

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #7

Do Not Mark In This Box
Filing Date

2011 JUN -8 AM 10:21

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: West Virginia Division of Labor TITLE NUMBER: 42

CITE AUTHORITY: W. Va. Code 21-15-6 and 21-15-8

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 10

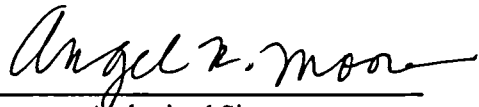
TITLE OF RULE BEING PROPOSED: Zipline and Canopy Tour Responsibility Act

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

see attachment

Use additional sheets if necessary


Authorized Signature



EMERGENCY RULE QUESTIONNAIRE

DATE: June 8, 2011

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Division of Labor
State Capitol Complex, Building 6, Room B-749, Charleston, WV 25305
304.558.7890 x 111

EMERGENCY RULE TITLE: Zipline and Canopy Tour Responsibility Act

1. Date of filing June 8, 2011

2. Statutory authority for promulgating emergency rule:
W. Va. Code 21-15-6 and 21-15-8

3. Date of filing of proposed legislative rule: June 8, 2011

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? The emergency rule adopts new language.

5. Has the same or similar emergency rule previously been filed and expired?
No.

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.
See attachment.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

The emergency rule is being promulgated to comply with the effective date of a new article, W. Va. Code 21-15-1, et seq., the Zipline and Canopy Tour Responsibility Act.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

See attachment.

WEST VIRGINIA DIVISION OF LABOR

749-B Building 6 , Capitol Complex • Charleston, West Virginia 25305

Phone (304) 558-7890 • Fax (304) 558-2273

www.wvlabor.org

EARL RAY TOMBLIN
Governor



DAVID W. MULLINS
Commissioner

Statement of Circumstances and Brief Summary of Proposed Emergency Rule, Title 42, Series 10 Zipline and Canopy Tour Responsibility Act

The West Virginia Division of Labor proposes an emergency rule, Title 42, Series 10, of the West Virginia Code of State Regulations, in order to implement the provisions of a new article, W. Va. Code § 21-15-1, *et seq.*, the Zipline and Canopy Tour Responsibility Act, which becomes effective June 12, 2011. The emergency rule includes the following provisions:

- It incorporates by reference the Association for Challenge Course Technology (“ACCT”) “Challenge Course and Canopy Zip Line Tour Standards,” 7th edition, 2008, that are to be used by inspectors and special inspectors to assess the installation, repair, use, operation, and maintenance of ziplines and canopy tours for the safety of the general public.
- It establishes administrative procedures for the registration, inspection, permit application and issuance of permits for ziplines and canopy tours.
- It establishes the qualifications for special inspectors and procedures for the certification of special inspectors.
- It defines terms that are not defined in the ACCT standards or the statute.

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Governor



DAVID W. MULLINS
Commissioner

June 8, 2011

The Honorable Natalie E. Tennant
West Virginia Secretary of State
Bldg. 1, Suite 157-K
1900 Kanawha Blvd. East
Charleston, WV 25305-0770

Dear Madame Secretary:

During the 2011 regular session of the Legislature, H.B. 2532 was passed on March 12, 2011, creating a new article entitled the "Zipline and Canopy Tour Responsibility Act," W. Va. Code § 21-15-1, *et seq.* The article goes into effect 90 days from passage, or June 12, 2011.

The new article charges the Division of Labor with the responsibility for promulgating rules for the safe installation, repair, maintenance, use, operation and inspection of all ziplines and canopy tours operating in West Virginia, and for issuing permits for the operation of ziplines or canopy tours, for employing or contracting with inspectors, and with conducting annual inspections or obtaining annual inspection reports from approved special inspectors.

In order to comply with the effective date of the new article, the Division of Labor respectfully requests that you consider these circumstances and approve the attached rule, 42 CSR 10, as an emergency rule until the proposed legislative rule (submitted separately) is considered by the Legislature during its 2012 session.

Should you have any questions, please do not hesitate to contact me at 304.558.7890 x 111 or by email at david.w.mullins@wv.gov.

Very truly yours,

A handwritten signature in cursive script that reads "David W. Mullins".

David W. Mullins
Commissioner

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Zipline and Canopy Tour Responsibility Act

Rule Title: _____

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Division of Labor

Address: State Capitol Complex
Building 6, Room B-749
Charleston, WV 25305

Phone Number: 304.558.7890 x 111 Email: david.w.mullins@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The Division of Labor anticipates that this proposed rule will have a minimal impact on the costs and revenues of state government.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Zipline and Canopy Tour Responsibility Act

Rule Title: _____

Rule Title: _____

- 3. Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

N/A

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

Date: June 8, 2011

Signature of Agency Head or Authorized Representative

Angel R. Moore

TITLE 42
LEGISLATIVE RULE
DIVISION OF LABOR

FILED
2011 JUN -8 AM 10:21

SERIES 10
ZIPLINE AND CANOPY TOUR RESPONSIBILITY ACT

OFFICE OF THE ATTORNEY GENERAL
SECRETARY OF STATE

§42-10-1. General.

1.1. Scope. -- This legislative rule sets the minimum acceptable safety standards for the installation, repair, use, operation, maintenance and inspection of ziplines and canopy tours and establishes procedures for the issuance of permits for ziplines and canopy tours.

1.2. Authority. -- W. Va. Code §§21-15-6, 21-15-8.

1.3. Filing Date. --

1.4. Effective Date. --

§42-10-2. Application and Enforcement.

2.1. Application. This legislative rule applies to the West Virginia Division of Labor and all persons, ziplines and canopy tours governed or otherwise within the purview of the Zipline and Canopy Tour Responsibility Act, W. Va. Code §21-15-1, *et seq.*

2.2. Enforcement. The enforcement of this legislative rule is vested with the West Virginia Division of Labor.

§42-10-3. Definitions.

3.1. "ACCT" means and refers to the Association for Challenge Course Technology, P. O. Box 47, Deerfield, IL 60015.

3.2. "Commissioner" means the Commissioner of the West Virginia Division of Labor or his or her designated representatives.

3.3. "Imminent danger" means a practice or condition which could reasonably be expected to cause death or serious injury to participants, operators and/or the general public.

3.4. "Inspector" means a person employed by the Division who meets the training and experience requirements set forth in the ACCT Challenge Course and Canopy/Zip Line Tour Standards, Seventh Edition, Chapter 5, Section C or substantially equivalent training and experience requirements.

3.5. “Serious injury” means an injury that results in death, loss of consciousness, or requires medical treatment other than first aid by a physician or other medical professional for which a record is created.

3.6. “Unscheduled cessation of operation” means an unplanned cessation of operation of an zipline or canopy tour due to any mechanical, electrical, operational or structural malfunction, modification or adjustment or due to any environmental conditions, including weather.

§42-10-4. Adoption of Standards.

The ACCT “Challenge Course and Canopy Zip Line Tour Standards,” 7th edition, 2008, are adopted and incorporated herein by reference.

§42-10-5. Registration and Permit to Operate Required.

5.1. Before beginning the operation of a zipline or canopy tour in West Virginia for participant use, the owner or operator of the zipline or canopy tour shall apply in writing to the Commissioner for a permit to operate and shall register each zipline or canopy tour.

5.2. A permit to operate a zipline or canopy tour shall expire annually on December 31st of each year.

5.3. A permit to operate is valid only for the zipline or canopy tour registered with the Commissioner.

§42-10-6. Permit Application Requirements.

6.1. An owner of a zipline or canopy tour shall submit an application for a permit to the Commissioner and shall register each zipline or canopy tour at least 15 days before the first intended date of use.

6.2. An owner of a zipline or canopy tour shall submit the application and registration on forms provided by the Commissioner.

6.3. An owner of a zipline or canopy tour shall submit any amendment to the application or registration to the Commissioner at least 24 hours before the first intended date of use of the zipline or canopy tour.

6.4. An owner of a zipline or canopy tour shall include the following information on the application:

6.4.a. The name, address, telephone number, email address (if applicable) and website address (if applicable) of the zipline or canopy tour operator;

6.4.b. Registration of the zipline or canopy tour, including the location, dates of operation, date of installation, and the name and address of the installer of the zipline or canopy tour equipment;

6.4.c. Documentation of a commercial general liability insurance policy covering claims for personal injury, death and property damages arising from the operation of a zipline or canopy tour in amounts not less than those specified in W. Va. Code §21-15-3(4);

6.4.d. The most recent inspection report prepared by an inspector or special inspector, including a certification that the inspection fee has been paid, or a request for inspection by the Division and a check for the inspection fee, as specified by W. Va. Code §21-15-7(a).

6.5. An owner of a zipline or canopy tour shall include the permit fee with the permit as specified by W. Va. Code §21-15-7(a).

§42-10-7. Annual Inspection; Issuance of a Permit to Operate.

7.1. An inspector or special inspector shall inspect a zipline or canopy tour and determine that it is in compliance with the provisions of W. Va. Code § 21-15-1, *et seq.* and this rule before a permit to operate can be issued.

7.2. A permit to operate shall be in the form of a certificate of inspection, which shall include the date or dates of the inspection.

7.3. A zipline or canopy tour operator shall post a copy of the certificate of inspection in close proximity to the entry to the zipline or canopy tour where it is readily visible to participants.

§42-10-8. Qualifications and Certification of Special Inspectors.

8.1. A person applying for certification as a special inspector shall make application annually on a form provided by the Commissioner.

8.2. An applicant shall furnish documentation of the following with the application:

8.2.a. Experience and training that comply with the requirements set forth in the ACCT Challenge Course and Canopy/Zip Line Tour Standards, Seventh Edition, Chapter 5, Section C; or

8.2.b. Experience and training that is substantially equivalent to the requirements set forth in the ACCT Challenge Course and Canopy/Zip Line Tour Standards, Seventh Edition, Chapter 5, Section C.

§42-10-9. Commercial General Liability Insurance.

9.1. The Commissioner may, in his or her discretion, require the zipline or canopy tour operator to submit the complete insurance policy or contract.

9.2. A zipline or canopy tour operator shall obtain an insurance policy issued by a carrier licensed or approved to transact business by the WV Offices of the Insurance Commissioner

9.3. The Commissioner shall not accept any commercial general liability insurance policy unless it obligates the insurer to give written notice to the Commissioner at least 30 days before any proposed cancellation, suspension or non-renewal of the policy.

§ 42-10-10. Unscheduled Cessation of Operation; Imminent Danger; Serious Injury or Fatality; Reports and Records.

10.1. Unscheduled Cessation of Operation.

10.1.a. Following any unscheduled cessation of operation, the operator of a zipline or canopy tour shall immediately have the participants safely removed or unloaded from the zipline or canopy tour.

10.1.b. If the operator determines that the zipline or canopy tour can safely resume operation, the operator shall first operate the zip line or canopy tour without participants to ensure that the cause of the unscheduled cessation of operation has been corrected.

10.1.c. The operator shall document any unscheduled cessation of operation, including the identification of the zipline or canopy tour, the name of the employee operating the zipline or canopy tour during the unscheduled cessation, and a complete description of the incident, including the date, time, weather conditions, location, number of participants, etc.

10.2. Imminent Danger.

10.2.a. If the Commissioner or a special inspector determines that a zipline or canopy tour presents an imminent danger, he or she shall immediately give written notification to the zipline or canopy tour owner or operator, advising him or her that the zipline or canopy tour shall be immediately removed from service.

10.2.b. If the owner or operator does not immediately remove the zipline or canopy tour from service, the inspector shall immediately report the imminent danger to the Commissioner.

10.2.c. If the owner or operator does not immediately remove the zipline or canopy tour from service, the Commissioner may seek a temporary or permanent restraining order or injunction to prohibit the continuing operation of the zipline or canopy tour.

10.3. Serious Injury or Fatality.

10.3.a. If a participant or member of the general public is involved in an accident related to the operation of a zipline or canopy tour that results in a serious injury or a fatality, the owner or operator shall immediately shut down the operation of the zipline or canopy tour and secure the safety of other participants and the general public.

10.3.b. An owner or operator shall ensure that the scene of a serious injury or fatality is left intact from the time of the accident and shall ensure that the zipline or canopy tour involved is not removed from the scene of the accident without written authorization from the Commissioner or a law enforcement officer.

10.3.c. The owner and any employees who witnessed the accident or who operated the zipline or canopy tour when the accident occurred shall be available to be interviewed by the Commissioner.

10.3.d. The owner of the zipline or canopy tour shall make a report of the injury or fatality to the Commissioner within 24 hours of its occurrence.

10.3.e. The owner shall document the accident, to include the full name, address and telephone number of the injured person(s), a description of the injuries, identification of the zipline or canopy tour involved, the names and addresses of the owner and employees who witnessed the accident, and any other pertinent information describing the events leading up to the accident.

10.3.f. An owner or operator shall keep a record of every accident or fatality with the certificate of inspection, which shall be readily accessible to the general public. The record shall include the following information:

10.3.f.1. The date(s) of every accident or fatality;

10.3.f.2. A description of the type(s) of accident(s);

10.3.f.3. The number of people injured or killed; and

10.3.f.4. A description of the types of injuries.

10.4. Reports and Records.

10.4.a. The owner of the zipline or canopy tour shall retain all reports, documents, photographs and records required by this section of the rule for not less than 3 years from the date of the unscheduled cessation, imminent danger notification, or serious injury or fatality.

10.4.b. If an owner violates any provision of this section of the rule, the Commissioner

may permanently revoke the permit to operate.