

The Wisconsin Department of Commerce adopts an order to renumber Comm 34.04 (2) (intro.), and to create Comm 34.035, Comm 34.04 (2) (b) and Comm 34.22 (5m), relating to amusement rides and affecting small business.

Analysis of Rule

1. Statutes Interpreted

Statutes Interpreted: s. 101.17, Stats.

2. Statutory Authority

Statutory Authority: ss. 101.02 (1) and 101.17, Stats.

3. Related Statute or Rule

Statutes: ss. 101.19 and 101.12 (1), Stats.,
Administrative Rules: Chapter Comm 34, Amusement Rides

4. Explanation of Agency Authority

Under the authority of s. 101.17, Stats., the Department of Commerce has oversight of various mechanical devices and equipment, which includes amusement rides, in order to protect public safety. The Department fulfills this responsibility by promulgating the Amusement Ride Code, under chapter Comm 34.

5. Summary of Proposed Rules

The proposed rules will require an amusement ride owner to acquire and maintain liability insurance in order to operate rides in Wisconsin.

The proposed rules also create safety field attachment or connection redundancy provisions for amusement rides where passengers donning harnesses are elevated.

6. Summary of, and Comparison with, Existing or Proposed Federal Regulations

The US Consumer Product Safety Commission under the Consumer Product Safety Act has jurisdiction over portable amusement rides. The commission has not developed any specific standard or insurance requirements for portable amusement rides. At times the commission has issued various safety bulletins regarding operation, repair, maintenance or set-up for specific rides.

There are no existing or proposed federal regulations that address the specific issues of this rule.

7. Comparison with Rules in Adjacent States

A review of the amusement ride insurance regulations for the states of Illinois, Iowa, Michigan and Minnesota indicated the following liability insurance minimums:

- Illinois, \$100,000 for injury to one person, \$1,000,000 in aggregate, \$500,000 in aggregate for permanent sites with not more than 5 rides and operating at a height not more than 8 feet.
- Iowa, \$100,000 for injury to one person, \$300,000 in aggregate.
- Michigan, \$300,000 in aggregate, \$50,000 in aggregate if owner has only one ride designed primarily for children.
- Minnesota, \$1,000,000 in aggregate.

An Internet-based search of the amusement ride regulatory programs for the states of Illinois, Iowa, Michigan and Minnesota found that none of the states have specific rules or standards regarding the field attachment or connection of passengers as addressed by the proposed rules.

8. Summary of Factual Data and Analytical Methodologies

The proposed rules were developed utilizing information gathered during the department’s investigation of a recent accident that resulted in a fatality. The amusement ride utilized a single carabiner on the primary attachment point between the passenger and the ride. The department also evaluated the current provisions of the Amusement Ride Code, chapter Comm 34, with respect to industry safety practices that were identified during the department’s periodic inspection of rides. The department also reviewed the amusement ride insurance regulations of various states.

9. Analysis and Supporting Documents used to Determine Effect on Small Business or in Preparation of Economic Impact Report

Currently, approximately 320 amusement ride owners and operators have registered rides with department for 2007. All owners and operators would be required to obtain liability insurance under the proposed rules. The cost of the amusement ride insurance is dependent upon several variables including the size of the operation and the type of rides. An insurance source indicated that the cost for a million dollar policy could range between \$30,000 and \$100,000 annually. However, it is unknown how many of these owners and operators already are covered by insurance either voluntarily or to satisfy contractual obligations or other state regulations.

Based on a review of the list of 1400 amusement rides registered to operate in Wisconsin for 2007, the department estimates that fewer than 10 rides may fall within the scope of these proposed rules regarding attachment. These rules would not include such amusement rides as bungee jumps, bungee trampolines, and rock walls with mechanical take-up systems.

An economic impact report has not been required to be prepared.

SECTION 1. Comm 34.035 is created to read:

Comm 34.035 Insurance. (1) Except as provided in sub. (2), no amusement ride owner may operate a ride unless at the time there is in existence a contract of insurance providing coverage of not less than \$1,000,000 per occurrence against liability for injury to persons for the ride.

(2) No amusement ride owner shall operate a non-mechanical ride or a coin-operated ride unless at the time there is in existence a contract of insurance for the ride providing coverage of not less than \$500,000 per occurrence against liability for injury to persons.

(3) (a) The insurance contract to be provided under subs. (1) and (2) shall be by an insurer or surety authorized to transact business in the state.

(b) The amusement ride owner shall be responsible for assuring that the insuring company will notify the department at least 10 days prior to cancellation or change of insurance coverage. The certificate of insurance shall acknowledge this notification responsibility.

(c) The insurance contract or an attached schedule to satisfy the provisions of subs. (1) and (2) shall identify each amusement ride included in the coverage utilizing the ride serial number where such a number exists.

SECTION 2. Comm 34.04 (2) (intro.) is renumbered 34.04 (2) (a).

SECTION 3. Comm 34.04 (2) (b) is created to read:

Comm 34.04 (2) (b) A request for amusement ride registration shall include proof of insurance under s. Comm 34.035.

SECTION 4. Comm 34.22 (5m) is created to read:

Comm 34.22 (5m) ATTACHMENT. (a) Except as provided in par (b), the field attachment or connection of a passenger by an operator for a ride that elevates passengers off the ground, and necessitates passengers to don harnesses, shall utilize redundant means of attachment or connection or department approved equivalency on the primary attachment point between the passenger and the ride. Where carabiners are used to accomplish the primary attachment or connection, at least two locking hardened steel carabiners with a minimum breaking strength of at least 6,000 pounds each shall be utilized.

(b) The provisions of par. (a) do not apply to bungee jumping operations, bungee trampolines, or rock climbing operations.

SECTION 5. Comm 34.43 is renumbered Comm 34.43 (1).

SECTION 6. Comm 34.43 (2) is created to read:

Comm 34.43 (2) Before any amusement ride is operated, the owner of the amusement ride shall provide a copy of the insurance contract required under s. Comm 34.035 to the person, group or business contracting or leasing the installation and use of the amusement ride.

(END)

EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro.), Stats., these rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register.
