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STATE OF WEST VIRGINIA
DEPARTMENT OF NATURAL RESOURCES
CHARLESTON 25305

SECRETARY OF STATE

ARCH A. MOORE, JR.
Governor

October 31, 1986

RONALD R. POTESTA
Director

MICHAEL A. FOTOS
Deputy Director

NOTICE OF PUBLIC HEARING
OR COMMENT PERIOD ON A PROPOSED RULE
PUBLIC HEARING

AGENCY: West Virginia Department of Natural Resources
RULE TYPE: Legislative
RULE TITLE: Outfitters and Guides

A PUBLIC HEARING ON THE ABOVE PROPOSED RULE WILL BE HELD AT
3:00 p.m. on Wednesday, December 10, 1986 at Room 674,
1800 Washington Street, East, Charleston, WV 25305

COMMENTS ARE LIMITED TO: ORAL WRITTEN BOTH
COMMENTS MAY ALSO BE MAILED TO: Mr. Jeffrey E. Herrold,
West Virginia Department of Natural Resources, Room 842,
1800 Washington Street East, Charleston, WV 25305.

THE DEPARTMENT REQUESTS THAT PERSONS WISHING TO MAKE COMMENTS
AT THE HEARING MAKE AN EFFORT TO SUBMIT WRITTEN COMMENTS IN
ORDER TO FACILITATE A REVIEW OF THESE COMMENTS. THE ISSUES TO
BE HEARD SHALL BE LIMITED TO THE PROPOSED RULE.

Ronald R. Potesta
Director



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NOTICE OF PUBLIC HEARING
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COMMENT PERIOD


AGENCY: West Virginia Department of Natural Resources
RULE TYPE: Legislative
RULE TITLE: Outfitters and Guides

A COMMENT PERIOD ON THE ABOVE PROPOSED RULE HAS BEEN SCHEDULED
AND WILL END ON FRIDAY, DECEMBER 12, 1986 AT 5:00 P.M.

WRITTEN COMMENTS ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

West Virginia Department of Natural Resources, Room 842
1800 Washington Street East, Charleston, WV 25305
Attention: Mr. Jeffrey E. Herrold

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THE PROPOSED RULE.



Ronald R. Potesta
Director



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CHARLESTON 25306

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October 31, 1986

RONALD R. POTESTA
Director
MICHAEL A. FOTOS
Deputy Director

The Honorable Ken Hechler
Secretary of State
Capitol Complex, Suite 157-K
Charleston, West Virginia 25305

Re: Filing of Proposed Rules (Outfitters
and Guides, Series XI), Notice of
Public Hearing, and Notice of Comment
Period by the Department of Natural
Resources

Dear Mr. Hechler:

Enclosed please find for your filing a copy of proposed amendments to the legislative rules of the Department of Natural Resources, a Notice of Public Hearing, and a Notice of Comment Period for the proposed rule.

If you have any questions, please contact Mr. Jeffrey E. Herrold, Director's Office of Regulatory Affairs, at 348-2761.

Sincerely,

A handwritten signature in cursive script that reads "Ron Potesta".

Ronald R. Potesta
Director

RRP/jhb

Enclosures

PREAMBLE FOR AMENDMENTS TO LEGISLATIVE RULES
CONCERNING OUTFITTERS AND GUIDES

PROGRAM: Law Enforcement

REGULATIONS: Department of Natural Resources, Outfitters and Guides (Series XI)

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

ACTION: Proposed Rules and Request for Comments

TOPIC: The regulation of commercial outfitters and guides

DATES: A public hearing will be held on Wednesday, December 10, 1986 at 3:00 p.m. in the Director's Conference Room 674, 1800 Washington Street East, Charleston, West Virginia. Comments will be received until 5:00 p.m. on Friday, December 12, 1986.

SUMMARY: The Department is proposing amendments to its legislative rules that would replace existing Series XI regulations concerning licensed commercial outfitters and guides.

The new Series XI proposed today concerns the outfitter and guide regulations contained in Sections 1 through 5 of the current Series XI. Sections 6 through 9 of the current Series XI regulations, concerning whitewater rafting, have been deleted from this Series; the contents of these sections have been revised and proposed as a new Series by the Commercial Whitewater Advisory Board. Because existing regulations are being replaced by two new Series issued by two different agencies, a struck-through and underlined version of Series XI has not been included with today's proposal. Changes made to the form of this Series are numerous enough to cause confusion, rather than clarity, if strike-throughs and underlines were included.

The contents of today's proposal parallel corresponding sections in the new commercial whitewater outfitters regulations proposed by the Commercial Whitewater Advisory Board. 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 proposal incorporates the contents of Sections 1 through 5 of the current Series XI regulations. For example, today's proposal retains sections related to National Forest lands, bear hunts, first aid certification, and hunting and fishing trips.

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
DEPARTMENT OF NATURAL RESOURCES
SERIES XI
OUTFITTERS AND GUIDES
LEGISLATIVE RULES

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

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

SECRETARY OF STATE

Section 1. Scope and Authority

- 1.1 Scope and Purpose. The purpose of these regulations is to provide for the regulation of commercial outfitters and guides to assure safe operations.
- 1.2 Authority. These regulations are promulgated under the authority of Chapter 20, Article 2, Section 23 and Chapter 20, Article 1, Section 7 of the West Virginia Code.
- 1.3 Effective Date. These regulations become effective on _____.
- 1.4 Filing Date. These regulations were filed on _____.
- 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 West Virginia Code §20-1-2.

Section 3. Outfitters License

- 3.1 An outfitter must obtain a license from the Director prior to the commencement of operations in the State.
- 3.2 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 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 days of such change.
- 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 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 outfitter 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 West Virginia Code §20-2-22a, an outfitter 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

- 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 1.

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 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, the licensee must file a report with the Director within five 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 West Virginia Code §20-7-9.

6.2 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 days in which to request a hearing subject to the provisions of Section 7 of these regulations. Within sixty 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 West Virginia Code §20-2-26, and give notice to the Attorney General of the State to seek collection of the forfeiture without delay.

Section 8. Appeals

8.1 The terms and conditions of a license are appealable under the provisions of West Virginia Code §29A-5.

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