



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

7/27/2017 11:19:05 AM

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-  
MAKING REVIEW COMMITTEE**

AGENCY: Labor TITLE-SERIES: 42-10  
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No  
RULE NAME: 42-10 Zipline and Canopy Tour Responsibility Act

**PRIMARY CONTACT**

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CITE STATUTORY AUTHORITY: W. Va. Code §§21-15-6, 21-15-8

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

W. Va. Code §21-15-6 authorizes the Division to propose rules for the safe installation, repair, maintenance, use, operation and inspection of ziplines and canopy tour consistent with the Association for Challenge Course Technology ("ACCT") standards.

In accordance with its rule-making authority, the rule includes the following sections: definitions; the adoption of the ACCT Challenge Course and Canopy Zip Line Tour Standards; requirement for a permit, permit application requirements, permit fees and application amendment requirements; annual inspection requirements, the issuance of a permit to operate, and required emergency contact protocol; commercial general liability insurance requirements; requirements concerning the unscheduled cessation of operation; requirements concerning the issuance of cease and desist orders for the operation of a zipline or canopy tour without a permit; imminent danger protocol; required reports of a serious injury or fatality; and required reports and records.

W. Va. Code §21-15-8 authorizes the Division to propose rules for application requirements and minimum qualifications for special inspectors.

The rule includes a section on the application requirements, minimum qualification requirements and requirements concerning the certification of special inspectors.

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/15/2017

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED:

7/17/2017

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

The purpose of the rule is to comply with the Division's rule-making responsibilities for administering the Zipline and Canopy Tour Responsibility Act, W. Va. Code §21-15-1 et seq.

The proposed rule incorporates the HB 2948 amendments to W. Va. Code §21-15-10, passed during the 2017 regular legislative session, and includes the new time frames for taking final action on an application for a permit to operate within 30 days of receipt of an uncontested application or within 90 days of a contested application, adds defines several new terms, including certificate of inspection, complete application, contested application, device, final action, and special inspector certification, clarifies the requirements for information that must be included in a permit application to operate a zipline or canopy tour, adds a section for the issuance of a cease and desist order to any person operating a zipline or canopy tour without a permit, and makes some technical changes and corrections.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The Division has incorporated the HB 2948 amendments to W. Va. Code §21-15-10 in the proposed rule, which require the Division to take final action on an uncontested application for a permit to operate a zipline or canopy tour within 30 days of receipt of a complete application, or within 90 days if the application is contested.

Pursuant to its W. Va. Code §21-15-6 rule-making authority, the Division also finds it necessary to clarify its requirements regarding information that must be included in a permit application to operate a zipline or canopy tour, and to include a new section providing for the issuance of a cease and desist order to any person operating a zipline or canopy tour without a permit.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The proposed legislative rule will have no impact on the costs or revenues of state government.

**B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:**

W. Va. Code §21-15-7 sets the annual permit fee of \$100.00, which is waived for any nonprofit business operating a zipline or canopy tour.

Special inspectors certified by the Division are not employed by the Division and set their own fees.

**C. FISCAL NOTE DETAIL:**

<b>Effect of Proposal</b>	<b>Fiscal Year</b>		
	<b>2017 Increase/Decrease (use "-")</b>	<b>2018 Increase/Decrease (use "-")</b>	<b>Fiscal Year (Upon Full Implementation)</b>
<b>1. Estimated Total Cost</b>	-	-	-
<b>Personal Services</b>	-	-	-
<b>Current Expenses</b>	-	-	-
<b>Repairs and Alterations</b>	-	-	-
<b>Assets</b>	-	-	-
<b>Other</b>	-	-	-
<b>2. Estimated Total Revenues</b>	-	-	-

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. -- ~~March 30, 2012.~~

1.4. Effective Date. -- ~~July 1, 2012.~~

1.5. Sunset Date. This rule shall terminate and have no further force or effect upon the expiration of 10 years from its 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. "Act" means the Zipline and Canopy Tour Responsibility Act, W. Va. Code §21-15-1, et seq.

3.3. "Certificate of inspection" means the permit to operate issued by the Commissioner, stating the name and location of the zipline or canopy tour owner or operator, the zipline or canopy tour device number, the type of device, the date of installation, the name of the installer and the date that operations may begin.

~~3.2.~~ 3.4. "Commissioner" means the Commissioner of the West Virginia Division of Labor or his or her designated representatives.

3.5. "Complete application" means an application that includes all the information required in section 5 of this rule.

3.6. "Contested application" means an application that the Commissioner challenges, which can include, but is not limited to, incomplete information.

3.7. "Device" means a zipline, a canopy tour or a challenge course.

3.8. "Final action" means the issuance or denial of an application for a permit.

~~3.3.~~ 3.9. "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.~~ 3.10. "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.~~ 3.11. "Serious injury" means an injury that is directly related to any mechanical, electrical, operational or structural malfunction of a zipline or canopy tour 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.

3.12. "Special inspector certification" means the document issued by the Commissioner to a special inspector upon receipt of a complete application, certifying that the individual is qualified to inspect ziplines and canopy tours.

~~3.6.~~ 3.13. "Unscheduled cessation of operation" means an unplanned cessation of operation of a 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," 7<sup>th</sup> edition, 2008, are adopted and incorporated by reference.

#### **§42-10-5. Registration and Application for Permit to Operate Required; Permit Application Requirements; Permit Fee; Certificate of Inspection; Application Amendments.**

~~5.1.~~ 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 submit a written application for a permit to operate at least 15 days before the first intended date of use and provide all information as to the Commissioner for a permit to operate and shall register each zipline or canopy tour may require on a form supplied by the Division.

~~6.4.~~ 5.2. An owner of a zipline or canopy tour shall include the following information ~~on~~ in the application:

~~6.4.a.~~ 5.2.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.~~ 5.2.b. ~~Registration~~ Identification of the zipline or canopy tour each device, 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.~~ 5.2.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.~~ 5.2.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).

5.3. Unless waived by W. Va. Code §21-15-7(a)(3), the fee for a permit to operate each separate zipline or canopy tour shall be \$100.00.

5.4. The preferred means of paying the application fee is by credit card.

5.5. The Commissioner may not issue a permit to operate and a certificate of inspection until the zipline or canopy tour has been inspected by an inspector or special inspector and found to be in compliance with ACCT standards.

5.6. Upon receipt of a complete uncontested application, the Commissioner shall issue a permit to operate and certificate of inspection within 30 days.

5.7. If the application is contested by the Commissioner, he or she shall have 90 days to take final action on the application.

5.7.a. The Commissioner shall promptly notify the applicant in writing, either by mail or certified mail, return receipt requested, of the reasons for contesting the application and afford the applicant an opportunity to respond.

5.7.b. If, after notice, the applicant fails to respond to the Commissioner's objections, the Commissioner shall deny the application.

~~5.2.~~ 5.8. A permit to operate a zipline or canopy tour and certificate of inspection ~~expires~~ shall expire annually on December 31<sup>st</sup>.

~~5.3.~~ 5.9. A permit to operate and certificate of inspection is valid only for the zipline or canopy tour registered with the Commissioner.

~~6.3.~~ 5.10. 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.

~~§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 6. Annual Inspection Required; Issuance of a Permit to Operate; Emergency Contact Protocol.**

~~7.1. 6.1. An inspector or special inspector shall inspect a zipline or canopy tour and determine that it complies with the provisions of W. Va. Code §21-15-1, et seq. Act and this rule before a permit to operate may be issued.~~

~~7.2. 6.2. 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. 6.3. 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 or other location where it is readily visible to participants.~~

~~7.4. 6.4. 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 7. Qualifications and Certification of Special Inspectors.**

~~8.1. 7.1. A person applying for certification as a special inspector shall make application annually on a form provided by the Commissioner.~~

~~8.2. 7.2. An applicant shall furnish documentation of the following with the application:~~

~~8.2.a. 7.2.a. Experience and training that comply with the requirements set forth in the Challenge Course Standards; or~~

~~8.2.b.~~ 7.2.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~~ 8. Commercial General Liability Insurance.**

~~9.1.~~ 8.1. 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.~~ 8.2. 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.~~ 8.3. 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~~ 9. Unscheduled Cessation of Operation.**

~~10.1.~~ 9.1. 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.

~~10.2.~~ 9.2. If the operator determines that the zipline or canopy tour can safely resume operation, the qualified person shall first operate the zipline or canopy tour without participants to ensure that the cause of the unscheduled cessation of operation has been corrected.

~~10.3.~~ 9.3. 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.

**§42-10-10. Operating a Zipline or Canopy Tour Without a Permit; Cease and Desist Orders.**

10.1. Upon a determination that a person is operating or allowing the operation of a zipline or canopy tour without a permit, the Commissioner shall issue a cease and desist order requiring the person to immediately cease operating, or allowing the operation of, the zipline or canopy tour.

10.2. The owner or operator of zipline shall post the cease and desist order in a location where it is readily visible to participants.

10.3. If the owner or operator continues to operate or permit the operation of a zipline or canopy tour after the issuance of a cease and desist order, the Commissioner may seek a temporary or permanent restraining order or injunction to prohibit the continuing operation of the zipline or canopy tour.

**§42-10-11 Imminent Danger.**

11.1. 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.

11.2. 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.

11.3. 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.

**§42-10-12. Serious Injury or Fatality.**

12.1. 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.

12.2. 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.

12.3. 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.

12.4. 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.

12.4.a. 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.

12.4.b. 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.

12.5. 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.

12.6. 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:

12.6.a. The date of every accident or fatality;

12.6.b. A description of the type of accident;

12.6.c. The number of people injured or killed; and

12.6.d. A description of the types of injuries.

**§42-10-13. Reports and Records.**

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

13.2. If an owner violates any provision of this section of the rule, the Commissioner may permanently revoke the permit to operate.