FOR THE CASE OF
Dol Board of Elevators & Amusement

TRANSCRIPT OF
3rd Quarter Board Meeting
September 13, 2016

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COURT REPORTING
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1. APPEARANCES:
2. Robbie Fox, Chairman
   Fixed Amusement Device Representative
3.  
4. Chris Farmer
   Elevator Inspector Supervisor
5.  
6. David Hale, Board Member
   Tennessee Fair Association Representative
7.  
8. Lewis Moorer, Jr., Board Member
   Public at Large Representative
9.  
10. Larry R. Moore, II, Board Member
    Owner and Lessees Representative
11.  
12. Paul D. Fisher, Board Member
    Manufacturer Representative
13.  
14. Mitch H. Rader, Board Member
    Insurance Company Representative
15.  
    Administrator, State of Tennessee
17.  
18. Dan Bailey, Esq.
    Legal Counsel, State of Tennessee
19.  
    General Counsel, State of Tennessee
21.  
22. Melinda Kelsey
    Chief of Staff, State of Tennessee
23.  
24. Carlene Bennett
    Board Secretary, State of Tennessee
25.  

**Reporter's Note: All names are spelled phonetically unless otherwise provided to the Reporter by the parties.**
1. * * * * * *

2. CHAIRMAN FOX: Good morning. We will call the Elevator and Amusement Device Safety Board Meeting for September 13, 2016 to order. If we could, let’s deviate from the agenda and do the pledge first and then we’ll do the introductions.

3. Mr. Hale, if you would, please lead the Pledge of Allegiance.

4. (Whereupon, the Pledge of Allegiance was recited.)

5. CHAIRMAN FOX: Mr. Fisher, this is the point where we have introductions. I would offer you the opportunity to introduce yourself and then we’ll start back around the table here in just a second. You’re our newest board member and we’re certainly glad to have you.

6. MR. FISHER: Thank you.

7. CHAIRMAN FOX: We look forward to learning from you.

8. MR. FISHER: I hope I can contribute. My name is Paul Fisher. This is my first meeting, but I’ve been in the elevator industry for going on 13 years now. I’ve worked in the field and in management. I’ve worked basically all ends of the state, but I do appreciate the opportunity to serve on the board and look forward to it. That’s about it.

9. CHAIRMAN FOX: All right. We’re glad to have you, sir.

10. MS. CARLENE: I’m Carlene Bennett, board secretary.

11. MR. FARMER: Chris Farmer, Elevator Unit Supervisor.

12. MR. HALE: David Hale, board member.

13. CHAIRMAN FOX: Robbie Fox, board member.

14. MR. MOORER: Lewis Moorer, board member.

15. MR. MOORE: Larry Moore, board member.

16. MR. RADER: Mitch Rader, board member.

17. MR. DEASON: Chance Deason, general counsel with the Department of Labor.

18. MS. KELSEY: Melinda Kelsey, Chief of Staff, Department of Labor, Commissioner’s office.


20. MR. BAILEY: Dan Bailey, legal counsel for the Board.

21. MR. BURCH: Perry Burch, ex-board member.

22. CHAIRMAN FOX: Glad to have you, sir.

23. MR. STOCK: Don Stock from The Adventure Guild, ZipStream Ruby Falls and ZipStream Fall Creek Falls.


25. MR. TIERNEY: Shawn Tierney, Executive Director, Association for Challenge Course Technology.


27. MS. WILSON: Allison Wilson, Challenge Design Innovations.

28. MR. HANSON: Josh Hanson, Foxfire Mountain Adventures.

29. MS. POWERS: Mary Audrey Powers, Navitat Canopy Adventures.

30. MR. CLEVENGER: Steve Clevenger, ZipStream, Fall Creek Falls State Park.

31. MR. JONES: Kyle Jones, Department of Labor communications.

32. MS. RHODES: Anita Rhodes, Department of Amusement Devices and Elevators.

33. MS. CAUDILL: Jan Caudill, Department of Labor, Workplace Regulations.

34. MS. TUGMAN: Christine Tugman, Labor Standards.

35. MR. REED: Ed Reed, board member for International Association of Trampoline Parks.

36. I also represent Jumpstreet who has three parks here in Nashville.

37. MR. WHITE: I’m Wayne White, third-party inspector.


39. MS. DOWER: Jan Dower, Commissioner’s office.

40. MR. CANNON: Chris Cannon, director of communications for the Department.

41. MS. POWERS: Mary Audrey Powers, Navitat Canopy Adventures.

42. Provided by Stone & George Court Reporting (615) 268-1244
CHAIRMAN FOX: Thank you, sir. (Applause.) September 13th, 2016.

Presented to Mr. Roy Perry Burch in appreciation and in recognition of outstanding service and for service as a member of the Tennessee Elevator and Amusement Device Safety Board on this day, the 26th day of July, 2016, Bill Haslam, Governor.

CHAIRMAN FOX: This says, "Presented to Mr. Roy Perry Burch in appreciation for service as a member of the Tennessee Elevator and Amusement Device Safety Board on this day, September 13th, 2016." (Applause.)

CHAIRMAN FOX: Thank you, sir.

CHAIRMAN FOX: Thank you.

I hope you can hear me. I just wanted to let you know a few things that have happened since the last board meeting, the last one I attended, that I was working for another elevator company and they lost -- they had a contract with the State doing maintenance, and I was one of the guys that helped them do that. And so at that point, I didn't really have a job, you know, and so -- but I wanted to keep working and I told them I would do certain things. And they said, "Well, we just really don't have anything."

And I said, "Well, okay. Then give me a layoff slip." So they gave me a layoff slip, but the labor board wouldn't let me draw unemployment. So you know what I had to do? I had to get another job.

So I've gotten another job with another elevator company. When they found out I didn't have a job, they thought I did have some service that I could render. And so that's what happened to me.

And I'll leave that to you two ladies. Okay. Can everybody hear? I'm going to read this. "The State of Tennessee State Capitol by Bill Haslam, Governor, by virtue of the authority vested in me, I hereby confer upon Mr. Roy Perry Burch this certificate of appreciation in recognition of outstanding service in the best interest and the highest tradition of the State of Tennessee, given under my hand on the Great Seal of the State of Tennessee in Nashville, the 26th day of July, 2016, Bill Haslam, Governor."

Mr. Burch: Thank you and thank Governor Haslam. I've never had anything like that before. (Applause.)

CHAIRMAN FOX: This says, "Presented to Mr. Roy Perry Burch in appreciation for service as a member of the Tennessee Elevator and Amusement Device Safety Board on this day, September 13th, 2016."

(Applause.)

CHAIRMAN FOX: Thank you, sir.
MR. FARMER: Just to give you a little background on what's going on. We currently have 26 building inspectors with open positions in Middle Tennessee that we hope to get filled in the next couple of months. We have one office manager that assists with amusements and elevators day to day, and that's Anita Rhodes. We have two administrative ladies in the office, Betty Zivkov and Christina -- I hope I don't butcher her last name -- Henggeler. Of course we have one supervisor, which is me.

We have approximately 13,578 active elevators in use; we've done 445 new permits this year for new installations; we've performed 16,125 reinspections; we have issued 9,866 operating permits; and we currently have 522 pending installation permits. So we're really busy.

CHAIRMAN FOX: I would say so.

Anything else, sir?

MR. FARMER: Like I said, everything is going pretty smooth. So we've got the three new inspectors out doing inspections and performing acceptance inspections, so we're rocking on.

CHAIRMAN FOX: Okay. Thank you very much.

Item Number VI, the Amusement Device Unit's Report. Ms. Kelsey, could we recognize you first? And I think you have some information for us.

MS. KELSEY: I do, sir. I'm very happy to announce that the Tennessee Department of Human Resources has approved the positions that we requested, that was requested by the board. And one of those positions is an executive service, and I want to make sure that the board understands the difference between "executive" and "preferred."

"Executive" means that we do not have to pull a register through the Department of Human Resources. The others would have to go through the vetting process, through NEOGOV, and would have to meet all the guidelines in the job description that was provided to the Department of Human Resources. The positions will be classified as Amusement Device Safety Compliance Officers. They will be stationed in the three grand divisions across Tennessee. Their role and responsibility would be to be a second set of eyes in the event when carnivals or fairs are coming forth. We will still rely on third-party inspectors as we have always done, but this gives an extra set of eyes upon that.

This will be released. It will go on NEOGOV, I think, this week; if not, the first of next week. And then the vetting process and the actual interviewing process will occur from that point forward.

We must meet all regulations to ensure that these individuals meet the qualifications set forth. If we do not have candidates that meet that, we will certainly keep the board informed as to the status, that we are running into some obstacles trying to find inspectors. We will keep the board informed from the Commissioner's office and from the elevator -- from Ms. Jefferson's division.

So we're very excited about this. With that being said, when they're preferred, the rate of pay is pretty much set. It is probably much less than probably what individuals could be potentially making in the private sector. Much less than probably what individuals could be lower than it would be. They're actually getting paid in the private sector, so I want to make sure that everyone in this room is very well aware of that. There are state benefits that come with this job, as any other state employment, which is insurance, 401(k), all these -- the perks of being a state employee, but, again, the rate of pay is much less than probably what individuals could be making in the private sector.

So we will keep the board informed. We will keep everyone updated as we move through this process.

CHAIRMAN FOX: Okay. Just for clarification, those folks will provide an inspection. They will be inspectors. And furthermore, they will conduct investigations in the event of an accident; is that correct?

MS. KELSEY: They can be, yes, sir.

CHAIRMAN FOX: Yes. Okay.

MR. HALE: Could you give us some idea of the pay range? Do you have that figure?

MS. KELSEY: I don't have that readily available. I can get that and make sure that that is provided to each of you. Kim may know what the pay range is.

MS. JEFFRSON: I don't.

MS. KELSEY: I'm sorry. I don't
25. HR upstairs and ask them what the average rate is.
24. We can get that to you.
23. MR. HALE: Thank you.
22. CHAIRMAN FOX: Thank you very much.
21. We appreciate your cooperation and that of the
20. Commissioner and Ms. Jefferson in making this
19. happen. We've looked forward to this for a long
18. time and I think it's finally come to fruition.
17. And again, thank you-all very, very much.
16. MS. KELSEY: You're welcome.
15. CHAIRMAN FOX: Anything else,
14. Ms. Kelsey?
13. MS. KELSEY: No, sir.
12. CHAIRMAN FOX: Okay.
11. Ms. Jefferson?
10. MS. JEFFRSON: Yes. The first
9. thing I wanted to talk about are the statistics.
8. I just want to give you-all an idea of what we've
7. done since the beginning of the fiscal year which
6. began on July the 1st, 2016 of this year.
5. The number of permanent applications
4. that the Amusement Device Unit has received is
3. approximately 41. This is through August the
2. 26th, just to give you an idea. The number of
1. companies issued permits is in the amount of 36.
24. The number of payments received are 40. The
23. amount of revenue processed today or to that date
22. is $19,925. The number of amusement devices at
21. companies where permits were issued is 271. So
20. that gives you an idea of what we've done since
18. The number of reported accidents is
17. seven at this point. This includes ziplines,
16. coasters, as well as accidents, as far as the
15. fairs and carnivals are concerned.
14. In addition to our statistics, since
13. the fair and carnival season, there have been two
12. major reported accidents. We'll talk about Greene
11. County in just a second, but you may be aware --
10. most of you are aware that there was an accident
9. in Shelby County last weekend, and that was in
8. regard to one of the customers, Belle City
7. Amusements. They're also referred to as BCA. And
6. so that was another and I'll touch on that later
5. on in the discussion.
4. But I just wanted you-all to know
3. that we have prepared a standardized inspection
2. form. It's been created on behalf of the
1. Department and Chance Deason has been involved in
20. that process. We wanted to provide that document
19. for consistency purposes.
18. We currently receive a lot of
17. inspection reports from inspectors, and all of the
16. inspection reports are different. Some say "Safe
15. and Operable." Some say the device is pass or
14. fail. Some indicate that the device is
13. satisfactory. But some don't even include
12. anything, so it makes it really difficult and we
11. have to follow up with the inspectors.
10. And so what we wanted to do is to
9. create something that's standardized that will
8. provide consistency because this will help us with
7. our efficiency and our effectiveness within the
6. unit.
5. And in addition to that, our standard
4. operating procedures have been updated. This is
3. the process that we use in order to determine what
2. to do. In order for the employees within the unit
1. to know what to do, we had to put together
2. standard operating procedures so that they would
1. know what steps to take, not just in the way of
20. accidents but just everyday, day-to-day
19. activities. So those procedures have been
18. updated.
17. After the fair and carnival season, a
16. mass mailing will occur. Last year we did a mass
15. mailing for the dark houses because we know that
14. in October that we have something new to look at.
13. We have the dark houses or haunted houses. And so
12. we will be doing a mass mailing at the end of the
11. week to notify all of those companies to help them
10. to meet statutory compliance requirements.
9. And over the next few months our goal
8. is to process permits at least a month in advance.
7. That's our goal. That's been very, very difficult
6. to do. And what we're running into -- we have to
5. educate our customers to get the information to us
4. in a timely manner because if they wait, say, the
3. week of expiration or the week of a fair, it makes
2. it really, really difficult for us to get the job
1. done. So our goal is to educate, to continue to
2. educate the customers, let them know what they
1. need to do to meet the statutory compliance
21. requirements and get that information to us in
20. advance so we can timely process their permits.
19. And as I tried to indicate, always
18. safety is our number one concern. We want to make
17. sure that the customers are safe within Tennessee.
1. We work in the best interest of the customers that
2. we're charged with serving. That's our number one
3. concern. And we want to ensure that what we do is
4. correct and we're using the proper procedures and
5. we follow the laws that govern the entire process.
6. And if you want additional
7. information, please let us know, because I want to
8. direct everyone to our website. The website has
9. been updated. The communications division
10. assisted us to do that earlier on in the year.
11. And it has a lot of helpful information.
12. And just for the audience, if you
13. have questions about compliance requirements, all
14. that information is on the website. If you have
15. questions about the accident reporting
16. requirements, that information is on the website.
17. If it's not on the website, just let us know and
18. we'll be happy to assist.
19. But again, the most important item
20. for us is to ensure that we receive your
21. information in a timely manner so that we can
22. timely process your permits.
23. And that's all I have.
24. CHAIRMAN FOX: Just a quick
25. question on the 30 days and when we were having a

1. discussion earlier about this. When the fairs
2. come in, they're notifying you of their itinerary;
3. is that correct?
4. MS. JEFFRSON: Well, what happens
5. is that they have to complete an application, and
6. they complete an itinerary at that point. The
7. problem is that sometimes they don't give it to us
8. until the week -- like, the weekend before or the
9. week before the fair starts. We don't get it.
10. What we're trying to do, our goal is
11. to take a look at all the companies that are
12. renewals based on the Fair Association list. That
13. would be the proper way to do it, take a look at
14. that list from the beginning of the season, and to
15. identify the companies and try to bring them into
16. compliance as quickly as we can. But the problem
17. is, even though we reach out to them and we send
18. renewal notices, sometimes they still don't
19. respond until the week of. And that puts us in a
20. pickle. It really puts us in a pickle. So we
21. want to somehow develop a system to avoid that
22. from happening.
23. CHAIRMAN FOX: Okay.
24. MR. HALE: Could I add a
25. clarification, Mr. Chairman?

1. CHAIRMAN FOX: Sure.
2. MR. HALE: Fairs and carnivals are
3. two separate entities. And fairs, in the state of
4. Tennessee, do not own carnival rights. They
5. contract with a carnival company to come in and
6. provide those rides. So I just want to make sure
7. that, in the minutes, that we're clear that the
8. fair -- in actuality, the fairs have a
9. responsibility, I suppose, to their guests to make
10. sure that the rides are properly inspected and
11. permitted; however, the requirement for inspection
12. and permitting lies with the carnival company.
13. It's not the fair's responsibility to go out and
14. obtain inspections.
15. It is a moral obligation, I suppose,
16. if you will, of the fair to ensure that their
17. contractor is properly permitted and inspected.
18. So I just want to clarify that fairs and carnivals
19. are two different entities.
20. MS. JEFFRSON: And that's true.
21. And we have had some really good responses from
22. the fair and carnival representatives. When we've
23. told them that we're having difficulties with an
24. owner/operator obtaining the permit, they do talk
25. with them and help us to issue the permits.
1. challenge courses and ziplines in the state of Tennessee.
2. We have a -- our presentation is comprised of three parts. I'm sure by now this board is getting a tiny bit weary of this conversation. And this is very important to us, who are sitting in this room. There's a lot of things that we really do need to present but we need to talk about because we are on the side of regulation in our state. And I will address that in a minute. Our presentation will be in three parts. I and Mr. Ogle from Smoky Mountain Adventures will talk about the stakeholders, from the stakeholder's perspective in the state of Tennessee. Because there are a lot of us who make our living in this industry and who serve hundreds of thousands of participants every year in our industry and in our state. So we want to really kind of give our perspective, a historic perspective, in terms of ACCT in the state of Tennessee, and also explain why we are so adamantly committed to encouraging you to seriously consider its adoption for the state because its -- it really does have the track record.

Kathy Haras, Chair of the ACCT's Design, Performance, and Installation Committee will follow us and respond to some of the PRCA's prior accusations regarding the ACCT's standards and its supposed culpability and accidents within the industry. From a personal standpoint -- I can't speak for anybody else in the room but I've been doing this a long time -- I've been quite disturbed by some of the things that have been presented, and I think it's somewhat unprofessional and embarrassing to have someone present a -- to come into this room and look at this group of people and say, "If you had been doing things differently, these accidents would not have happened." I think you would have to be God himself to know if that happened. So there's no question that your determination that you make.

I would like to briefly outline the reasons for my strong recommendation for the official inclusion and adoption of ANSI/ACCT 03-2016 for regulating challenge courses, ziplines, and adventure parks in the state. However, to give a context for why that is the case, I would like to give you kind of a brief overview of my background and experience. I am a native Tennessean. I was born and raised in Goodlettsville, just up the street. Our company, The Adventure Guild, is a Chattanooga-based challenge course company that's been providing challenge course team-building services and adventure parks and zip line services in the state for over 20 years. I'm also a licensed contractor for challenge courses and zip lines in the state of Tennessee. We've designed, installed, and operated the aerial adventure park at Ruby Falls, which is one of the oldest and most iconic attractions in the state of Tennessee.

The Reporter: Thank you. Which falls? If you're reading, if you would slow down. Mr. Stock: Okay. Sorry. So it's Ruby Falls. The Reporter: Thank you. Mr. Stock: And then Fall Creek Falls. The Reporter: Thank you. Mr. Stock: Those two falls. Okay. We are also partners who secured the bid to build and operate the ZipStream Aerial Adventure Park at Fall Creek Falls State Park. And we currently have a long-term contract with the State of Tennessee for that location. Our company also holds the distinction of being the only challenge course vender in existence to have successfully navigated both the PRCA and the ACCT accreditation processes. We're the only company that's done both.

I served as a PRCA board member and treasurer for several years, having joined the PRCA early in 2005, soon after its inception. I have been a part of the PRCA's ANSI Consensus Group since its inception and participated in the development of that standard from the beginning.

Mr. Rader: Slow down.
serve thousands and thousands of people every year which are generated by the challenge course contractors in our state, who are licensed zip line or adventure park or have legitimate, licensed businesses in our state, and who pay millions of dollars in taxes to the state, and who are sitting behind me and the people who are licensed zip line or adventure park or have legitimate, licensed businesses in our state, and who pay millions of dollars in taxes to the state.

I am primarily here today as a Tennessean on behalf of the stakeholders in Tennessee, the people who live in our state, who Tennessee, when we've been operating here for endless frustration in trying to be a force for truth, transparency, honesty, and reconciliation within our industry, I broke from the PRCA as an accredited vendor and as a member out of protest for the, I guess, the actions of the organization and its leadership.

Later I served as the Vice Chair of the ACCT's Inspector Certification Committee and actively helped develop the association's very successful inspector certification process that the State of Tennessee has adopted and this board has recognized.

In August 2014 I participated in the ANSI appeal between the PRCA and ACCT on the side of the ACCT, having been frustrated by the utter lack of transparency and industry participation in the PRCA's ANSI process.

I later served on the board of directors of the ACCT as the liaison for the board and for the ethics committee.

So I only -- all that is to say that I have a really unique, multi-faceted experience with both of these organizations, not only just -- not of the organizations but leadership and standards and how those standards were developed. My experience with the PRCA and its standards predates even Mr. Barker. I was a part of that organization, part of that standards group before he was even on board. And so I know how it started and why it started and how the whole process developed. However, I am not primarily here today to advocate for ACCT or to be an adversary to PRCA. I am primarily here today as a Tennessean on behalf of the stakeholders in Tennessee, the people who live in our state, who have legitimate, licensed businesses in our state, who are licensed zip line or adventure park or challenge course contractors in our state, who employ hundreds if not thousands of people in our state, and who pay millions of dollars in taxes every year which are generated by the challenge course/zip line/adventure park industry in our state.

We are deeply, deeply committed, the people who are sitting behind me and the people sitting at this table, too, to public safety. We serve thousands and thousands of people every single year, both through the construction, inspection, building, and operations. And safety is the highest priority for us, and we are always vigilantly pursuing new ways to make it -- to mitigate the risk, to make an activity that is inherently risky more viable, more safe, and to make it as safe as it possibly can be.

There are critically important issues that need to be addressed regarding regulation of these unique experiences within the state. Because as you -- I suppose that you know -- I presume that you know these are very, very different experiences. They are different structures. There are different operational procedures and things than compared to a Tilt-a-whirl or a Ferris Wheel or whatever. These are completely different animals that I want to admonish us to recognize. And if we're going to regulate it -- and I want us to -- that we do it in a way that addresses the uniqueness of those structures and those operations, because the differences make a difference in making sure that we're protecting the public safety.

We currently have a permit application that doesn't really match the structure or the unique operational aspects of what we do. I think that's something that's been addressed. And that's wonderful.

There's a very unclear designation currently of what constitutes a commercial versus a traditional challenge course or a zip line in the state for regulatory purposes and how we apply to those different types of courses, and, also, who is most qualified and knowledgeable about these unique structures and operations when it comes to professional inspections, et cetera.

The PRCA has spent a great deal of your time and used a lot of words attempting to capitalize on tragedy and engender fear and hope that you would validate their organization and standard by adopting it for its use in Tennessee. I can only speak for myself as a stakeholder in Tennessee, someone with many years of experience in all this. With all due respect to the PCRA leadership, as a Tennessean, I'm pretty disinterested in what someone from Michigan or Pennsylvania or Connecticut or Illinois has to say about what we should be doing in the state of Tennessee, when we've been operating here for
MR. OGLE: Hello, everyone, this morning. Thank you for this opportunity to come and talk to you. As Mr. Stock here mentioned, with the regulatory environment, the first zip line in Sevier County opened in 2008. We actually opened in 2009. Now there are about 15 companies in our area. And while I can't speak for all of them, my own personal company, we would be guilty of that home-built kind of -- not necessarily a backyard operation but unacknowledged and unknowing construction.

It was -- it seemed to be the thing to do and it was something we got into, and had we not found some sort of higher purpose or higher calling, better source of knowledge, it's undoubtedly that we would have eventually injured somebody. As somebody who has seen from, I guess, a rougish operation and we're self-built, like I said, and we kind of learned some lessons through.

The regulatory process is a critically important one that impacts and influences not only the primary issue of public safety but also economics, the creation of jobs, the viability of an entire industry which has a long history in the state of Tennessee.

And let me say unequivocally that we are for state regulation of our industry. We want to be a team member. We want to be a partner in that. Because there -- I have seen, as an inspector, more than a few house-built, nonprofessionally developed zip lines and backyards which have been opened in 2009. Now there are about 15 companies in our area. And while I can't speak for all of them, my own personal company, we would be guilty of that home-built kind of -- not necessarily a backyard operation but unacknowledged and unknowing construction.

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industry who's being regulated, is regulation that
actively engages and involves the stakeholders as
partners in that regulatory process. And that's
the message that we spread to our colleagues, is
don't fight this. Let's be a part of it. Let's
support it. Let's do everything we can.
The current system isn't ideal but
we're still doing it. We're trying to show the
Department that we're behind them. We're with
them. We're all on the same team. I think the
communication that we've had with Ms. Jefferson's
offices and with Carlene in particular has
demonstrated that, that we have been a part of
trying to do the right thing and be involved in
the process as it exists.

No one knows an industry like the
group of people who do it every day, which is why you have
elevator people on this board, and so no one knows
it like the people who are there. And without the
input and insight from the people who make up the
industry, it's very easy to make decisions at an
administrative level that can have unanticipated
and extremely negative effects. And because of
this, I applaud your willingness as a board to
hear our concerns. I do truly thank you for that.

1. environments and elements therein. But there are
2. things we can do to minimize those risks and
3. through my involvement with the ACCT, I've learned
4. a lot. We run a lot safer operation now than we
5. did in 2009. And I think -- I contribute a lot of
6. that to not only our company's attention to detail
7. but also the involvement of the ACCT and the
8. knowledge base that we've gained access to through
9. that. So that would be my biggest takeaway, is
10. that it's -- and with the regulations, it's only
11. effective if it's adopted, if you can get
12. participation from those that are involved in it.
13. Otherwise, you kind of get dragging feet and
14. there's kind of a shuffle towards compliance as
15. opposed to an embrace of it. And that's something
16. that I feel, just through my own experiences with
17. the association, that it's very embracing.
18. Thank you, Don.
19. MR. STOCK: Appreciate that.
20. So we are absolutely for regulation.
21. But experiencing these types of regulatory efforts
22. across the country has demonstrated that the best
23. regulation, the best outcomes, the best success
24. which goes the furthest and is the most successful
25. in ensuring public safety and supporting the
1. courses and had been doing training recognized the
2. need for an association, recognized the need for
3. standards that would begin to really put together
4. a solid list of things that needed to happen,
5. needed to be done, and a standard to which people
6. needed to be held to, to if we're going to do
7. these activities, this is how we need to go about
8. it.
9. This is the Ninth Edition. It
10. started as the first edition in 1994 and it's gone
11. through revision after revision after revision
12. by -- through the hands of thousands of people in
13. our industry through the course of this last
14. 20 years.
15. Since those early years, the ACCT
16. standard continued to be refined and expanded.
17. It's gone through many editions, all the way up to
18. the ninth edition, which is the ANSI/ACCT 03-2016
19. you have before you.
20. Over the span of 20 years, this
21. standard began to be adopted and was used more and
22. more by builders and operators in our state until
23. it became, as it remains today, the de facto
24. standard for challenge courses and zip lines in
25. our state.

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1. adherence, far from creating dangerous conditions,
2. presented by the PRCA, the ACCT standard and its
3. history. It has the support, and it covers both
4. and are well-versed and use the ACCT standard.
5. represented in this room, not only the builders
6. but the operators, they all are already compliant
7. and are well-versed and use the ACCT standard.
8. The standard is written to address
9. the unique aspects of our industry, to be
10. applicable to all challenge course, zip line, and
11. adventure park application, whether they be
12. commercial, educational, therapeutic or
13. recreational.
14. At this time right here, I believe
15. that at this moment it is the very best single
16. option for adoption by the State of Tennessee for
17. the regulation of our industry for the following
18. reasons. And keep in mind that I said "at this
19. moment the very best single option." Okay?
20. Because it's the one that is vetted. It's got the
21. history. It has the support, and it covers both
22. commercial and traditional use. It addresses
23. everything we need to address within the state in
24. terms of regulatory work.
25. Contrary to the misrepresentations
26. presented by the PRCA, the ACCT standard and its
27. adherence, far from creating dangerous conditions,
28. have been quietly and effectively protecting the
29. public safety in Tennessee for over 20 years.
30. It's only been in the last probably five or so
31. that this board and this department even knew of
32. the existence of our association and our history.
33. And so for all those years we've been quietly
34. running zip lines and adventure parks and
35. challenge courses in the state safely, protecting
36. participants for two decades.
37. And if we were not doing a good job,
38. if the standard was full of all the holes that it
39. has been purported to be, we certainly would have
40. had lots and lots of accidents through this course
41. of time and you would have known about us way
42. earlier than you did. And so my admonition is
43. that that's a misrepresentation, and it's a huge
44. misrepresentation that I take offense at.
45. The reality is there are 68 ACCT
46. members in the state of Tennessee. There are
47. three accredited professional venders that reside
48. in Tennessee. Eight certified inspectors reside
49. in the state of Tennessee that support ACCT
50. standard and its adoption for use in our state.
51. And this doesn't even take into account the myriad
52. of camp owners, challenge course directors,
53. facilitators, commercial operations that already
54. use the ACCT standard and support its adoption in
55. Tennessee, some of which are sitting behind me.
56. Just in a very quick, cursory email
57. to our colleagues, who are builders, and very
58. incomplete data collection over the past month,
59. demonstrates that among just eight challenge
60. course venders that responded to my request that
61. are either based in Tennessee, who are legally
62. operating in the state of Tennessee, serving,
63. like, 20 commercial operations in the state and
64. over 100 camps, schools, retreat centers, and
65. treatment facilities. That many people already
66. are using the standard, already familiar with it,
67. already vetted it, and are firmly behind the
68. adoption, official adoption, of the standard for
69. the state of Tennessee for regulatory purposes.
70. Secondly, the ACCT standard has been
71. vetted over the span of 20 years, is supported by
72. the industry and is almost universally accepted as
73. the de facto standard. It has passed through a
74. rigorous, thorough, and completely transparent
75. ANSI standards process which involves significant
76. participation by the greater industry.
77. Additionally, over the course of the
1. last ten years, the PRCA has, on many occasions,
2. appealed the ACCTs process again and again
3. again and again, and there was just a final appeal
4. decision from the BSR that went completely
5. 100 percent in the ACCTs favor. It included some
6. of the -- the presentation by the PRCA included
7. some of the very same issues that -- the safety
8. concerns and things that they brought to you.
9. ANSI responded with a universal
10. ruling on the side of the ACCT and upheld the
11. standard and its validity. And so it has passed
12. through a rigorous process that's had a lot of
13. eyes on it over the course of many years.
14. The ANSI ACCT 03-2016 already enjoys
15. the most universal industry to support and is
16. specifically called out and referred to by many
17. regulatory bodies. Authorities having
18. jurisdiction in West Virginia, Colorado,
19. Massachusetts, New York, Illinois, Texas,
20. Kentucky, Pennsylvania, and California have either
21. adopted, referenced or used language from the ACCT
22. standard in their regulatory process.
23. The ACCT has a secretary for the
24. ANSI. The ACCT standard is a large and
25. well-funded organization with a robust

1. training and training documentation for these --
2. to address the issue of operator error that is the
3. source of the vast majority of fatalities in our
4. industry and injuries in our industry. And this
5. is the big difference between our industry and
6. that of the regular, traditional amusement
7. devices. We don't have the sensors and relays and
8. the safety systems that come from mechanism in
9. order to take care of the public safety. Thats
10. in the hands of human beings. And that is a --
11. there is some engineering in terms of delay
12. systems and things like that that are actively
13. being used to help protect the public safety, but
14. the reality is we have a lot of human involvement
15. in these activities by their very nature. And so,
16. therefore, any regulatory stuff that we do really
17. needs to address that issue of training, proper
18. training, proper qualifications for those guys in
19. leadership. The ACCT standard does that as well
20. as the accreditation -- program accreditation that
21. we're working on.
22. Point Number 4, ASTM F2959, which I
23. am on the subcommittee for and on the work group
24. for, is the applicable standard for our industry.
25. But as a member of that subcommittee, developing
1. this standard, I can attest that currently it is
2. an incomplete document. It's a great work but
3. it's about five or seven pages long and it
4. basically just refers to all of the other, in 2291
5. and all the ones that are a part of the ASTM F24.
6. It's a process that is under way.
7. There are legitimate holes and significant holes
8. particularly in terms of some of the training
9. aspects. 770-15 of ASTM has included some of
10. those training aspects, but there's work that
11. still needs to be done. And so it could take
12. years before we have that standard to the place
13. where it's complete, which leaves significant
14. holes that I don't believe we ought to leave open
15. until we get all of those things plugged. It's a
16. process that's under way. A lot could change in
17. the course of the next few months. But as it
18. stands, it continues to need work.
19. Also, ASTM F2959, also, specifically
20. states that it is not applicable to courses used
21. for educational curriculum, physical fitness
22. purposes, organizations for competitive events,
23. therapeutic programs, training purposes, or team
24. and confidence building. Though it may be
25. possibly due to some confusion or misunderstanding

1. between the permitting office and our operators,
2. currently, as we understand it, the State is
3. requiring permitting for any and all challenge
4. courses, zip lines, and adventure parks in
5. Tennessee, regardless of the purpose or use.
6. That's the information that we have gotten.
7. However, courses used for these types of
8. purposes -- and there are many, as I mentioned --
9. are not covered by ASTM 2959. They're
10. specifically exempted, which also leaves a hole.
11. So at the very least, if this board
12. determines that it is in the best interest of
13. public safety to retain reference to ASTM F2959
14. for strictly commercial operations, I also
15. strongly urge the board to document ACCT standard
16. alongside the ASTM F2959 with the stipulation that
17. the appropriate standard be applied to the
18. appropriate situation.
19. To the contrary. And I'm not sure how
20. much of this information is -- you are aware of or
21. not. As a Tennessee business owner, I actually do
22. not support the PRCA or its ANSI standard because
23. I've been a part of it. I know how it was
24. developed and I know what it has in terms of
25. industry support and what it doesn't.

1. the ANSI/PRCA 1.0.3-2014 standard was
2. written and edited by a single individual, and the
3. public comments during the PRCA's ANSI process
4. were reviewed and responded to by a three-person
5. subcommittee that was chaired by the same
6. individual. The consensus group didn't even get
7. to see the public comments until after the
8. subcommittee had already processed the comments
9. and sent their responses to the commentators. I
10. violently reacted to this and wrote letters and
11. required explanation about why that was a
12. legitimate way to do things.
13. I was on the ANSI/PRCA standards
14. committee through the entire process and
15. continually and loudly protested against this lack
16. of transparency, the lack of industry buy-in, the
17. lack of actual discussion regarding standards
18. content.
19. I asked the question what standard has
20. ever been developed where there was no discussion
21. within the consensus group regarding the content
22. of the standard. I only know of one, and that's
23. the PRCA standard. Because I asked how can we
24. understand that we have industry consensus and
25. that the content of the standard is what it needs
1. to adhere to, all with no increase in public
safety. There are things that include a proof
2. testing of the little nuts that hold the holds on
3. a climbing wall. 20 percent of them, you've got
4. to proof test them. They're not life safety.
5. There's all kinds of things that -- the
6. application of the standard is going to be wildly
7. disruptive and extremely expensive especially for
8. operations who are not a huge commercial -- with
9. lots of money to spend.
10. This standard also has no significant
11. history of use in Tennessee. I was the only
12. builder and operator who ever referenced it or did
13. it when I was a part of the association for use in
14. Tennessee, and there's no significant support for
15. its adoption among Tennesseans.
16. The PRC is asking this board to abandon
17. an incredibly successful 20-year history of use of
18. the ACCT standard in our state in order to gamble
19. on their unwanted, unproven, and unsupported
20. standard. As a stakeholder in Tennessee, I cannot
21. conceive of a scenario where that could ever be
22. considered in the best interest of public safety.
23. And despite what's being presented,
24. there is no evidence whatsoever that PRCA has
25. successfully developed a functional, vetted

1. inspector certification program to support its
2. standard. If it exists, like many things within
3. the organization -- and, again, I speak from
4. experience -- it exists only on paper.
5. The PRCA has no accreditation process to
6. address the significant issue of operator error,
7. which is the source of the majority of injuries
8. and fatalities within the state. Despite this,
9. however, over the course of several meetings, the
10. board and the PRCA has counted on this board's
11. unfamiliarity with our specific industry and its
12. history and used fear and misrepresentations in an
13. attempt to convince all of you to support their
14. standard.
15. I fully expect the presentation that
16. follows mine to be more of the same, including the
17. accident that just recently happened in the state
18. of Delaware, which was that a person disconnected
19. themselves from a belay system and fell from a
20. height. Again, I expect kind of the same line of
21. reasoning, but the reality is that in the midst of
22. those presentations, they've made accusations
23. regarding the ACCT standard and its connections
24. with accidents in our industry that are at best
25. unprovable. Okay? Some of the things represented
26. just -- there's no way to know that. You would
27. have had to have had a video and watched this
28. accident happen to prove that the carabiner rolled
29. out rather than the participant wasn't clipped
30. into the belay system itself.
31. And I can tell you they're far more
32. likely to -- the operator had gotten distracted,
33. forgot to make the connection and sent the
34. participant off than is likely that that carabiner
35. had gate roll-out on a harness loop.
36. THE REPORTER: The car --
37. MR. STOCK: Carabiner.
38. So at this time, I would like to turn
39. our presentation over to Kathy Haras, who is the
40. chair of the ACCT's Design, Performance, and
41. Installation Committee, to respond to some of
42. those presentations that have been made and
43. accusations that have been made regarding the ACCT
44. standard.
45. Kathy?
46. MS. HARAS: I'm actually going to
47. sit over there because I've got a PowerPoint,
48. so ...
and those are aerial adventure parks and our zip lines -- that's me, I've made a booking, and I've shown up to voluntarily participate. That is generally not what happens at camp. That is not what happens in a school phys-ed program. They are what we might call invitation-only groups where these are the campers that are participating in a camp program. This is a grade 10 physical education class. And the supervision and experience that is provided is different.

The reason this distinction is important is that it reasonably but not specifically maps towards the commercial application. So the open-to-the-public, those tend to be your commercial or market-driven enterprises, high through foot experiences.

The invitation-only groups, they tend to be being provided by mission-driven organizations, often nonprofits, generally community based. And it is a different experience because of how that is connected to their mission. And so it looks the same on the surface but when you go a little bit deeper, it is, in fact, different.

And so this is a fairly typical picture. I found it on Google images. I don't know where particularly it's from. But what you'll notice is that the portion of people who are in the air as compared to the portion of people who are on the ground are very different.

Lots of folks are involved in the safety system. Lots of folks are involved in the team-building aspect. But this is not what we might imagine when we say "amusement ride."

The other thing to point out -- and I've got a pointer that you can see behind you -- is that the safety system is different. This person up here (indicating) is connected to a rope system that runs down and is being managed by this person here (indicating). Similarly, these two young ladies who are climbing are being belayed by these two folks down here (indicating). So the safety system runs all the way up and comes back down to them.

That is fairly different than a lanyard-based system that you're going to see on aerial adventure parks and zip lines. And the reason that's important from a regulatory standpoint is that it is fairly easy to write a standard or make a decision that doesn't quite differ.

differences that do and don't exist among the different areas: Scope, context, definitions, approach, and differences. And my hope is that this will make it easier for you to tease apart the differences that do and don't exist among the different standard-setting bodies.

I'm going to start with the scope, which deals with how broad, wide -- what is the topic that is being covered. As you've already heard from Mr. Stock, there is a difference between the ACCT and the ASTM standard, and it particularly deals with the fact that ASTM is meant to apply when it's operated for concession or commercial recreation. And the reason for this difference is not at the structural level but very much at the operational level. And you're going to see some photos that the words might be similar, but in actual fact, what the experience is differs a fair bit. And that is the gap or the hole that ACCT is able to address.

So the exemptions that are listed are educational curriculum, therapeutic programs, training purposes, team and confidence building. And many of your camps, park districts, and schools, therefore, don't fall under the scope of ASTM.

This model hopefully explains a little bit what's going on. What we call "programs" tend to be facilitated, and rather than amusement devices that are open to the public --
The inherent intent of the activity is different. It is how they're being protected. And this is team-building aspect gets created.

You could deal with this using some sort of collective safety system, whether a safety net or water or padding, but that would be counter to the goal of this activity, which is to work together, both with the people on the ground and with the folks who are in the air. And so we need to be careful when we use the term "challenge course," which flavor of challenge course we're talking about and being aware that what mission-driven organizations that tend to be noncommercial are offering and what aerial adventure parks and zip lines and commercial activities.

operations are offering differ in ways that are significant. This is a school phys-ed class at a climbing wall, and this is a very different delay system than what you've seen in the past and what you traditionally see at climbing walls. They're using a counter-weight system, walk backwards, and the climber, who's hiding up in that corner, that is how they're being protected. And this is important because it's that team aspect that is trying to be leveraged.

Moving on to "Context," this is about the setting and the circumstances in which the event or the experience takes place. And what is most important here is that the laws of whatever state you are in continue to apply when you are on a challenge course, zip tour or aerial adventure park. The standards do not supercede, duplicate, or replace those regulations. And so it is important when we are reading standards to be aware of that context.

ANSI's Z359, which absolutely applies in a labor context, does not apply to sports activities such as mountaineering because the inherent intent of the activity is different. It also does not include window cleaner belts or sports-related activities. That is outside their scope, outside their mission, and so it is not particularly appropriate to look at that.

I'm not going to read this paragraph to you, but I would like to draw your attention to the final sentence which is yes, the systems, subsystems, components, and equipment might be the same, but when you are doing these other activities, they do not intend for their standards to apply. And so it is important -- you know, this is the fine print at the beginning of the standard and it's not very exciting reading -- but it is important in terms of figuring out, well, does this matter? Finally, "Definitions." As we continue to move forward, it seems silly to say that a word might not mean what you think it means. This is particularly true from a standards standpoint because if you are comparing standards, or more appropriately, when you are comparing standards, if you think the word means the same thing throughout all the standards that you are comparing, that is another opportunity to make a mistake because the word might not, in fact,
1. this doesn't seem the same at all. There are two main approaches. One is a systems approach that focuses on the whole, and one is component analysis, whereby, the parts of the system are broken into separate elements. And being aware of which approach is being used is helpful because it lets you know where the numbers or the data have come from and why they are important.

2. ACCT uses a systems-based approach.

3. There is harnesses, being that they are the patron-conveying unit, receive a lot of the tension. And what's important here is that there appears to be a difference in the strength of the standards. However, what you'll notice is between the PRCA standard, the ACCT standard, and the ASTM standard, the listed specifications and standards that are cited are the same.

4. One of the base standards is EN 12277. And, again, I'm not going to read this technical explanation to you, but I would draw your attention to this bracket right here which talks about 15 kilonewtons. That's an important number when we're talking about this system. This is an EN 12277 harness which is recognized by all the standards that we are discussing today.

5. The statement that seems to be the substantive or significant or they're not relevant wording. Differences that don't matter aren't in this context. So one of the differences is that the equipment standard is intended to apply to participants and not to equipment used by installers, operators, or other staff members. That is because the labor regulations in the state are, in fact, the laws that apply. And so it is not intended to convey that installers, operators, and other staff members can do whatever they want, but simply to recognize that the rules and regulations and standards that pertain to them have already been established. It's the participants that need particular care and attention to their safety. So that is a difference.

6. There is a fair amount of discussion among participants that need particular care and focus in this context. So one of the differences is that all manufacturers are going to stamp a carabiner or any other type of connector with a published rating of 22 kilonewtons is equivalent, because it's a rounding issue, and we don't expect that all manufacturers are going to stamp a carabiner or any other type of connector with a decimal point. Furthermore, the safety factor is 5.

7. 1 percent difference. The last thing I will say about the level of safety. It is a safety chain, and the chain is as strong as its weakest link. So we can be thinking that surely a set of lanyards with a breaking strength of 16 kilonewtons or 22 kilonewtons, which converts to 5,000 pounds, well, those would be better. But if we are connecting them to the same piece of equipment, that's not creating a different system safety factor.

8. From the presentations that you have received from the PRCA, a number of differences have been highlighted. Some of those differences matter. Some of them don't matter. And some of them simply don't exist. They are differences in the source of confusion or misunderstanding is not, in fact, part of the ACCT standard. It is part of the explanatory material. And it is our metrication policy which is simply that a published rating of 22 kilonewtons is equivalent, because it's a rounding issue, and we don't expect that all manufacturers are going to stamp a carabiner or any other type of connector with a decimal point. Furthermore, the safety factor is 5.

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1. And finally, a little bit more about
2. carabiners, the difference here is that when they
3. are used as a fall arrest system, ACCT categorizes
4. its safety equipment into four different
5. categories. And the reason those four categories
6. exist is because the loading and the safety
7. systems used are different. We have not simply
8. chosen one number. We have recognized that there
9. are differences across these four safety systems.
10. So similarly, lanyards that are used as
11. fall arrest systems, not the photo that you
12. previously saw, they are intended to be compliant
13. with work-at-height legislation throughout North
14. America. So this difference that has been
15. reported is not actually a difference when you
16. read all of the words.
17. And I think that in the interest of
18. time, I will end my presentation there and turn
19. things over to Shawn Tierney who is the executive
20. director of ACCT.

CHAIRMAN FOX: Sir, may I ask a
1. question? How long will your presentation last?
2. MR. TIERNEY: The most important
3. thing of the day. I will keep my presentation
4. very brief. I'm expecting about no longer than
5. ten minutes. And I hope you can appreciate that.
6. Again, I just wanted to thank you,
7. Chairman Fox, and the rest of the board for the
8. opportunity to come before you today. I will also
9. try to speak slowly so that you can capture what I
10. have to say.
11. I really just want to sort of wrap up
12. our presentation with a couple of main points. I
13. want to talk about our organization, the
14. Association for Challenge Course Technology, ACCT,
15. and then a couple of main points around our
16. rationale for this board considering inclusion of
17. the ANSI/ACCT 3-16 standard in the Tennessee
18. rules.
19. For the last year, our association
20. has provided representation and participation at
21. these meetings in the hopes of really providing
22. some assistance, some information, some
23. clarification. I know that a lot of these
24. standard discussions really gets into a lot of
25. nuances that there's really no way you can
26. completely consider.
27. What you're ultimately going on is, I
28. believe, a process of verifying and a process of
29. ensuring that not only operators are acting in the
30. best interest of public safety to protect
31. consumers, but ultimately that the organization
32. has not only the credibility and the standing and
33. the ability to continue not only to develop the
34. standards but to ensure that, also, we have a
35. process where we can ensure that the risks
36. associated are being mitigated to the greatest
37. extent possible.
38. So our organization actually started
39. in the late '80s, came out of a builders symposium
40. and over the years has grown into a very large,
41. reputable, credible organization. We are the
42. largest ANSI, American National Standards
43. Institute, accredited standard development
44. organization for this industry. We do have the
45. 03-2016 American National Standard. I believe
46. you-all have a copy of that in front of you so
47. that you can get a sense of what these standards
48. entail and the work that has gone into that
49. publication. It is, essentially, the ninth
50. edition.
51. We've been publishing standards for
52. the past 20 years. We are a standard development
53. organization. But we go beyond that. Our
54. organization is really comprised of a nucleus of
55. over 3,000 members worldwide, not just the United
56. States and North America. We have members and
57. operators throughout Europe, Asia, the Caribbean,
58. Japan, Korea, Central America. So we really do
59. have tremendous international support. We're just
60. not a U.S.-based organization. We truly are
61. international. And I think that fact alone gives
62. us a lot more information not only about what's
63. happening on the international level but how we
64. can then take that information to improve the
65. process and the standards that we develop.
66. So the rationale really for including
67. our standard, there's a couple of things. Adding
68. our standard to the Tennessee rules provides the
69. State of Tennessee and the constituents with
70. access to really a wide variety of our
71. organizational benefits. I really do want to
72. highlight this because I think that is a very
Lastly, ASTMs, as you’ve heard, F 2959, specifically excludes educational fitness programs, organizational competitive programs and events, the repeated programs, programs for training purposes, getting confidence building. There’s a lot of exclusions there as well. It’s not just the commercial operations. There’s an entire industry of noncommercial, what we call traditional uses.

The ACCT standard has a proven track record since ’94 in effectively supporting these noncommercial operations such as summer camps and schools operating multiple programs which utilize components of the challenge course industry.

In the ASTM standard, the expectation is that operators have the on-site skills to do their own internal inspections and internal maintenance, while the ACCT standard does not make that assumption. And that is a huge consideration right there.

The ACCT standard requires inspections to be a third-party process outside the ownership of the facility. Currently, ACCT certified inspectors at the professional level are qualified to provide third-party inspections in accordance with either ASTM or ACCT standards. However, current Tennessee rules make no distinction between commercial and noncommercial applications. As a result, under Tennessee rules, camps and schools are subject to a standard that was never intended to cover such installations. By adding the ANSI ACCT standard, not necessarily replacing the ASTM standard to the Tennessee rules, noncommercial facilities, like camps and schools, would be inspected to a more appropriate standard for their application.

So I’ll just close by saying if the safety board wants to retain use of F 2959 for regulating challenge courses, zip lines, and aerial adventure parks in the state of Tennessee, I would urge you to consider adopting ANSI ACCT 03-2016, the manual that you have in front of you, alongside, for the reasons I’ve just stated. Again, I wanted to thank you-all for hanging through our presentation which covered a lot of information, and I’ll just open it up to any other questions that you might have at this point for us.

CHAIRMAN FOX: Any questions from the board?

MR. HALE: In your guidelines, in
1. the ACCT guidelines, are portable zip line devices
2. addressed anywhere in that? If not, are --
3. MR. TIERNY: When you say
4. "portable," are you referring to sort of
5. commercially made, like, backyard zip lines,
6. things that particularly have --
7. MR. HALE: I'm talking about mobile
8. zip line devices. I was in another state -- and I
9. don't know of any local -- any carnivals that are
10. playing in Tennessee that are bringing one in --
11. but a carnival that I was at in another state had
12. a zip line system that was brought in there and
13. erected for the five days and torn down and moved
14. to another fair. Is that addressed in your
15. standard, and if not, is that something that you
16. are looking at addressing?
17. MR. TIERNY: I would defer to some
18. of my colleagues, actually, for that answer
19. specifically so that I'm not giving any inaccurate
20. information about that.
21. MS. HARAS: Right now they are
22. addressed. There are no separate guidelines,
23. however, for that, so they would need to meet all
24. of the standards for permanent zip lines. There's
25. not a separate set of standards that they would be

1. required to meet.
2. MR. HALE: And I can certainly
3. agree with you, as far as cable inspection and
4. sizing and harness and that type of thing. I
5. guess my particular question is about the anchor
6. points and whether that is something that would be
7. addressed in the future. Obviously, they're not
8. coming in with a portable line and hooking it to a
9. tree, so...
10. MR. JACOBS: The manufacturer
11. specification --
12. THE REPORTER: I don't know who
13. that is.
14. CHAIRMAN FOX: Excuse me. You'll
15. have to stand and state your name.
16. MR. JACOBS: Keith Jacobs. I am
17. also with ACCT.
18. The manufacturer specifications for
19. portable rides would have to be followed. There
20. is a manual for the three manufacturers of current
21. portable zip lines that do specify what the anchor
22. strength, the ratings, and how they need to be
23. inspected are.
24. CHAIRMAN FOX: Thank you.
25. Anything else? Any other questions?
courses, ariel adventure parks and zip line

This is a 3,375-pound lanyard that was
We're trying to educate.

dramatic. If someone is falling and dying, it is
dramatic stuff and everything, but safety is
All right? But I know that what you're saying is
dependent on how to test harnesses appropriate to this

way? Why adopt a

industry?

We had some comparisons back and forth
of the two standards, and one of the things that
was mentioned was the redundancy. The
redundancies, if you look at those two standards
side by side, again, are different. Like we said,
the definitions make a big difference. One of
them, the ACCT standard, says safety factor. The
PRCA standard says tinsel strength. They are
different. There's a major difference there

between safety factor and tinsel strength. Safety
factor is part of a whole system, period. All
right? Systems have to be complete. You can't
just sit there and say, well, we'll use this
system and it will be all right even if it's less
strength. It doesn't work that way.

And harnesses, the straps on leg straps
on harnesses can be 3,375 pounds when you look at
the ASTM requirements and some of the other
requirements for harness manufacturing around the
world.

The belay loop, the thing that people
are attaching to, is 5,000 pounds here in the U.S.
That's what's required. So that entire system is
5,000 pounds. The auto-lock carabiner is 5,000
pounds. The lanyard, 5,000 pounds. The
attachment is 5,000 pounds. It's a 5,000-pound
system all the way back to the anchor
requirements. Not "Well, maybe we'll do 3,375
here and maybe we'll allow this gate to open under
stress."

Putting a standard out there that if I
came in as a builder or a manufacturer or somebody
who wanted to run a course here in Tennessee, you
put out a standard that says, "Well, you can use
1. anything one of these carabiners.” Because -- it's so
2. vague. It says, "It could be mechanical. It
3. could be fall arrest.” And it leaves it all up to
4. me. And then I start looking through those
5. standards. I wind up with this carabiner out
6. there like we had in the zip line course here in
7. Tennessee that opened and the person fell to the
8. ground. Does it matter if it was a worker or a
9. user? It doesn't matter.
10. All right. The idea here is to
11. develop -- do you go with the best, safest
12. standard. ASTM does not address a lot of things.
13. The current legislation -- we were just talking a
14. little while ago, the current legislation right
15. now has people like the Boy Scout camps and so
16. forth being held to the same regulations, same
17. permitting costs and everything else. And that's
18. an absolute shame but that has to go through
19. legislative services so we can try to get that
20. addressed.
21. Boy Scout camps operate on, you know,
22. volunteers. They’re team building. That’s what
23. they’re all about. They’re not about commercial
24. operations and so forth. They shouldn’t be
25. included in the same category. But that’s

1. something to be dealt with separately,
2. It all comes down to safety. You've
3. heard me here numerous times. I even joked before
4. that I feel like a member of the board already,
5. I've been here so much. We've offered to do the
6. training for the new inspectors. We've offered to
7. do that at no cost.
8. This isn't a popularity contest. This
9. is about what's safest and what's best for the
10. people.
11. I've got one last thing I'm going to
12. pass around. I do need to get it back, please.
13. No one keep it. And it's just to make a point, a
14. very important, valuable point. What you see
15. there is this man’s last half-second of life with
16. a carabiner rolled out, improper connector.
17. Tennessee OSHA cited someone here in Tennessee for
18. using a connection that did not meet the PRCA
19. requirements. Did it meet the ACCT standard
20. requirements? Yes.
21. MR. STOCK: It did not.
22. MR. BARKER: And you also need to
23. know that in the ACCT standard -- we keep saying
24. the ACCT standard has been 20 years, 20 years,
25. 20 years. But the ANSI/ACCT standard has been

1. getting developed for the last couple of years.
2. If you take the eighth edition standard and lay it
3. next to this, they're two totally different
4. things. And they needed to be because those first
5. 20 years, those standards were developed
6. specifically by the builders, so it needed to be
7. changed.
8. Once again, the PRCA standard has --
9. is fully harmonized with the ACCT standard except
10. with safety issues, except with training issues.
11. It follows a national training scheme developed
12. successfully in Australia and New Zealand. That
13. has been working excellent over there for many
14. years. It's a good safety standard. And that's
15. the key. It's a safety standard. In order for a
16. thing to be classified by ANSI as a safety
17. standard, every single aspect of that standard has
18. to be open for public review. From definitions,
19. to explanatory notes, everything had to be opened.
20. Nothing could be closed and controlled
21. specifically by that little group. That’s what
22. makes it a safety standard.
23. It's also being controlled right now
24. by a standard managing committee that represents
25. over 5,600 different entities, associations,
1. CHAIRMAN FOX: Any other questions from the board?
2. (No verbal response.)
3. CHAIRMAN FOX: Thank you for your presentation.
4. MR. BARKER: Thank you-all for your time.
5. CHAIRMAN FOX: Okay. Under Old Business we've heard from both groups. We've heard from both -- I guess both groups three times now. So with that being said, we need to make a decision. Under 16-01, recommendation to adopt the ANSI/ACCT standard, is there -- what's the pleasure of the board?
6. MR. HALE: I first want to say I believe, wholeheartedly believe, that both of these organizations are passionate about safety.
7. I don't think there's any doubt that both of y'all are passionate about the safety of participants.
8. But with that said, I have spent too many hours trying to weed through and review each of your standards. And so I'm going to make a motion that we document the ANSI/ACCT guidelines to complement the ASTM standard in Tennessee.
10. CHAIRMAN FOX: Any other discussion?
11. MR. DEASON: I see a concern in whichever standard that has been presented here today it's going to take a legislative change to bring that about. It cannot be done by rulemaking. And so I just want to make sure we're clear on everything here. The statutory language currently requires that the amusement device meet ASTM standards.
12. CHAIRMAN FOX: Right.
13. MR. BAILEY: So if you adopt whichever standard that has been presented here today it's going to take a legislative change to bring that about. It cannot be done by rulemaking. And so I just want to make sure we're clear that whatever standard, if any, is adopted today, it's basically a recommendation for legislation to incorporate that either along with the ASTM or in substitution of it or whatever.
14. CHAIRMAN FOX: And so the other side of that is if a legislation decides not to do it, then it does not pass and we're still at the ASTM rules and regulations.
15. MR. BAILEY: That would be correct, yes, sir.
16. MR. HALE: I think that my intent was that this not replace the ASTM but to supplement or complement the ASTM standard, and not to completely replace it.
17. MR. BAILEY: Correct.
18. CHAIRMAN FOX: So your motion is -- do you want to modify your motion to express that?
19. MR. HALE: I thought my motion already did.
20. CHAIRMAN FOX: Okay. Well, then if it does, there needs to be a second.
22. MR. HALE: My recommendation is that we document the ANSI/ACCT guidelines to complement the ASTM standard.
23. MR. BAILEY: Again, just for clarity, when you say complement, do you mean to work in conjunction or to be the two recognized standards?
24. MR. HALE: No, to work in conjunction.
25. MR. BAILEY: Work in conjunction.
26. And I don't know if there is any conflict between -- like, on a particular -- I've dealt with a lot of OSHA standards and so if one body of standards address a situation a certain way and the other addresses it in a different way, which one rules? And I don't know if there's any situations out there like that, but I would be willing to bet it will come up.
27. MR. HALE: If that exists, I did not find it in my research that there was a conflict between the standard that my motion covers and ASTM.
28. CHAIRMAN FOX: Yes, sir?
29. MR. DEASON: I see a concern in that for permitting purposes -- you know, we're not the experts. We're not the industry experts -- when these reports come in, we've had -- you know, we've had problems with the various forms and this and that in determining what standard was applied, and we've had recent issues with that. I can foresee a potential -- when somebody submits a report and it says ACCT certified, I mean, whether or not -- which standard that you use, do they use all of one and part of another. Would it be better to -- and I'm just throwing this out there to say that in terms of zip lines in aerial adventures and stuff like that, as opposed to working in conjunction with,
1. that ACCT may be used as well as ASTM, as opposed
to -- that "in conjunction with" is what bothers
3. me and what, I think, we'll get off the beaten
4. path and can be interpreted a lot of different
5. ways.
6. MR. BAILEY: Well, I could add to
7. that thought a little bit. Just adding to that,
8. what Chance is, I think, onto there is -- and I
9. don't know if the legislature would want to do it
10. or not because they specifically put ASTM in the
11. statutory language, but would they be willing to
12. not reference a particular standard and allow the
13. board to do that through rulemaking? So that way,
14. if 20 years down the road there's a better group
15. of standards, you wouldn't have to go through the
16. legislative process to change it. So I don't
17. know, I mean, that's just something I was thinking
18. out loud. Whenever you write something in the
19. statute, it's pretty hard -- it's pretty hard to
20. get it changed because it's kind of like trying to
21. herd cats sometimes, but -- where if they'd leave
22. it, leave that to the experts, you know, through
23. the board to determine which is the better safety
24. standards and adopt it by rule and change it by
25. rule or amend it by rule -- but, I mean, I know

1. that's not something you-all can do.
2. The legislature may say, "We want to
3. know what set of standards and we want to put it
4. in the statute." But it would be functionally a
5. lot easier if they didn't do that, so ...
6. MR. HALE: Well, I guess I had
7. maybe the misconception that we already had the
8. authority to adopt the ACCT as rulemaking because
9. the ASTM is part of the law already.
10. MR. DEASON: As inspectors but not
11. just standard itself.
12. MS. JEFFRSON: Right. I'll speak
13. to that. The law allows the commission of the
14. department to approve other certified agencies.
15. However, the ASTM standard is the approved
16. standard for the state of Tennessee, and those are
17. two separate issues.
18. So if we're talking requesting
19. approval from the commissioner to certify
20. inspectors in Tennessee, then we can -- the board,
21. in your authority, can submit that recommendation
22. to the commissioner, and he'll decide whether or
23. not, you know, he wants to do that.
24. If we're talking standards, on the
25. other hand, because Tennessee recognizes the ASTM

1. standards, then that's a different process.
2. Although a recommendation can be made to the
3. commissioner that we utilize ACCT standards or
4. PRCA standards, whichever you-all prefer, at that
5. point, then we have to decide -- the commissioner
6. has to decide -- is this in this year's
7. legislation? And I know Leanne is not here today.
8. She speaks to that. But will it be in next year's
9. legislation? But that's something totally
10. different.
11. CHAIRMAN FOX: Okay.
12. MR. HALE: And in March of 2015, we
13. adopted that ACCT inspectors were the
14. recognized -- that was the recognized standards
15. for people to inspect zip lines in Tennessee,
16. correct?
17. MS. JEFFRSON: Yes, sir. In
18. addition to --
19. MR. HALE: And so part of my motion
20. is that if we believed that that was the way then,
21. and was effective, why would we not continue
22. forward with that same standard?
23. MS. JEFFRSON: Right. Well, that's
24. what we're doing now. I think their question is
25. different. They've already been approved. ACCT

1. has already been approved as a certifying agency
2. in Tennessee. Now they want their standard to be
3. used as well. Because although they were approved
4. as a certifying agency, their standard was not
5. approved, and, of course, we can't do anything
6. contrary to what the law states. And the law only
7. recognizes ASTM.
8. CHAIRMAN FOX: So our function,
9. then, would be to make a recommendation to the
10. commissioner and -- whether it would go forward or
11. not.
12. MS. JEFFRSON: Right.
13. CHAIRMAN FOX: That would be our
14. function here today --
15. MS. JEFFRSON: Yes.
16. CHAIRMAN FOX: -- or not. Okay.
17. MR. HALE: So I will modify my
18. motion to say that we recommend that to the
19. commissioner.
20. MR. RADER: And I will modify my
21. second to second that.
22. CHAIRMAN FOX: Okay. We have a
23. motion on the floor, a motion and a second on the
24. floor, to make a recommendation to the
25. Commissioner of Labor to adopt the ACCT/ANSI
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<td>standard for inspection purposes, correct?</td>
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<td>2.</td>
<td>MS. JEFFRSON: Yes.</td>
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<td>3.</td>
<td>MR. HALE: That's correct, sir.</td>
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<td>4.</td>
<td>CHAIRMAN FOX: Okay. Any discussion?</td>
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<td>5.</td>
<td>MR. FARMER: You might want to clarify which edition that you wanted to adopt, because there is 9, I think is what you said, right?</td>
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<td>6.</td>
<td>MR. STOCK: It's gone through nine editions. The current one is the one that you have.</td>
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<td>7.</td>
<td>MR. FARMER: But you might want to clarify either the latest edition or what edition you want.</td>
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<td>8.</td>
<td>MR. RADER: The 03-2016.</td>
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<td>9.</td>
<td>MR. HALE: Yes, that's correct.</td>
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<td>10.</td>
<td>MR. RADER: David, is that --</td>
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<td>11.</td>
<td>MR. HALE: That's correct, 03-2016.</td>
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<td>13.</td>
<td>CHAIRMAN FOX: Okay. All right.</td>
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<td>14.</td>
<td>All in favor of the motion, let it be known by saying &quot;aye.&quot;</td>
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<td>15.</td>
<td>(Affirmative response.)</td>
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<td>1.</td>
<td>CHAIRMAN FOX: All opposed, like sign.</td>
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<td>2.</td>
<td>(No verbal response.)</td>
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<td>3.</td>
<td>CHAIRMAN FOX: Motion carries.</td>
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<td>4.</td>
<td>Okay. Under 16-02, Recommendation to Adopt ANSI/PRCA Standards. What is the pleasure of the board?</td>
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<td>5.</td>
<td>(No verbal response.)</td>
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<td>6.</td>
<td>CHAIRMAN FOX: Hearing no action, the, I guess, recommendation at this time would be rejected.</td>
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<td>7.</td>
<td>Moving to New Business. Item Number 8, 16-03, the International Association of Trampoline Parks would like to present information on their service tech certification program.</td>
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<td>8.</td>
<td>And who is here to speak to that, please?</td>
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<td>9.</td>
<td>MR. REED: Good morning.</td>
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<tr>
<td>10.</td>
<td>Mr. Chairman. My name is Ed Reed. I'm with the board of the IATP, International Association of Trampoline Parks. Five minutes, I promise.</td>
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<td>11.</td>
<td>Good morning. We would like to thank you for the opportunity to come before you today to talk about our program and what we would like to see as far as legislation and regulation with the State of Tennessee.</td>
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<td>12.</td>
<td>We realize that in our industry that regulation is a way to help make our parks safer for our customers, and we support the regulation of our industry and welcome the opportunity to see how we can help with the State of Tennessee.</td>
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<tr>
<td>13.</td>
<td>The IATP has had the opportunity to work with regulators or legislators to help establish regulation in Colorado, Arizona, and Michigan, and we are excited to work with Tennessee. We believe that there are 15 parks currently operating in the state of Tennessee that will be affected by this legislation and regulation which is now in place, and six of those parks are IATP members.</td>
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<td>14.</td>
<td>We have reviewed the current legislation and had the opportunity to meet with Ms. Jefferson and her staff, and some of the questions that we had, some of the discussion that we had led to possibly coming before this board today and asking those questions. And so the board has asked me to open up that dialogue with you today.</td>
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<td>15.</td>
<td>The first item that we would like to present for your consideration is adopting specifically ASTM 2970-15 to be used as a baseline for the inspection in compliance of indoor trampoline parks.</td>
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<td>16.</td>
<td>ASTM 2970-15 is the standard practice for the design, manufacture, installation, operation, maintenance, inspection, and major modification of trampoline courts. Our board has worked and continues to work closely with ASTM to develop this standard.</td>
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<td>17.</td>
<td>And maybe I could offer up a little bit of history that would just give you a little background into why we think this is important. The first park for our industry opened in 2005, and today we have more than 400 parks open in the United States. In 2011 ASTM starting talking seriously or taking a serious look at our industry and decided a task group should be set up to develop the standard for our industry. At that time we had less than 50 parks.</td>
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<td>18.</td>
<td>Our task group began under the subcommittee for the amusement rides and devices, 2460, and then in 2014 ASTM had seen a shift in amusement rides and devices from traditional roller coasters and Ferris wheels to more patron-driven amusement rides. And so 2461 was...</td>
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1. created for adventure attractions or patron-driven
2. amusement rides. This is the community we now
3. work in.
4. The first task group meeting came in
5. 2012. In June of 2013, we were able to codify our
6. first standard. We had a new version published in
7. 2015, and we expect a new version to publish again
8. in 2017. So this is a very -- it's an ongoing
9. working group. Our industry continues to grow and
10. the group tries to stay with it. But there's been
11. a lot of clarification. It's a very prescriptive
12. standard, and there's a lot of information that's
13. in it.
14. I think when -- as I mentioned
15. earlier, I also represent Jumpstreet. We have
16. three parks here in Nashville. And when we went
17. through the inspection process to comply with the
18. new regulation for trampoline parks, Mr. Wayne
19. White came in and he did our inspection for us.
20. And when we started the inspection, we started
21. with, you know, "Mr. White, what will you inspect
22. as we go through this park today?" And so he went
23. through his list of things, which are
24. safety-driven, absolutely. So they have to do
25. with our maintenance records, our inspections, our

---

1. injury records, making sure we have our fire
2. extinguishers, making sure that we have access in
3. and out of the building, so -- but when we started
4. delving into our standard, there was things that
5. came up that had to do with containment, that had
6. to do with redundant netting, had to do with
7. capacity ratio for people being on the court,
8. padding that goes around a court. It's very
9. prescriptive and it makes our industry much safer.
10. And so as we went through, Mr. White
11. spent the day with me, thankfully. And so we
12. walked through all three of the parks we have here
13. and we just kind of dissected what it was and kind
14. of the differences between what the normal
15. amusement ride device inspection would be and what
16. it would be if it was based on our standard. And
17. I think it's a much more effective inspection to
18. have a base understanding, because there are a lot
19. of standard -- there are a lot of safety
20. precautions in there that I think take precedence,
21. so -- and we appreciate his time going through
22. that, and thankful we passed those inspections, so
23. it was great.
24. We do think that in the end, the ASTM
25. standard creates a safer environment for our

---

1. customers, and I think that's what we're all
2. after, and so we support it very much, and so we
3. would definitely like to see that adopted as a
4. baseline for third-party inspectors when
5. inspecting at our trampoline parks. And if the
6. time arises, we'd certainly be happy to work with
7. the in-house inspectors.
8. Congratulations on that. That's big
10. But we'd certainly be willing to work
11. with them, too, to walk through our standard and
12. educate them to our way of thinking.
13. The second item we'd like to present
14. for your consideration is a third-party inspector
15. program similar to ACCT. IATP has developed an
16. inspection program specific to the indoor
17. trampoline industry. We would like the board to
18. consider recognizing the IATP Service Tech Level 1
19. as an improved third-party inspector program for
20. indoor trampoline parks.
21. The Service Tech Level 1 Inspector is
22. required to attend eight hours of approved
23. training on ISTM 2917 specifically, and to pass an
24. open book exam specific to that standard.
25. We also recognize NAARSO and AIMS
language that would allow for the operator to
1. close down the device if the injury is a result of
2. a device failure.
3. If, however, the serious injury is a
4. result of patron-directed activity or behavior,
5. and not the device failure, then the injury
6. reporting will continue in place but the device
7. will not need to be closed down for the
8. inspection.

9. The safety of our industry relies not
10. only on the responsibility of our manufacturers
11. and operators but also on the responsibility of
12. our patrons. We can do much in our industry to
13. build and operate optimally safe facilities for
14. our customers, but ultimately, we cannot control
15. the outcome of every patron's behavior or jumping
16. activity.

17. Our industry, I think, is caught a
18. little bit -- we're obviously regulated under
19. an amusement device, but our activity is more akin to
20. an athletic/sporting activity where it's very
21. active from the patron. And so I think that you
22. would see in our industry that our injury rates
23. are higher than what you would typically see in
24. the amusement industry, but I think that you would
25. see that they are lower than what you would see in
26. an athletic competition such as football or soccer
27. or even cheerleading.

28. So most of our injuries are due to
29. patron-driven and not failure of the device. The
30. most common failure of the device that we would
31. see in our industry would be a bed tear, so the
32. trampoline bed tears and somebody goes through the
33. bed. But in our industry, with the ASTM, if
34. they're compliant with our standard, there's a
35. redundant system underneath there and it should
36. not lead to an injury. So we really don't see a
37. lot of other device failures within our industry.
38. There are some where possibly the padding or the
39. suspension system or whatever are possibly not as
40. protected as they should be. So that would be a
41. situation where it would need to be inspected but
42. the majority of our industry is definitely patron
43. driven, so...

44. And I think that, you know, you're
45. seeing it within ASTM. Moving from 2460 to 2461,
46. going to that patron driven, I think the ropes
47. courses are seeing some of the things where it is
48. very patron driven and rely on those guys. And we
49. work with our patrons to become safe in our
CHAIRMAN FOX: I think we would all have to adhere to the same rules and regs. And we had a commissioner -- a meeting with Commissioner Phillips the other day and we looked at maybe going forward to establishing some objective or using some objective criteria for the report feature. But right now we're under the law that's written. So until that changes, we are where we are.

MR. REED: Okay.

CHAIRMAN FOX: And as far as your information on 2970 or your request about 2970-15, we're already there on that. So that's what someone would have to inspect, to that particular criteria. If you haven't read that lately, it's exciting stuff.

MR. REED: So is 2970, so...

CHAIRMAN FOX: 2970-15. And can't wait until '16 gets here.

MR. REED: '17.

CHAIRMAN FOX: But I think that we would have to inspect to those standards, so I think we've answered that question. But as far as the reporting goes, right now the law is pretty specific on what we do, but we hope to maybe change that a little bit later on. But again, that's a recommendation and we have to get the legislature to buy in on that as well.

MR. RADER: Speak with their legislator, I guess.

MR. REED: Okay.

CHAIRMAN FOX: Okay. Anything else, sir?

MR. REED: That's it, sir. Thank you very much.

CHAIRMAN FOX: Okay. Thank you very much.

Okay. Still under New Business,

16-04, Recommendation for Proposed Fee Structure.

Ms. Jefferson, on the 16-04,

Recommendation for Proposed Fee Structure, I'll turn it over to you.

MS. JEFFRSON: Okay. Well, at the last meeting, the department provided the proposed fee structure and asked for your recommendation on that fee structure. And we just wanted to get the recommendation today. Did you-all need for me to review that information? Did you have any questions about what we proposed earlier?

MR. RADER: I don't.

CHAIRMAN FOX: Do you have a question?

MR. MOORE: No. I think I've reviewed it. And I did not bring a copy of that. But no, no questions.

CHAIRMAN FOX: Okay. What's the pleasure of the board on the proposed fee changes?

MR. HALE: Do you have that information that we're talking about?

MR. FISHER: Actually, I don't have that information.

MR. HALE: Would it be possible that we could provide him with that information? I thought maybe it was in there but it's not. At least it's not in mine. Of course, I might have taken it with me, too.

MS. BENNETT: Let me see if I have a copy.

MS. JEFFRSON: I printed a copy but I left it upstairs, but we'll be happy to provide a copy after the meeting.

CHAIRMAN FOX: He's looking at a document here. Just a couple of minutes. He wants to review this.

MS. JEFFRSON: If we have a few minutes, I can have someone go up and make some copies.

CHAIRMAN FOX: Folks, let's take ten minutes and we'll come back. We'll be back here at 8 minutes till...

(Recess observed.)

CHAIRMAN FOX: Ms. Jefferson, one of the things that Mr. Moorer did, he took the last information that we had and put it on an Excel spreadsheet and he was wanting to present that. It's the same information that you had given us out, if that's okay.

MS. JEFFRSON: Okay. That's fine. Okay. So the last time we talked about the proposed fee structure, we talked about there being a need to revise the current rules because we need to create a new fee structure, because we're moving actually in a different direction now. So we wanted to create a new fee
1. structure that would allow us to become a viable business that it's going to be affecting, the
2. amusement device unit. Because everybody out here probably understands that we don't have enough funding to support a program.
3. Although we received legislative funding for this year and next year, it's only good for two years. It's only been guaranteed two years, but after that we're pretty much on our own.
4. What we're trying to do is establish a fee structure that will allow us to operate the unit after the next two years. And last time, I talked about the program history and program facts, the purpose of the proposed fee, the number of companies that have valid permits, the number of devices per company, the device range and number of companies that fit within certain ranges, and then we talked about a flat fee.
5. I'm not familiar with that information, that particular chart. And if someone wants to explain ...

**Chairman Fox:** I would ask Mr. Moore if he would go through that with us.

**Mr. Moore:** What I did following that last presentation that Ms. Jefferson gave was -- as you can see, due to laziness, I did not type out the company name. I didn't type out the type of amusement device unit. Because everybody out here probably understands that we don't have enough funding to support a program.

**Chairman Fox:** And one other question I did have, Ms. Jefferson, was it considered to have an increase in percentage -- not only change how it was done but just a basic increase in percentage across the board versus -- because the reason I say that, if you look at -- you know, some of them are going down almost half, some of them even more than half, and several are a hundred percent or above, as I mentioned earlier. But I was just wondering if that was the only way to increase the fee that was looked at.

**Ms. Jefferson:** Okay. Well, what we did -- and for people in the audience, I'm not sure if you understand what we're doing -- but here, the number of devices -- we looked at companies, amusement device companies that we currently serve. Last year we permitted approximately 250 companies, and we took a look at the number of devices that each company had. Of course this varies because there are different types of amusement devices. We consider, you know, everything in that amusement industry. We consider, say, for example, if you're a trampoline and you have, what, 5, 6; say, if you're a zip line, you have 2 or 3; if you're a carnival Ferris wheel, you have 20; or inflatables, you have 30.

We considered all of that and we counted the possible, and what we came up with was a flat fee, charging a flat fee. Because right now you may be familiar -- I'm sure you're familiar with the fees. If you're an inflatable, for example, that's $25 -- is that correct? -- $25 per device. If you're a kiddie ride, it's $50 per device. If it's a large ride, then it's $100 -- or a large device, rather, $100. And if it's some spectacular ride, it's $200 per device.

So that's the way we currently do it. Based on that, it will not fund the program. So that's why we're trying to come up with something a little differently. And looking at this particular chart, and looking at what we came up with earlier, we decided that maybe a flat fee...
MR. RADER: -- 3, 4, 5 ...
1. but a $4,000 increase in my business is a lot of money. I mean, that makes a difference of how much help I keep and things like that.
2. But I certainly agree and understand that we've got to do something to increase the revenue. I'm not 100 percent sold on this particular system, at least not yet. But I don't know that I've got an idea for something better, either.
3. And I guess part of that I base on the fact that it takes 20 minutes to inspect an inflatable and it may take eight hours to inspect a roller coaster. So I think we also have to look at it in the amount of time that our employees have invested in that work versus the cost.
4. MS. JEFFRISON: Well, I was going to say I was thinking about those -- the third-party inspectors, is that the one we're still -- the third-party inspectors are going to be inspecting these devices initially?
5. MS. KELSEY: (Nods head.)
6. MS. JEFFRISON: So the inspectors that we have on staff, with those that we have on staff, they'll just be focusing on the fairs and carnivals and emergencies? Is that correct?

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5. MS. KELSEY: (Nods head.)
6. MS. JEFFRISON: So the inspectors that we have on staff, with those that we have on staff, they'll just be focusing on the fairs and carnivals and emergencies? Is that correct?
1. MR. HALE: I'm certainly not blind to the fact that we've got to have more funding.
2. MS. KELSEY: Sure.
3. MR. HALE: Do I believe we'll ever fully fund it? I'm skeptical that we would ever fully fund it. We don't fully fund the highway patrol either. You know, they're not self-sufficient either and they're a safety agency, too.
4. MS. KELSEY: To your point, what we do not want to happen and hopefully that's what we're trying to help, preventing the storm before it hits. You know, you get your life jackets out before the dam breaks. But what we want to make sure is that when we get to a point in two years we have these inspectors in place. And all of a sudden the brakes are on and we no longer have funding to support that. I think that --
5. MR. HALE: I am fully in support of finding a way. I'm just not totally convinced --
6. MS. KELSEY: Right. I understand.
7. MR. HALE: -- that we've reached the ...
8. MS. KELSEY: Sure.

1. CHAIRMAN FOX: Let me ask this question. What -- as bad as I hate to ask the question. What's the chances of us doing a workshop within the next 30 days and coming in here and devoting a meeting time to put this -- I mean, we need to look at -- we need to do those considerations with the inflatables and the coasters and then figure out exactly what we want to do and not worry about whether it's 48 inches tall or you have to be at 52 to ride or whatever. It's the machine or the device or the lines, the -- whatever it may be, we need to establish a fee for those commonalities that would be across the state.
2. MS. JEFFRSON: Right. I think that's a good idea.
3. CHAIRMAN FOX: And, you know, maybe we -- we may want to use some of this. I don't know. But I think we just -- we put together a workshop, and, again, within the next 30 days, and see if we can hammer this out. Does that work?
4. MR. MOORE: I think it's a great idea.
25. The Greene County accident occurred on August the 8th. The TOSHA administrator actually called me. It was after work hours. He called me -- he called Melinda, and Melinda contacted me to let me know that an accident had occurred in Greene County.

At that time, I talked with -- there was a number of representatives there at the fair. The mayor was there. We had just different representatives, you know, from the State. You had -- actually, they were sending federal inspectors, state inspectors -- or third-party inspectors were on the way. Lots going on there. Of course, the fair officials and everybody involved in the process.

And so at that time it was reported that one of the devices was tipped to the interior, approximately 90 degrees, and the device was located in the 3 o'clock position. Emergency personnel responded to the scene.

There were three little girls who were injured. Two of the three were flown by helicopter to the Johnson City Medical Center, and the third young lady was transported by ambulance to the Johnson City Medical Center.

So just to make a long story short, it was a very serious accident. A lot was involved. Lots of people from our department who were interacting, just trying to get things under control. So when I talked with them, they indicated that one of the devices had caused the problem.

Of course, you know, when you hear about something serious, you know, a serious injury involving folks that have to be flown, of course, you become -- you know, it was just a situation where we had to act immediately and do something because we couldn't just, you know, sit there and not do anything.

So at that point, we talked with the officials at the fair, and they understood, you know, due to the severity. They said they were going to cease and desist not only that particular device -- only the device is generally required to cease and desist under the law -- but under the circumstances, they decided to cease and desist all devices. Now, they continued to operate the food stands and some of the other activities. But

1. not sure if there wasn't that many or if they weren't being reported. So it was one of the two.
2. The Greene County accident occurred on August the 8th. The TOSHA administrator actually called me. It was after work hours. He called me -- he called Melinda, and Melinda contacted me to let me know that an accident had occurred in Greene County.
3. At that time, I talked with -- there was a number of representatives there at the fair. The mayor was there. We had just different representatives, you know, from the State. You had -- actually, they were sending federal inspectors, state inspectors -- or third-party inspectors were on the way. Lots going on there. Of course, the fair officials and everybody involved in the process.
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5. There were three little girls who were injured. Two of the three were flown by helicopter to the Johnson City Medical Center, and the third young lady was transported by ambulance to the Johnson City Medical Center.
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7. Of course, you know, when you hear about something serious, you know, a serious injury involving folks that have to be flown, of course, you become -- you know, it was just a situation where we had to act immediately and do something because we couldn't just, you know, sit there and not do anything.
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The inspector's analysis determined that one of the devices had caused the accident. The inspection report along with the fair officials. They took photos of the different devices so we could match with the serial numbers on the devices. Because that's part of our new process. Previously, we hadn't obtained photos, but because of the severity and everything that's happening, we found the need -- the Department found the need to actually take photos and match those to the information that we receive on the ride or device list. So we did that.

Post-accident reports were conducted by certified, qualified inspectors. We had two qualified inspectors, Francis Guenthner and Wayne White, who is here. And Wayne, could you stand up, please.

MR. WHITE: (Complies.)

MS. JEFFRSON: Thank you. And, Wayne, if I say anything incorrect, just feel free to come on up here and correct me.

They determined that the device was not safe for operation. They submitted, of course -- the company is required to submit the inspection report. And I'll talk about that. We'll talk about the accident report and requirements. But they submitted the inspection report.

In addition to them doing it -- because the company is the only one under the law that's required to submit the inspection report.

But the law states owner/operator. And for that reason, we had the fair to also submit their version of what happened, a representative from the fair. So they submitted something as well.

The inspector's analysis determined that during the setup and tear-down, that particular device had been set on the ground and moved about which caused wear on the rivets that...
1. affix the trim plate to the fiberglass door --
2. floor, rather. And over time, those rivets became
3. worn. And so they said that's the primary reason
4. why the accident occurred. The bottom aluminum
5. cover plate underneath the tub itself became loose
6. due to the worn rivets. So it's mainly worn
7. rivets on that particular device.
8. After the accident investigation and
9. inspection, the device was turned over to the
10. manufacturer for a complete inspection and repair.
11. And to my knowledge, that device is not operating.
12. It's still at the manufacturer's or it's, you
13. know, out of circulation at this point.
14. The company, Family Attraction
15. Amusement, had a valid permit at the time of the
16. accident. The permit is still valid. I can't
17. remember when that permit expires, but that's
18. something that we'll look into.
19. Do you know right offhand, Carlene?
20. MS. BENNETT: It was in the process
21. of renewal, I think, when the accident occurred.
22. So we had received all of the accident report and
23. then renewed it for another year.
24. MS. JEFFRISON: Yes. That was the
25. night we were here until 10:30. We stayed here

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<td>2. “satisfactory.” So we just have to make sure on</td>
<td>2. accidents and what is required of the</td>
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<td>3. our end that we're not giving them permission to</td>
<td>3. owner/operator. And you're working on the list of</td>
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<td>4. do something that they shouldn't be doing. And we</td>
<td>4. what's required by that owner/operator? Have you</td>
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<td>5. have to make sure those inspection reports don't</td>
<td>5. got the check-off list?</td>
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<td>6. have any remedial action. Because if we miss that</td>
<td>6. MS. JEFFRISON: As far as the</td>
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<td>7. and we actually give them a permit based on the</td>
<td>7. accident reporting list? We do. We have a</td>
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<td>8. fact that the inspector told them to correct</td>
<td>8. checklist now. We have a checklist, but that's</td>
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<td>9. something, then we know that would fall back on</td>
<td>9. something a little different. As far as the</td>
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<td>10. us. So we really take that seriously, and that's</td>
<td>10. accident reporting requirements, we have a staff</td>
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<td>11. a pretty long, extensive process, especially if</td>
<td>11. member who checks every day, because we have an</td>
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<td>12. the company has a number of devices.</td>
<td>12. accident reporting form on the website now. We</td>
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<td>13. So that's pretty much what happened</td>
<td>13. thought it would just be convenient, just like</td>
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<td>14. with that particular -- with the Greene County</td>
<td>14. with the inspection form that's been proposed, to</td>
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<td>15. fair.</td>
<td>15. have the accident reporting form on the website,</td>
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<td>16. CHAIRMAN FOX: Okay. Anything</td>
<td>16. so if there's an accident, the company,</td>
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<td>17. else?</td>
<td>17. owner/operator, they can go directly to our</td>
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<td>18. (No verbal response.)</td>
<td>18. website and report that, because the State</td>
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<td>19. CHAIRMAN FOX: Okay. Thank you</td>
<td>19. requires that it be reported within 24 hours of</td>
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<td>20. very much.</td>
<td>20. the accident. In addition, the requirements also</td>
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<td>21. Next item, the discussion on hiring</td>
<td>21. require the owner/operator to hire a third-party</td>
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<td>22. compliance officers. I think we're ready to go on</td>
<td>22. inspector within 24 hours of reporting it to us.</td>
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<td>23. that.</td>
<td>23. And just lots of requirements there. And so we</td>
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<td>24. MS. KELSEY: Yes, sir.</td>
<td>24. have a staff member to go on the website and</td>
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<td>25. CHAIRMAN FOX: The next item would</td>
<td>25. access that information to see if there's been an</td>
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In Tennessee, we understand that serious incidents and serious physical injuries and fatalities are required to be reported based on the new law. And so they're required to do that. If they don't report those serious physical injuries, the incidents or the fatalities, there's a $300 penalty.

Only one company has been assessed $300 since the law became effective on July 1st. But if there's a serious incident, serious physical injury or fatality in Tennessee, this is what we do in our office. The staff, they understand we have to notify. They have to notify the supervisor. We have to immediately send a cease-and-desist notice to the amusement device company. We request a post-accident inspection be performed. We request that if a post-accident inspection report be submitted to our office and then upon receipt of that post-accident report, that demonstrates the device is safe and operable, then the staff notifies the supervisor and I notify the commissioner. Because ultimately, in those types of cases the commissioner wants to be involved and he wants to be able to say, well, "yay" or "nay," you know, that this company can resume or not resume.

And we don't do that until we receive information to show the device is safe and operable. And there are other administrative steps associated with it, but that's mainly -- that's our process for now.

CHAIRMAN FOX: Okay. With the board's indulgence, could we also get this added -- because we're going to get inspectors -- could we get the discussion for investigating amusement device accidents, can we get that put on that workshop with the fees as well?

MS. KELSEY: And, Chairman, while we're on that, just for the matter of the record, during the incident with Greeneville, we got contacted from the Associated Press, CBS, Good Morning America, ABC, every -- because of the incident that had occurred elsewhere.

CHAIRMAN FOX: Oh, absolutely.

MS. KELSEY: -- so we appreciated the communication that we had from the commissioner's office and communications office.
1. motion to include this discussion, amend my
2. original motion? Or do you want me to make a
3. separate motion?
4. CHAIRMAN FOX: Let's just make a
5. separate motion.
6. MR. HALE: I make a motion we
7. include discussion regarding rules for
8. investigation of device accidents in our workshop.
9. MR. RADER: I second it.
10. CHAIRMAN FOX: Okay. Any
11. discussion?
12. (No verbal response.)
13. CHAIRMAN FOX: All in favor of the
14. motion, let it be known by saying "aye."
15. (Affirmative response.)
16. CHAIRMAN FOX: All opposed by like
17. sign.
18. (No verbal response.)
19. CHAIRMAN FOX: Thank you-all very
20. much. Motion carries.
21. MR. HALE: Can we add one comment
22. to our discussion about -- I have been contacted
23. by probably no less than 12 carnival companies,
24. owner/operators, and all of those folks are,
25. including Family Attractions, are very supportive

1. of inspection and regulation in Tennessee. I have
2. not had a single operator contact me and say,
3. "Y'all need to do away with that." Everybody is
4. supportive.
5. I think the only thing that I have
6. heard, if you want to say negative, is they just
7. want to know what the rules are and what's
8. expected of them and it remain constant. And I
9. think there was a little bit of perception that
10. the rules changed in the middle of the game
11. because of submitting photographs and all those
12. things, and it had never been required before.
13. And I'm not saying that's a bad thing, to get the
14. pictures. I'm just saying they felt like somebody
15. should have told them. You know, "I didn't know I
16. had to submit photographs and all of a sudden I'm
17. asked for photographs."
18. MS. JEFFRSON: Right. And that
19. occurred after the accident.
20. MR. HALE: Absolutely.
21. MS. JEFFRSON: So that was a change
22. that actually came up --
23. MR. HALE: I think all they're
24. looking for is for us to be consistent. And, like
25. I said, they're all in support of that, including

1. Family Attractions, you know, who expressed to me
2. that even though he hadn't jumped through a lot of
3. hoops, he knew that it's what needed to be done.
4. MR. MOORE: Can I make a
5. suggestion? And I hate to put anything on
6. Carlene, because I'm afraid that's where it would
7. end up. But if we issue a hard-copy permit, which
8. I'm assuming we do, right? Not just electronic?
9. But would it not be possible to include that with
10. the permit, a hard copy of the injury checklist,
11. and include photographs that, one, let's the
12. carnival and/or ride owner know this is what
13. you're supposed to do? When you hand them that
14. permit, you get them a hard copy of the accident
15. checklist and with a "This is what you do," and
16. that way there's no ignorance. They can't plead
17. ignorance. They don't have to have a wifi
18. connection. They know what they're supposed to do
19. immediately.
20. MS. JEFFRSON: Well, I think that's
21. a good idea. We give it to them when they apply.
22. When they make application, that's the first thing
23. that Carlene sends them, the requirements. They
24. get it on the front end, during the process.
25. MR. MOORE: They get the accident

1. checklist?
2. MS. JEFFRSON: They receive
3. everything.
4. MR. MOORE: Okay.
5. MS. JEFFRSON: They receive
6. everything. They have requirements to become
7. noncompliant. As far as our website, we cited the
8. website, where to find all that information.
9. Because all of the information is on the website.
10. So if you-all run into anyone who says, you know,
11. "Hey, I'm not really sure what it takes to become
12. compliant," refer them to the website. That's why
13. we're trying to educate and just publicize the
14. website.
15. CHAIRMAN FOX: Yes, ma'am?
16. MS. KELSEY: Just another little
17. addition. One of the things we've discussed
18. previously is what we've seen lately. Their
19. permit is getting ready to expire. They're coming
20. into Davidson County. They have been permitted
21. outside of the state of Tennessee. They're coming
22. in three days before their expiration -- and
23. correct me, Carlene and Kim -- three days before
24. they know that they're actually coming into a
25. particular area, knowing that that permit is going
1. to expire, and expect the State of Tennessee to be able to flip a coin and get everything operable.
2. You know, we're going to ask for guidance on that and maybe some direction.
3. Because the role and responsibility is for Kim's division to turn that around very quickly. But the company within itself knows when their permit is to expire. So it shifts the burden of proof and it looks like that the State of Tennessee Workplace Regulations is not doing their job, which, in fact, they get it two to three days prior to the time for it to expire.
4. MS. JEFFRSON: Or try the same day.
5. MS. KELSEY: Try the same day.
6. We've had that occur.
7. MR. RADER: You can't get that done, Kim?
8. MR. HALE: And that's certainly a discussion I've had with every single carnival that I've talked to.
10. MR. HALE: You can't wait until the day before and expect a rabbit to be pulled out of the hat.
11. MS. KELSEY: Absolutely.

1. MR. HALE: Now, let me ask this, Carlene or Ms. Jefferson, whichever one of you, what is a reasonable amount of time? Is 15 days reasonable? Is a month reasonable? What's that magic time?
2. MS. JEFFRSON: Do you want to speak to that, Carlene?
3. MS. BENNETT: Well, I just know that the law does say traveling amusement devices, it's 30 days. They should have their paperwork in to --
4. MR. HALE: In 30 day?
5. MS. BENNETT: Yes, 30 days.
6. MR. HALE: And I assure you, I'll convey that.
7. MS. BENNETT: Thank you.
8. CHAIRMAN FOX: And that is a reasonable expectation. I mean, it takes a while to do that.
9. MS. BENNETT: Well, there's so much other things going on, you know, with the news media and accidents and people being out, you know, of the office for one reason or another.
10. You know, it takes it when you have fair season and they all want to be permitted at one time.
11. MR. HALE: Well, and on occasion there are situations that occur where a carnival will come in and their contract with the fair says they have to have "X" number of a certain type of ride. They realize they don't have that. They've got to contact somebody. But that should not be the norm.
12. And three days is probably even not reasonable at that. But still, there may be occasions when something like that would happen.
13. I know of a situation, actually, in Georgia that two rides were, on the way to the fair, involved in a traffic accident. They're not going to be there, so they had to get another company to come in. But that should not be the norm.
14. And I kind of applaud y'all -- I do applaud y'all for the late nights that I know your office has put in, but we have to express that can't be the norm. That has to be the exception.
15. CHAIRMAN FOX: Anything else on that?
16. (No verbal response.)
17. CHAIRMAN FOX: All right. With the exception of the workshop, which we don't have dates yet, the next meeting will be December the 6th at 9:00 a.m., I'll assume back here in this room?
18. MS. BENNETT: I'm not sure. I had the Tennessee room, but if we change it, we'll let you know.
19. CHAIRMAN FOX: Okay. First of all, I want to say thank you-all, everybody for hanging around here today. Thank you for your-all's patience and your understanding. This has been a long meeting. It's been very informative. I think we've all learned a lot. And with that I'll accept a motion for adjournment.
20. MR. RADER: So moved.
21. CHAIRMAN FOX: We're out of here.
22. END OF THE PROCEEDINGS.
1. CERTIFICATE
2. STATE OF TENNESSEE )
3. COUNTY OF WILLIAMSON )
4. I, Cassandra M. Beiling, a Notary Public
5. in the State of Tennessee, do hereby certify:
6. That the within is a true and accurate
7. transcript of the proceedings taken before the
8. Elevator and Amusement Device Safety Board and the
9. Chief Inspector or the Chief Inspector’s Designee,
10. Tennessee Department of Labor and Workforce
11. Development, Division of Workplace Regulations and
12. Compliance, Elevator and Amusement Device Unit, on
13. the 13th day of September, 2016.
14. I further certify that I am not related to
15. any of the parties to this action, by blood or
16. marriage, and that I am in no way interested in
17. the outcome of this matter.
18. IN WITNESS WHEREOF, I have hereunto set my
19. hand this 5th day of October, 2016.
20. Cassandra M. Beiling, CCR, LCR# 371
21. Notary Public State at Large
22. My commission expires: 3/15/2020
23. 
24. Digitally signed 10/5/2016 at 6:44am CDT
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