

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

Do Not Mark In this Box

FILED

1997 JUN 10 AM 9:27

SECRETARY OF STATE

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

AGENCY: Department of Natural Resources TITLE NUMBER: 47

CITE AUTHORITY W. Va. Code Section 20-2-23

AMENDMENT TO AN EXISTING RULE: YES ☒ NO ☐


IF YES, SERIES NUMBER OF RULE BEING AMENDED: 50

TITLE OF RULE BEING AMENDED: Outfitters and Guides

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



FISCAL NOTE FOR PROPOSED RULES

Rule Title: Outfitters and Guides

Type of Rule: X Legislative Interpretive Procedural

Agency: Department of Natural Resources

Address: 1800 Washington Street East, Charleston, West Virginia 25305

1. Effect of Proposed Rule (Estimated Total Cost)	Increase \$	ANNUAL	Current \$	FISCAL YEAR	
		Decrease \$		Next \$	Thereafter \$

Personal Services

Current Expense

Repairs and Alterations

NO CHANGE

Equipment

Other

2. Explanation of Above Estimates:

The proposed rule will not impact the Department's existing administration related to regulating outfitters and guides; no additional expenditures are anticipated.

3. Objectives of These Rules:

The proposed rule amends Series XI to delete reference to commercial whitewater outfitters.


4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government: No impact

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens: No impact

C. Economic Impact on Citizens/Public at Large: No impact

Date: October 31, 1986



Ronald R. Potesta
Director

PREAMBLE FOR AMENDMENTS TO LEGISLATIVE RULES
OUTFITTERS AND GUIDES

REGULATIONS: Department of Natural Resources, Series 50, Outfitters and Guides

AUTHORITY: West Virginia Code, Chapter 20, Article 2, Section 23

ACTION: Approved Rules and Response to Comments

TOPIC: The regulation of commercial outfitters and guides providing services related to hunting, fishing, or boating.

SUMMARY: The Department is approving amendments to its legislative rules that would replace existing regulations concerning licensed commercial outfitters and guides contained in Sections 1 through 5 of the current Series 50. Sections 6 through 9 of the current regulations, concerning whitewater rafting, have been deleted from this series; the contents of those sections have been revised and approved as a new series by the Commercial Whitewater Advisory Board (CWAB).

The contents of today's filing parallel corresponding sections in the new commercial whitewater outfitters regulations approved by the CWAB. For example, both sets of regulations use identical language related to bonding and insurance requirements, record keeping, accident reports, license modification procedures, and appeals. The balance of the other sections in today's filing incorporates the contents of Sections 1 through 5 of the current Series 50 regulations. For example, these rules retain sections related to National Forest lands, bear hunts, first aid certification, and hunting and fishing trips.

RESPONSE TO COMMENTS: A public hearing was held in Charleston on December 10, 1986 and comments were received until the close of business on December 12, 1986. One interested individual attended the public hearing; comments were received from two commenters.

Section 2.1

Comment: One commenter asked that the definition of "outfitter" be amended so as not to include the offering of guide services. This commenter felt that the term "guide" should be defined separately as follows: "Guide means any person who provides a non-material service such as knowledge of places, or accompanies groups or individuals in the pursuit of hunting, fishing or non-harvest entities."

Response: The Department agrees with this commenter that the terms "guide" and "outfitter" should be separately defined. The services provided by an outfitter can be different from the services provide by a guide and separate standards could be established for either which would not apply to both. However, the statutory definitions of the terms "guide" and "outfitter" prevent the Department from defining these terms separately. Under Section 20-2-23 of the West Virginia Code:

The term "guide," as used herein, shall be construed to include and embrace outfitter services and the term "outfitter" shall be construed to include and embrace guide services, but the applicant for any license hereunder may in his or her application elect to be designated as an outfitter or guide.

Since the Legislature has defined the term "outfitter" to embrace guide services and the term "guide" to embrace outfitter services, the Department does not believe that it holds the discretion to create a separate and exclusive definition for either term. However, Section 3.5 of these regulations has been amended as follows: "An outfitter seeking a license shall provide the Director with the information specified on the Department's application and any additional information that the Director deems necessary for consideration of such application. Any change in that information must be reported by the licensee to the Director within thirty days of such change. The applicant may in his or her application elect to be designated as an outfitter or a guide."

Section 3.4

Comment: One commenter asked that guides be exempted from the liability insurance requirements of this subsection.

Response: Since the term "guide" includes and embraces outfitter services, the Department believes that all licensees should be required to meet the same liability insurance requirements, regardless of whether they choose to designate themselves as either outfitters or guides.

Section 3.10

Comment: One commenter asked that this subsection be deleted in order to permit guides to conduct bear hunts.

Response: Request denied. Under Section 20-2-22a(9) of the West Virginia Code it is unlawful "for any person to organize for commercial purposes, or to professionally outfit a bear hunt or to give or receive any consideration whatsoever or any donation in money, goods or services in connection with a bear hunt."

Section 4.5

Comment: One commenter suggested that the following be added to this subsection: "Fishing excursions conducted in designated whitewater recreation zones must have fishing as their primary purpose and must not exceed two customers and one guide per vessels." This commenter also asked the Department to clarify whether an outfitter who supplies or guides a fishing or hunting trip by boat in a designated whitewater zone is required to obtain a commercial whitewater outfitters license.

Response: The Department believes the commenter's suggested language is unnecessary. An outfitter who conducts fishing excursions, boating trips, or hunting expeditions utilizing boats may be issued a license by the Director to operate on any waters of the State, including whitewater recreation zones. Prohibitions on operating in a particular zone, or portions of a zone, will be done on a case-by-case basis in the terms and conditions of a license. Furthermore, an outfitter who supplies or guides a fishing or hunting trip by boat in a designated whitewater zones is not required to obtain a commercial whitewater outfitters license.

* * * * *

In addition to changes made in response to comments received, the Department has deleted Section 4.5 of the proposed regulations. Senate Bill No. 215, passed during the 1987 Regular Session, amended Section 20-2-23a of the West Virginia Code to empower the Commercial Whitewater Advisory Board to regulate commercial whitewater outfitters operating on any waters of the State. This regulatory power had previously been limited to operations in designated whitewater recreation zones. Promulgation of Section 4.5 of the proposed regulations would impinge upon the statutory authority vested upon the CWAB and, therefore, this section has been deleted from today's filing.

Finally, Section 6 of the proposed regulations has been revised to conform to language that was placed in the CWAB Commercial Whitewater Outfitters regulations at the request of the Legislative Rule-Making Review Committee.

* * * * *

The following struck-through and underlined version of today's agency-approved rules shows revisions to the proposed rules discussed above.

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
Department of Natural Resources
Series 50

Hunting & Fishing Outfitters and Guides
Legislative Rules

Section 1. Scope and Authority.

1.1. Scope and Purpose. -- The purpose of these regulations is to provide for the regulation of commercial outfitter and guide services and to assure safe operations.

1.2. Authority. -- W. Va. Code §20-2-23 and §20-1-7.

1.3. Effective Date. --

1.4. Filing Date. --

1.5. **Promulgation History.** These regulations supercede West Virginia Administrative Regulations, Department of Natural Resources, Series XI filed on December 30, 1982 and effective on January 1, 1983.

Section 2. Definitions.

~~Unless the context dictates otherwise, the following words and their meanings as used in these regulations are defined below:~~

2.1. "Outfitter" or "licensee" means any person who, operating from any temporary or permanent camp, private or public lodge, or private or incorporated home situated within this state, provides for monetary profit or gain, saddle or pack animals or other animals, vehicles, boats, conveyances, equipment, or guide services for any person to hunt game or wild animals, to hunt game or wild birds, to fish, or to go boating within the state. The terms outfitter or licensee shall not include, however, any person who occasionally for accommodation or favor rather than profit or gain, rents equipment to hunters, fishermen or others as a service incidental to his principal occupation or business without advertising outfitter or guide services or holding out to the public his offering of such services.

2.2. All other terms shall have the meaning prescribed in W. Va. Code §20-1-2.

Section 3. Outfitters License.

3.1. **License Required.** An outfitter must obtain a license from the director prior to the commencement of ~~operations~~ services in the State.

3.2. **Compliance with License.** An outfitter issued a license by the director must comply with the terms and conditions of that license.

3.3. **License in Possession.** Each outfitter shall carry a copy of his license when conducting outfitter services. If the outfitter is a corporation, partnership, or other legal entity, then such copy will be carried by the representative of the outfitter who is present and designated in-charge during the performance of the outfitter services.

3.4. **Bonding and Insurance.** Before any outfitting services are offered or rendered, each outfitter must execute a surety bond in the penal sum of one thousand dollars (\$1,000) payable to the State of West Virginia and must hold valid public liability insurance for which the minimum acceptable coverage shall be \$300,000 per occurrence for bodily injury and \$25,000 per occurrence and \$25,000 aggregate for property damage. The licensee shall provide the director with a copy of the required insurance policy or appropriate certification by the insurer that the required insurance coverage is in effect.

3.5. **Application.** An outfitter seeking a license shall provide the director with the information specified on the Department's application and any additional information that the director deems necessary for consideration of such application. Any change in that information must be reported by the licensee to the director within

thirty (30) days of such change. The applicant may in his or her application elect to be designated as an outfitter or a guide.

3.6. Records. Licensees shall keep a current record or file containing the name, address, age, and residency of all persons who have utilized their services. This record shall be kept for a period of two (2) years and shall be made available to the director upon request.

3.7. Nontransferability. A license is nontransferable and is valid only for the calendar year designated therein.

3.8. Posted Lands. A license confers no authority to trespass; written permission must be obtained from the landowner, lessee, or tenant of any fenced or posted lands before entering same.

3.9. National Forest Lands. An outfitters license shall not be valid on National Forest lands within this state unless written permission is obtained from the Supervisor of such National Forest lands. Such permission must be signed and approved by the National Forest Supervisor upon the form furnished by the Department of Natural Resources.

3.10. Bear Hunts. In accordance with the provisions of W. Va. Code §20-2-22a, an outfitters license does not permit the holder thereof to organize for commercial purposes or to professionally outfit a bear hunt or to give or receive any consideration whatsoever or any donation in money, goods, or services in connection with a bear hunt.

Section 4. Hunting, Fishing, and Boating Trips Hunting and Fishing Trips.

4.1. Equipment. All vehicles, boats, conveyances, and equipment provided or used by an outfitter shall be maintained in a safe, operable condition.

4.2. First Aid. Each outfitter, or representative of the outfitter actually conducting the service, shall have a current standard first aid training certificate issued by the American Red Cross or equivalent.

4.3. Hunting Trips. All trips to hunt game or wild animals or game or wild birds or both must comply with current West Virginia hunting regulations. The licensee and all guests must have the appropriate hunting licenses and stamps on such trips.

4.4. Fishing Trips. All fishing trips must comply with current West Virginia fishing regulations. The licensee and all guests must have the appropriate fishing licenses and stamps on such trips.

~~4.5. Boating Trips. Organized whitewater trips conducted or supplied by an outfitter upon waters of the State which are not designated whitewater recreation zones must comply with the provisions of West Virginia Administrative Regulations, Commercial Whitewater Advisory Board, Series-4.~~

Section 5. Accident Reports.

5.1. Injury Report. If an accident which requires medical treatment occurs during the performance of a licensee's services, the licensee must file a report with the director within five (5) days after the accident. This injury report shall include the name, address, and age of the injured person; the nature of the injury; and the time, place, and circumstances of the accident.

5.2. Property Damage Report. If an accident occurs during the performance of licensee services which results in non-vehicular property damage in excess of five hundred dollars (\$500), the licensee must file a report with the director within five (5) days after the accident. This property damage report shall include the name of the owner of the property; an estimate of the amount of the loss; the time and location of the event causing the damage; and a description of the accident.

Section 6. Enforcement and Penalties.

~~6.1. Penalties. An outfitter who does not obtain a license or who violates the terms and conditions of his license shall be subject to the penalties prescribed in W. Va. Code §20-7-9.~~

6.1. Penalty for License Violation. An outfitter who violates the terms and conditions of his license shall be subject to the penalties prescribed in W. Va. Code §20-7-9.

6.2. Penalty for Failure to Obtain a License. An outfitter who does not obtain a license shall be subject to the penalties prescribed in W. Va. Code §20-2-26.

6.3. Modification, Suspension, or Revocation of License. If the director determines that a pattern of violations of any requirement of these regulations or any term or condition of a license exists or has existed as a result of the licensee's lack of reasonable care or diligence, or that such violations are willfully caused by the licensee, the director shall immediately issue an order directing the licensee to show cause why the license should not be modified, suspended, or revoked and giving the licensee thirty (30) days in which to request a hearing subject to the provisions of Section 7 of these regulations. Within sixty (60) days following such hearing, the director shall issue and furnish to the licensee a written decision, and the reasons therefore, concerning the modification, suspension, or revocation of the license. Upon a licensee's failure to show cause why the license should not be modified, suspended, or revoked, the director may modify, suspend, or revoke the license, forfeit the licensee's bond posted under W. Va. Code §20-2-26, and give notice to the Attorney General of the State to seek collection of the forfeiture without delay.

6.4. License modification, suspension, and revocation procedures shall be governed by the provisions of W. Va. Code §29A-5 unless otherwise specified in these regulations.

Section 7. Appeals.

7.1. The terms and conditions of a license are appealable under the provisions of W. Va. Code §29A-5.

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
Department of Natural Resources
Series 50
Outfitters and Guides
Legislative Rules

Section 1. Scope and Authority.

1.1. Scope and Purpose. -- The purpose of these regulations is to provide for the regulation of commercial outfitter and guide services and to assure safe operations.

1.2. Authority. -- W. Va. Code §20-2-23 and §20-1-7.

1.3. Effective Date. --

1.4. Filing Date. --

1.5. Promulgation History. These regulations supercede West Virginia Administrative Regulations, Department of Natural Resources, Series XI filed on December 30, 1982 and effective on January 1, 1983.

Section 2. Definitions.

2.1. "Outfitter" or "licensee" means any person who, operating from any temporary or permanent camp, private or public lodge, or private or incorporated home situated within this state, provides for monetary profit or gain, saddle or pack animals or other animals, vehicles, boats, conveyances, equipment, or guide services for any person to hunt game or wild animals, to hunt game or wild birds, to fish, or to go boating within the state. The terms outfitter or licensee shall not include, however, any person who occasionally for accommodation or favor rather than profit or gain, rents equipment to hunters, fishermen or others as a service incidental to his principal occupation or business without advertising outfitter or guide services or holding out to the public his offering of such services.

2.2. All other terms shall have the meaning prescribed in W. Va. Code §20-1-2.

Section 3. Outfitters License.

3.1. License Required. An outfitter must obtain a license from the director prior to the commencement of services in the State.

3.2. Compliance with License. An outfitter issued a license by the director must comply with the terms and conditions of that license.

3.3. License in Possession. Each outfitter shall carry a copy of his license when conducting outfitter services. If the outfitter is a corporation, partnership, or other legal entity, then such copy will be carried by the representative of the outfitter who is present and designated in-charge during the performance of the outfitter services.

3.4. Bonding and Insurance. Before any outfitting services are offered or rendered, each outfitter must execute a surety bond in the penal sum of one thousand dollars (\$1,000) payable to the State of West Virginia and must hold valid public liability insurance for which the minimum acceptable coverage shall be \$300,000 per occurrence for bodily injury and \$25,000 per occurrence and \$25,000 aggregate for property damage. The licensee shall provide the director with a copy of the required insurance policy or appropriate certification by the insurer that the required insurance coverage is in effect.

3.5. Application. An outfitter seeking a license shall provide the director with the information specified on the Department's application and any additional information that the director deems necessary for consideration of such application. Any change in that information must be reported by the licensee to the director within thirty (30) days of such change. The applicant may in his or her application elect to be designated as an outfitter or a guide.

3.6. Records. Licensees shall keep a current record or file containing the name, address, age, and residency of all persons who have utilized their services. This record shall be kept for a period of two (2) years and shall be made available to the director upon request.

3.7. Nontransferability. A license is nontransferable and is valid only for the calendar year designated therein.

3.8. Posted Lands. A license confers no authority to trespass; written permission must be obtained from the landowner, lessee, or tenant of any fenced or posted lands before entering same.

3.9. National Forest Lands. An outfitters license shall not be valid on National Forest lands within this state unless written permission is obtained from the Supervisor of such National Forest lands. Such permission must be signed and approved by the National Forest Supervisor upon the form furnished by the Department of Natural Resources.

3.10. Bear Hunts. In accordance with the provisions of W. Va. Code §20-2-22a, an outfitters license does not permit the holder thereof to organize for commercial purposes or to professionally outfit a bear hunt or to give or receive any consideration whatsoever or any donation in money, goods, or services in connection with a bear hunt.

Section 4. Hunting and Fishing Trips.

4.1. Equipment. All vehicles, boats, conveyances, and equipment provided or used by an outfitter shall be maintained in a safe, operable condition.

4.2. First Aid. Each outfitter, or representative of the outfitter actually conducting the service, shall have a current standard first aid training certificate issued by the American Red Cross or equivalent.

4.3. Hunting Trips. All trips to hunt game or wild animals or game or wild birds or both must comply with current West Virginia hunting regulations. The licensee and all guests must have the appropriate hunting licenses and stamps on such trips.

4.4. Fishing Trips. All fishing trips must comply with current West Virginia fishing regulations. The licensee and all guests must have the appropriate fishing licenses and stamps on such trips.

Section 5. Accident Reports.

5.1. Injury Report. If an accident which requires medical treatment occurs during the performance of a licensee's services, the licensee must file a report with the director within five (5) days after the accident. This injury report shall include the name, address, and age of the injured person; the nature of the injury; and the time, place, and circumstances of the accident.

5.2. Property Damage Report. If an accident occurs during the performance of licensee services which results in non-vehicular property damage in excess of five hundred dollars (\$500), the licensee must file a report with the director within five (5) days after the accident. This property damage report shall include the name of the owner of the property; an estimate of the amount of the loss; the time and location of the event causing the damage; and a description of the accident.

Section 6. Enforcement and Penalties.

6.1. Penalty for License Violation. An outfitter who violates the terms and conditions of his license shall be subject to the penalties prescribed in W. Va. Code §20-7-9.

6.2. Penalty for Failure to Obtain a License. An outfitter who does not obtain a license shall be subject to the penalties prescribed in W. Va. Code §20-2-26.

6.3. Modification, Suspension, or Revocation of License. If the director determines that a pattern of violations of any requirement of these regulations or any term or condition of a license exists or has existed as a result of the licensee's lack of reasonable care or diligence, or that such violations are willfully caused by the licensee, the director shall immediately issue an order directing the licensee to show cause why the license should not be modified, suspended, or revoked and giving the licensee thirty (30) days in which to request a hearing subject to the provisions of Section 7 of these regulations. Within sixty (60) days following such hearing, the director shall issue and furnish to the licensee a written decision, and the reasons therefore, concerning the modification, suspension, or revocation of the license. Upon a licensee's failure to show cause why the license should not be modified, suspended, or revoked, the director may modify, suspend, or revoke the license, forfeit the licensee's bond posted under W. Va. Code §20-2-26, and give notice to the Attorney General of the State to seek collection of the forfeiture without delay.

6.4. License modification, suspension, and revocation procedures shall be governed by the provisions of W. Va. Code §29A-5 unless otherwise specified in these regulations.

Section 7. Appeals.

7.1. The terms and conditions of a license are appealable under the provisions of W. Va. Code §29A-5.