

STATE OF WISCONSIN
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF RULE-MAKING : ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF SAFETY
DEPARTMENT OF SAFETY AND : AND PROFESSIONAL SERVICES
PROFESSIONAL SERVICES : (CLEARINGHOUSE RULE 12-008)

ORDER

The Wisconsin Department of Safety and Professional Services proposes an order to amend SPS 333.03 (1); to renumber SPS 333.15; to renumber and amend SPS 333.17; to repeal and recreate SPS 333.12 (2), and to create SPS 333.03 (3) (b), (4) and (5), SPS 333.14 Note, SPS 333.15 (2), SPS 333.17 (2) and (3), SPS 333.23 and SPS 333.24 relating to passenger ropeways and affecting small business.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Statutes Interpreted: s. 101.17, Stats.

Statutory authority:

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

Explanation of agency authority:

Under the authority of s. 101.17, Stats., the Department of Safety and Professional Services has oversight of various mechanical devices and equipment, which includes ski lifts and tows, in order to protect public safety. The Department fulfills this responsibility by promulgating the Passenger Ropeways Code, under chapter SPS 333.

Related statute or rule:

None.

Plain language analysis:

The current rules of ch. SPS 333 require passenger ropeways to be designed, constructed, installed, maintained and operated in accordance with the 1999 edition of ANSI B77.1 standard Passenger Ropeways – Aerial Tramways, Aerial Lifts, Surface Lifts, Tows and

Conveyors – Safety Requirements. The proposed rules will reference and adopt the 2011 edition of the ANSI B77.1 standard.

There are also several revisions as to how and what procedures need to occur for third-party inspectors in conducting the required period inspections for passenger ropeways.

Summary of, and comparison with, existing or proposed federal regulation:

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

Comparison with rules in adjacent states:

Illinois:

Illinois adopts and references the 2006 edition of the ANSI 77.1 standard.

Iowa:

Iowa does not have any specific state standards for the design, construction, installation, maintenance or operation for passenger ropeways.

Michigan:

Michigan adopts and references the 2006 edition of the ANSI 77.1 standard.

Minnesota:

Minnesota does not have any specific state standards for the design, construction, installation, maintenance or operation for passenger ropeways.

Summary of factual data and analytical methodologies:

The department reviewed and compared provisions of the currently adopted 1999 edition ANSI B77.1 standard to the 2006 and 2011 editions. The latest editions of the ANSI standard make a few specific design provisions retroactive for existing ropeway systems. Most of the retroactive design requirements were established under the 2006 edition of the ANSI standard and addressed communications, evacuation power, rollback devices, cable catchers, and deropement switches. The 2011 ANSI edition retroactively requires bullwheel brakes for existing fixed grip aerial lift systems. Operation and maintenance provisions relating to signage are required to be more pictorial in nature with the 2006 ANSI edition compared to the 1999 edition.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

The rules were developed with input from an advisory council that includes representatives of ski hill owners and operators. There are 50 existing ski/tubing facilities in the state operating approximately 200 passenger ropeway systems.

Two-thirds of the ski hill operations, involving about 130 passenger ropeway systems, are insured and inspected annually by third-party inspectors either employed or contracted by national insurance companies covering ski hill operations. It is the understanding of the department that the insurance company inspections are based upon the latest edition of the ANSI B77.1 standard.

The advisory council and the department believe that most of the existing passenger ropeway systems in the state currently comply with the retroactive design provisions of the latest ANSI B77.1 standards. If an existing passenger ropeway system would need to comply with the various retroactive requirements, the cost would depend upon the retroactive provisions involved and other variables including the type of passenger ropeway system, system manufacturer, the length of the system and the capacity of the system. Estimates, as provided by advisory council members, associated with the components of the various retroactive provisions are:

- communications, battery backup phone systems - \$200.
- rollback devices and bullwheel brakes:
 - rollback detection device - \$2,800.
 - automatic emergency hydraulic release system - \$1,500.
 - electronics - \$1,000.

Some ski areas may need to replace signage to conform to the latest ANSI standard requirements. The typical cost of a sign is about \$40. Signs are subject to weathering and most ski areas account for replacement in their operating budgets.

The department does not believe that the proposed rules will affect a significant number of existing ski hill operations.

Members of the advisory council are:

- Jim Engel, WI Ski Industries Association (WSIA)
- Sam Geise, Insurance Industry
- Hans Hauschild, WSIA
- Jim Hubing, National Ski Patrol System
- Don McKay, WSIA
- Gren Rudd, Ski Industry At Large
- Rick Schmitz, WSIA
- Dennis Schulz, Ski Industry At Large
- Chris Stoddard, Ski Industry At Large
- Rob Walz, WSIA

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis are attached.

Effect on small business:

These proposed rules will have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. and have been submitted to the Small Business Regulatory Review Board for a determination on whether the rules will have a significant economic impact on a substantial number of small businesses. The Department's Regulatory Review Coordinator may be contacted by email at Greg.Gasper@wisconsin.gov, or by calling (608) 266-8608

Agency contact person:

James Quast, Program Manager, Department of Safety and Professional Services, Division of Board Services, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-266-9292; email at jim.quast@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

The hearing record on this proposed rulemaking will remain open until March 2, 2012. Written comments on the proposed may be submitted to James Quast, at the Department of Safety and Professional Services, P.O. Box 2689, Madison, WI 53701-2689, or Email at jim.quast@wisconsin.gov.

TEXT OF RULE

SECTION 1. SPS 333.03 (1) is amended to read:

SPS 333.03 (1) NEW INSTALLATIONS. This chapter applies to all passenger ropeways installed or constructed on or after ~~September 1, 2001~~ November 1, 2012.

SECTION 2. SPS 333.03 (3) is renumbered SPS 333.03 (3) (a) and as renumbered is amended to read:

SPS 333.03 (3) EXISTING ALTERATIONS. (a) The applicable operation and maintenance requirements of this apply to passenger ropeways installed or constructed prior to ~~September 1, 2001~~ November 1, 2012.

SECTION 3. SPS 333.03 (3) (b), (4) and (5) are created to read:

SPS 333.03 (3) (b) Unless otherwise specifically stated in this chapter, existing passenger ropeway installations and their components shall be maintained to conform to the passenger ropeway code that applied when the installations or components were installed or altered.

(4) STANDARDS. (a) Where any rule written by the department differs from a requirement within a document referenced in this chapter, the rule written by the department shall govern.

(b) Where a provision of this chapter prescribes a general requirement and another provision of this chapter prescribes a specific or more detailed requirement regarding the same subject, the specific or more detailed requirement shall govern, except as provided in par. (a).

(c) Where different sections of this chapter specify conflicting requirements, the most restrictive requirement, as determined by the department, shall govern, except as provided in pars. (a) and (b).

(5) INTERPRETATIONS. Under s. 101.02 (1), Stats., the department reserves the right to interpret the requirements in this chapter and in all adopted codes and standards.

Note: Section 101.02 (1), Stats., reads as follows: “The department shall adopt reasonable and proper rules and regulations relative to the exercise of its powers and authorities and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings.”

SECTION 4. SPS 333.12 (2) is repealed and recreated to read:

SPS 333.12 (2) PERIODIC INSPECTIONS. (a) 1. All passenger ropeways, including existing passenger ropeways installed or constructed prior to November 1, 2012, shall be inspected at least once every 12 months by the department or a third-party independent inspector.

2. The inspection shall ascertain whether a permit to operate may be issued for each passenger ropeway.

3. Depending upon the type of passenger ropeway, the inspection shall cover at least the aspects of a general inspection as applicable under ANSI B77.1 sections 3.3.4.1, 4.3.4.1, 5.3.4.1, 6.3.4, or 7.3.4.

Note: Prior to July 1, 1984, administrative rules for aerial tramways, aerial lifts, surface lifts and rope tows were specified in ch. Ind 46. Since July 1, 1984, the rules have been specified in chs. ILHR 33, Comm 33 and this chapter.

(b) 1. By October 1 of each year, the owner of a passenger ropeway shall notify the department in writing if the next required periodic inspection is to be performed by a third party independent inspector.

2. If the notification is not made by October 1, the department may conduct the required period inspection and charge the owner the applicable fee specified under ch. SPS 302.

(c) 1. A third-party independent inspector conducting a periodic inspection under par. (a) shall be employed by or contracted by an insurance company providing liability coverage for the passenger ropeway.

2. If a third party independent inspector is unable to obtain compliance with this chapter, the inspector shall notify the department.

3. All correspondence and documentation that is sent by the owner of a ropeway to a third party independent inspector addressing cited violations of this chapter shall also be sent by the owner to the department.

(d) 1. a. Except as provided subd. 1. b., reports of periodic inspections shall be submitted to the department within 30 days from the date of inspection.

b. A report of a periodic inspection shall be submitted to the department within 10 days from the date of inspection if the inspector does not recommend issuing the permit to operate for the ropeway.

2. A copy of the inspection shall be provided to the owner or their agent of the ropeway.

3. A periodic inspection shall be reported on form SBD-10633 or other approved form.

SECTION 5. SPS 333.14 Note is created to read:

SPS 333.14 Note: The department and other state agencies may have additional rules that affect the design, construction, maintenance and use of passenger ropeways, including chs. SPS 310, Flammable and Combustible Liquids; SPS 314, Fire Prevention; SPS 316, Electrical; and SPS 340, Gas Systems. The department's Safety and Buildings Division administers all of these listed codes except ch. SPS 310, which is administered by the department's Environmental and Regulatory Services Division.

SECTION 6. SPS 333.15 is renumbered SPS 333.15 (1).

SECTION 7. SPS 333.15 (2) is created to read:

SPS 333.15 (2) The owner of the passenger ropeway that malfunctions resulting in bodily injury may not remove or disturb the ropeway or any of its components or permit any such removal or disturbance prior to receiving authorization from the department, except for the purpose of reducing further bodily harm or property damage.

SECTION 8. SPS 333.17 is renumbered SPS 333.17 (1) and is amended to read:

SPS 333.17 Incorporation of standards by reference. (1) The American National Standard for Passenger Ropeways – Aerial Tramways, Aerial Lifts, Surface Lifts, Tows and Conveyors – Safety Requirements, ANSI ~~B77.1-1999~~ B77.1-2011, subject to the changes, additions and omissions specified in subch. III, is hereby incorporated by reference into this chapter.

Note: Copies of the ANSI B77.1 standard can be purchased from Global Engineering Documents, Customer Support ~~A105~~ M/S A1108, 15 Inverness Way, Englewood, CO 80112, telephone ~~800/624-3974~~ 877/413-5184, or from the National Ski Areas Association, 133 South Van Gordon Street, Suite 300, Lakewood, CO 80228, telephone 303/987-1111.

Note: Copies of standards incorporated by reference are on file in the offices of the department and the legislative reference bureau.

SECTION 9. SPS 333.17 (2) and (3) are created to read:

SPS 333.17 (2) Any codes or standards referenced in the standards adopted in sub. (1) shall apply to the prescribed extent of each such reference, except as modified by this chapter.

(3) Any alternate standard that is equivalent to or more stringent than a standard incorporated by reference or otherwise referenced under this chapter may be used in lieu of the incorporated or referenced standard if the alternate standard is accepted in writing by the department.

SECTION 10. SPS 333.22 (1) (a) to (c) is renumbered 333.22 (1) (b) to (c).

SECTION 11. SPS 333.22 (1) (a) is created to read:

SPS 333.22 (1) (a) “ANSI” means American National Standard Institute, Inc.

SECTION 12. SPS 333.23 is created to read:

SPS 333.23 Electrical. Substitute the following wording for the requirements in B77.1 sections 2.2.1.1, 3.2.1.1, 4.2.1.1, 5.2.1.1, 6.2.1.1 and 7.2.1.1: Electrical systems shall comply with ch. SPS 316.

Note: Chapter SPS 316 references and adopts the National Electrical Code, NFPA 70. The latest edition of the National Electrical Code adopted under chapter SPS 316 is 2008.

SECTION 13. SPS 333.24 is created to read:

SPS 333.24 Applicable effective date. Substitute November 1, 2013, as the effective for all of the design requirements listed in B77.1 sections 3.3.1.1, 4.3.1.1, 5.3.1.1, and 6.3.1.1.

SECTION 14. This rule shall take effect on November 1, 2012, as provided in s. 227.22 (2) (b), Stats.

END OF TEXT OF RULE

Dated _____

Agency _____

Dave Ross, Secretary
Department of Safety and Professional Services