

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

Form #4

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OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: West Virginia Division of Labor TITLE NUMBER: 42

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

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 PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

Authorized Signature

43.40

**TITLE 42
LEGISLATIVE RULE
DIVISION OF LABOR**

**SERIES 10
ZIPLINE AND CANOPY TOUR RESPONSIBILITY ACT**

§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 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 expires annually on December 31st.

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 its 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; Emergency Contact Protocol.

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 may 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.

7.4. With the issuance of each permit to operate, the Division shall furnish its emergency contact protocol for the reporting of a serious accident, fatality, or other emergency, which shall include 24/7 electronic and telephone access.

§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 Challenge Course Standards; or

8.2.b. Experience and training that the Commissioner has determined in advance are substantially equivalent to the requirements set forth in the Challenge Course Standards.

§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, operator, 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, using the Division's emergency contact protocol.

10.3.d.1. After the owner of the zipline or canopy tour notifies the Commissioner of a serious injury or fatality, the Commissioner shall, with reasonable promptness, advise the owner whether the zipline or canopy tour shall remain shut down pending investigation and inspection or whether it can be placed back in service.

10.3.d.2. In deciding whether the zipline or canopy tour shall remain shut down or whether it can be placed back in service, the Commissioner's sole consideration shall be the safety of participants and the general public.

10.3.e. The owner shall document the accident, to include the full name, address and telephone number of the injured person, a description of his or her 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 of every accident or fatality;

10.3.f.2. A description of the type of accident;

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.