manufacturers and fabricators of amusement rides and attractions shall comply with current ASTM International F-24 Committee Standards concerning amusement rides and devices as they pertain to manufacturer responsibilities for equipment design, testing, erection, operation maintenance and inspections. These ASTM International F-24 Committee Standards[, October 1984,] and subsequent amendments are incorporated by reference.

(c) Changes or modifications.

(1) The applicable standards shall be the ASTM International F-24 Committee Standards in effect as of the earlier of the following:

(i) The date of contract for original manufacture of the amusement ride or attraction.

(ii) The date of the bill of sale from the manufacturer to the original purchaser of the amusement ride or attraction.

(2) Any changes or modifications to the ASTM International F-24 Committee Standards after the earlier of the dates described in paragraph (1)(i) and (ii) may not apply to the amusement ride or amusement attraction unless the standards themselves require retroactive implementation or the Department makes adherence to these new standards a condition of registration.

(d) An amusement ride or amusement attraction shall operate in strict accordance with the applicable ASTM International Standards. If the attraction is modified the latest version of the ASTM International Standards shall apply to the change, alteration or modifications.

(e) Owners of existing amusement rides[,] and attractions are responsible for obtaining the required construction maintenance and operational information from the manufacturer if available.



**§ 139.42. Structures.**

[(a)] Permanent buildings, enclosed structures ~~and rides intended to be used~~ THAT ARE NOT MANUFACTURED AS PART OF AN AMUSEMENT RIDE OR AMUSEMENT ATTRACTION BUT THAT ARE NEVERTHELESS USED for or as an amusement ride or amusement attraction shall be constructed to conform to [the requirements of fire and panic regulations at 34 Pa. Code Chapters 49--59 (relating to administration--buildings; general requirements--buildings; A-1 assembly; division A-2 assembly; division A-3 assembly; group B educational; division C-2 hotels, motels, apartment buildings, etc.; division C-3 small group habitation; division C-4 single exit apartments; division D-0 ordinary commercial, industrial, office)] the Pennsylvania Construction Code Act unless exempted under that statute or its attendant regulations, and shall have posted therein a certificate of occupancy issued by [the Secretary of the Department of Labor and Industry] a building code official in accordance with the Pennsylvania Construction Code Act.

[(b)] Temporary buildings intended to be used for or as an amusement ride or attraction that are relocated from time to time, with or without disassembly, shall conform to the following:

- (1) Be noncombustible or 1 hour flame-retardant.
- (2) Be provided a minimum of two exits reasonably remote from each other. Exits, including access to exits, shall be illuminated and marked and exit doors be equipped with panic hardware and open outward and lead directly to the outside. Required travel distance from one point may be no more than 75 feet.
- (3) Be provided with an emergency lighting system which shall be activated by U. L. approved smoke detectors.
- (4) Have access to the means of egress marked by readily visible signs in cases where it is not immediately visible to the passengers.
- (5) Conform interior finishes to the fire prevention requirements of § 139.75(d) (relating to fire protection and prevention) which deal with fabric hazards constituting part of a passenger-carrying amusement ride.
- (6) Be placed or secured with blocking, cribbing, outriggers, guys or other means to be stable under operating conditions.]

**§ 139.43. Passenger-carrying rides.**

[Tubs, cars, chairs, seats, gondolas and other carriers] Amusement rides and amusement attractions shall be designed for safe operation and meet applicable ASTM International standards, as described in § 139.41(c) (relating to general), and conform to the other requirements of this section to the extent they do not conflict with applicable ASTM International standards.

\* \* \* \* \*

(4) *Self-powered rides.* Rides which are self-powered and which are operated by a passenger shall have the driving mechanism and any moving part that might pose a threat to the rider guarded and the guards secured in place to prevent passengers from gaining access to the mechanism.

\* \* \* \* \*

(8) *Travel clearance.* The path of travel of an amusement ride shall have a clearance envelope THAT MEETS ASTM INTERNATIONAL STANDARDS FOR PATRON CLEARANCE ENVELOPES, to ensure that a passenger on the ride cannot be injured by contacting a structural member or other fixed or moveable object when the passenger is in the riding position in accordance with the manufacturer's specifications.

(9) *Emergency brakes and [antiroll back] antirollback devices.* Emergency brakes and [antiroll back] antirollback devices [shall] must be in accordance with manufacturer's specifications and, if required or recommended by the manufacturer, must be in place and operational when the ride is open for use by the public.

\* \* \* \* \*

(ii) On rides which make use of inclined tracks, automatic [antiroll back] antirollback devices shall be installed to prevent backward movement of the passenger-carrying units in case of failure of the propelling mechanism, unless movement in the reverse direction would not cause injury or damage.

\* \* \* \* \*

(11) *Signal systems.*

(i) Signal systems for the starting and stopping of amusement rides shall be provided where the operator of the ride does not have a clear view of the point at which passengers are loaded and unloaded, or where the ride operator does not have a clear view of oncoming or returning passenger-carrying vehicles with sufficient line-of-sight to prevent a collision. A signal system must be a mechanical, electronic or other system that meets or exceeds the manufacturer's recommendations.

(ii) A code of signals adopted for the operation of an amusement ride shall be printed and kept posted at both the operator's station and the signalman's [stations] station. A person who may use these signals shall be [carefully] adequately instructed in their use.

\* \* \* \* \*

(12) *Protection against moving parts.*

(i) An amusement ride may not be used or operated while a person is [so located as to] located in a position where a person would be endangered by [it] the amusement ride. Areas in which persons may be endangered shall be fenced, barricaded or otherwise guarded against public intrusion.

\* \* \* \* \*

(13) *Amusement ride and attraction ancillary equipment.*

(i) *Air compressors and hydraulic equipment.*

\* \* \* \* \*

(B) Air compressor tanks and other receivers used [inconnection] in connection with air compressors [shall] must comply with 34 Pa. Code Chapter 3a (relating to boilers and unfired pressure vessels).

\* \* \* \* \*

**Subchapter C. OPERATION, MAINTENANCE AND RECORDS**

**§ 139.71. General requirement.**

(a) Owners and operators of amusement rides, devices and structures shall [use ASTM Standards on Amusement Rides and Devices] conform to the ASTM International F-24 Committee Standards in effect as of the date the amusement ride or amusement attraction is registered with the Department, as they pertain to owner/lessee/operator responsibilities for equipment erection, testing, operation, maintenance and inspection. [ASTM Standards, October 1984, and subsequent amendments, are incorporated by reference.] Changes or modifications to the ASTM International F-24 Committee Standards after this registration date may not apply to the amusement ride or amusement attraction unless the standards themselves require retroactive implementation or the Department makes adherence to these new standards a condition of registration.

(b) An amusement ride or amusement attraction shall be constructed, maintained and operated in strict accordance with the applicable ASTM International F-24 Committee Standards. If the attraction is modified, the latest version of the ASTM International F-24 Committee Standards shall apply to the change, alteration or modification. If the modification is a major modification, the owner, operator or manufacturer shall also comply with § 139.78 (relating to rebuilt and modified rides).

(c) Air compressors and hydraulic equipment shall be inspected under § 139.43(13) (relating to passenger-carrying rides).

**§ 139.72. Erection/disassembly of amusement rides and attractions.**

The owner or lessee shall cause each amusement ride, device or attraction to be erected in accordance with the manufacturer's recommendations as provided for in ASTM International F-24 Committee Standards, and shall conform to the other requirements of this section to the extent they do not conflict with applicable ASTM International Standards.

\* \* \* \* \*

(2) *Proximity to high voltage lines.* Amusement rides shall be located at least [10] 15 feet from suspended high voltage lines CARRYING GREATER THAN 600 VOLTS, OR AS OTHERWISE DEFINED IN THE NATIONAL ELECTRICAL CODE.

(3) *Ride entry and discharge.* Safe and adequate means of normal entry and normal discharge from each ride shall be provided.

\* \* \* \* \*

(iii) [No] A means of egress [shall] must be [less than 22] at least 36 inches in width.

\* \* \* \* \*

(x) Stairways, passageways, ramps, landings or platforms [may not be less than 22] must be at least 36 inches in width for single lane passage or 44 inches for double lane passage. Landings or platforms [may not be less than] must be at least 3 feet long measured in the direction of travel.

(xi) Stair treads [shall] must be at least 9 inches deep, exclusive of nosing, and the rise may not exceed 8 inches. Between two connecting levels, the treads [shall] must be uniform depth and the risers [shall] must be of uniform height. The slope of ramps may not exceed one in ten except that when nonslip surfaces are provided.

\* \* \* \* \*

**§ 139.73. Electrical system and equipment.**

\* \* \* \* \*

(c) Where electrical distribution and transmission lines have not been de-energized or where special insulating barriers to prevent physical contact with the lines have [have] not been erected, a person shall be designated to give timely warning for all maneuvers of equipment, ride structures and machinery operated proximate to the lines so that ample clearance is maintained.

\* \* \* \* \*

(g) Services shall be installed in conformance with Article [230] 525 of the *National Electrical Code* [(NFPA 70-1984) and as subsequently amended].

(h) Temporary electrical power and lighting installation shall be permitted during periods of construction, remodeling or demolition activities. Temporary electrical power and [lightings] lighting shall be permitted for a period not to exceed 90 days when associated with operating amusement rides or attractions.

**§ 139.74. Temporary wiring.**

(a) Feeders shall be provided with overcurrent protection in accordance with the load imposed and conductor size as specified in Article 240 of the *National Electrical Code* [(NFPA 70-1984) and as subsequently amended].

\* \* \* \* \*

(m) [Receptables] Receptacles and attachment plugs [shall] must be of the grounding type and have ground fault interrupter (GFI) protection.

\* \* \* \* \*

**§ 139.75. Fire protection and prevention.**

(a) 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. FIRE EXTINGUISHERS SHALL BE PLACED SO AS TO BE ACCESSED AND IN USE WITHIN 20 SECONDS OF A PERSON SPOTTING A FIRE, AND SHALL BE SUFFICIENTLY REMOVED OR PROTECTED FROM HIGHLY-FLAMMABLE OR EXPLODING MATERIAL TO PREVENT THEIR DAMAGE OR DESTRUCTION IN THE INITIAL EXPLOSION OR FLAMES.

\* \* \* \* \*

(d) Fabrics constituting part of an amusement ride shall:

(1) Conform to the following requirements, based on tests conducted in accordance with [the requirements of] ASTM-E-84, or its current successor document:

\* \* \* \* \*

**§ 139.76. Ride and attraction operators and [attraction] attendants.**

[(a)] The ride operator shall operate the ride, device or attraction as follows:

\* \* \* \* \*

(4) The operator may not [opeate] operate a ride while under the influence of alcohol or drugs.

\* \* \* \* \*

~~(6) 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.~~ THE NUMBER OF OPERATORS AND ATTENDANTS SHALL MEET OR EXCEED THE NUMBER OF OPERATORS AND ATTENDANTS RECOMMENDED BY THE MANUFACTURER OF THE RIDE, DEVICE OR ATTRACTION OR THE NUMBER PRESCRIBED IN THE ASTM INTERNATIONAL F-24 COMMITTEE STANDARDS, WHICHEVER NUMBER IS HIGHER.

[(b) The operator shall lock-out the electrical disconnect switch when restoration of electrical power to an amusement ride or attraction could create a hazard to persons during the performance of maintenance, repair, inspection or an emergency evacuation of persons, and ensure that it remains locked out until restoration of power will not create a hazard.]

**§ 139.77. Maintenance of amusement rides and attractions.**

(a) *Maintenance program.* The owner of an amusement ride or amusement attraction shall implement a program of maintenance, testing and inspection, based on manufacturer's recommendations, providing for the duties and responsibilities necessary in the care of each amusement ride or attraction. The maintenance program [shall] must include a [check list] checklist to be made available to the person performing the regularly scheduled maintenance. The maintenance program [shall] must include, but is not limited to, the ASTM International F-24 Committee Standards for the operation, maintenance, testing and inspections.

(b) *Electricity lock-out.* A person performing maintenance or repairs, or making an inspection, shall lock-out the electrical disconnect switch when restoration of electrical power to an amusement ride or amusement attraction could create a hazard to persons during the performance of maintenance, repair, inspection or an emergency evacuation of persons, and ensure that it remains locked out until restoration of power will not create a hazard.

(c) *Identification and rating plates.* Manufacturers' identification information affixed to the ride or attraction shall be maintained in a readily visible and legible condition at all times to the inspector.

[(c)] (d) \* \* \*

[(d)] (e) \* \* \*

[(e)] (f) *Articulations and bearings.*  
\* \* \*

(8) A record of each inspection, test and maintenance shall be made immediately upon completion of the inspection/test and shall indicate those components subjected to special examination, such as x-ray, liquid penetrant, magnetic particle or ultrasonic testing and the dates the examinations were performed. The record shall also include breakdowns or repairs and violations of this chapter with action taken to rectify the violation. The record shall be kept and made available to the Department and qualified inspector for at least ~~1 year~~ **THREE YEARS.** ~~Additional retention periods for this documentation may be advisable.~~

\* \* \*

**§ 139.79. Records.**

(a) The owner or lessee of an amusement ride or amusement attraction shall maintain the following records onsite FOR THREE YEARS, and make them available [to] upon request of the Department, the Department's representative [and] or the qualified inspector.

(1) *Daily inspection records.* Daily inspection records--including daily ride-specific inspection checklist records referenced in ASTM International F-24 Committee Standards--shall be prepared and maintained by the owner, lessee or operator who shall be experienced and knowledgeable in the proper assembly and operation of the ride or attraction. The inspection and tests [shall] must include operation of control devices, speed-limiting devices, brakes and other safety equipment. The inspection shall be made each day the ride or attraction is put into normal operation.

(2) *Tests.* Tests recommended by the manufacturer shall be recorded and a copy made available to the Department, the Department's representative and the qualified inspector. Evidence of satisfactory test results shall be recorded on a form or statement by one of the following:

\* \* \* \* \*

(iii) A [registered licensed] professional engineer.

(iv) A person recommended by the manufacturer as qualified to perform the test.

\* \* \* \* \*

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