

**WEST VIRGINIA  
SECRETARY OF STATE  
BETTY IRELAND  
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

2007 JUL 27 AM 10:48

SECRETARY OF STATE  
STATE OF WEST VIRGINIA

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

AGENCY: DOC, Division of Natural Resources, Law Enforcement Section TITLE NUMBER: 58

CITE AUTHORITY: 20-1-7-(30)

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 12

TITLE OF RULE BEING AMENDED: Commercial Whitewater Outfitters

IF NO, SERIES NUMBER OF 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.

  
Authorized Signature

**Title 58, Series 12**  
**Legislative Rule**  
**Bureau of Commerce, Division of Natural Resources**

**COMMERCIAL WHITEWATER OUTFITTERS**

**STATEMENT OF CIRCUMSTANCES**

58CSR12 is being amended to guarantee that each commercial whitewater outfitter who holds a license issued by the Division of Natural Resources and who uses and benefits from the additional weekend of rafting on the Gauley River pays a set mitigation fee for each customer whom the commercial whitewater outfitter transports through each study zone of the Gauley River. These amendments will assure the fair spreading of the mitigation costs of the additional rafting weekend among those licensed commercial whitewater outfitters who use and benefit from that additional weekend, as well as assure adequate funding of the trout stocking program for the Gauley River in the spring and fall.

**Title 58, Series 12**  
**Legislative Rule**  
**Bureau of Commerce, Division of Natural Resources**

**COMMERCIAL WHITEWATER OUTFITTERS**

**SUMMARY OF PROPOSED CHANGES**

The objective of this rule is to secure an additional improvement fee to be used only to fund trout stocking in the Gauley River in the spring and fall, for the purpose of mitigating the loss of fishing opportunities resulting from the additional weekend of whitewater rafting on the Gauley River. The proposed changes add the following: amendments to a designated whitewater study zone; a Gauley River fee of thirty-five cents (35¢), which will be paid by each holder of a commercial whitewater outfitters license for each customer that is transported by such commercial whitewater outfitter through each study zone of the Gauley River; a requirement that any and all fees collected must be used only to fund trout stocking in the Gauley River; a provision that the Whitewater Commission may hire a private contractor to administer the trout stocking program; a provision that such collected fees must be paid by the licensee to the Division of Natural Resources and be deposited into a sub-account within the whitewater study and improvement fund; and a requirement that the Whitewater Commission must review this fee every four (4) years to ensure that such fee provides adequate funding for the trout stocking program.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Commercial Whitewater Outfitters

Type of Rule:  Legislative  Interpretive  Procedural

Agency: Division of Natural Resources, Law Enforcement Section

Address: 1900 Kanawha Blvd., E., Capitol Complex, Bldg. 3, Room 837,  
Charleston, WV 25305

Phone Number: 304-558-2784 Email: jerryjenkins@wvdnr.gov

**Fiscal Note Summary**

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

This proposed rule will result in no financial decrease to the public or government. However, without the adoption of proposed rule, the trout stocking program cannot exist, as it relies solely on the additional proposed fees to be received from commercial whitewater outfitters who transport customers on the Gauley River. In addition, without the amendments to ensure that the additional rafting weekend is secured by the mitigation costs of the trout stocking program, the State of West Virginia will be denied an additional weekend of tourism as well as the substantial revenue for the State of West Virginia and the local communities that result from such tourism.

**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.

<b>FISCAL YEAR</b>			
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			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: Commercial Whitewater Outfitters

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

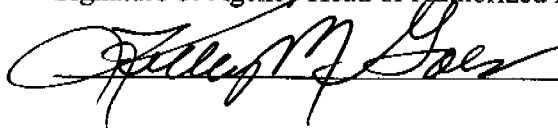
**MEMORANDUM**

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.

The trout stocking program set forth in the proposed rule is completely self-funding. The program relies exclusively on the proposed additional thirty-five (35) cents that will be generated by each licensed commercial whitewater outfitter who transports customers through each study zone of the Gauley River. These fees will be paid to the Division of Natural Resources and deposited into a sub-account and will be used to fund the program in its entirety.

Date: \_\_\_\_\_

Signature of Agency Head or Authorized Representative

 \_\_\_\_\_

**QUESTIONNAIRE**

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: 7/27/07

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* Division of Natural Resources  
Law Enforcement Section  
Capitol Complex, Building 3  
1900 Kanawha Boulevard  
Charleston, WV 25305-0668

LEGISLATIVE RULE TITLE: Commercial Whitewater Outfitters

1. Authorizing statute(s) citation 20-1-7-(30)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
June 28, 2007

b. What other notice, including advertising, did you give of the hearing?  
No public hearing was held. There was a 30-day comment period which wa also advertised in a state wide news release distributed July 2, 2007

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
Public comment period ended on July 27, 2007 at 9:00AM.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.  
Attached N/A No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

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- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Jerry B. Jenkins - Lt. Colonel  
Division of Natural Resources  
Law Enforcement Section  
Capitol Complex, Building 3  
1900 Kanawha Boulevard  
Charleston, West Virginia 25305-0668

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- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

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3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

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b. Date of hearing or comment period:

\_\_\_\_\_

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

\_\_\_\_\_

d. Attach findings and determinations and reasons:

Attached \_\_\_\_\_

RECEIVED

58CSR12

2007 JUL 27 AM 10:48

TITLE 58  
LEGISLATIVE RULE  
BUREAU OF COMMERCE  
DIVISION OF NATURAL RESOURCES

SECRETARY OF STATE  
STATE OF WEST VIRGINIA

SERIES 12  
COMMERCIAL WHITEWATER OUTFITTERS

**§ 58-12-1. General.**

1.1. Scope and Purpose. -- The purpose of this rule is to provide for the regulation of commercial whitewater rafting, outfitting, and related activities to assure safe operations and protect the environment.

1.2. Authority. -- W. Va. Code §20-2-23a.

1.3. Filing Date. -- April 18, 2006.

1.4. Effective Date. -- April 21, 2006.

**§ 58-12-2. Definitions.**

2.1. "Commercial Kayak Clinic" means an instructional class for the purpose of teaching the Eskimo roll, paddling, reading whitewater, navigating, portaging and scouting rapids.

2.2. "Commercial Whitewater Guide" means any person who is an owner, agent or employee of a commercial whitewater outfitter, and who is qualified and authorized to provide services for whitewater expeditions in the state in accordance with W. Va. Code §20-2-23 and 23a and this rule.

2.3. "Commercial whitewater outfitter" means any person, partnership, corporation, or other organization, or any combination thereof, duly authorized and operating from within or from without the State, which for monetary profit or gain, provides whitewater expeditions or rents whitewater craft or equipment for use in whitewater expeditions on any river, portions of rivers, or waters of the State.

2.4. "Division" means the Division of Natural Resources.

2.5. "Evaluation Trip" means a trip provided by a West Virginia commercial whitewater outfitter, licensed in this state, for the purpose of determining that the guide trainee meets the criteria outlined in section 12. of this rule.

2.6. "Familiarization Trip" means a trip provided by a licensed West Virginia commercial whitewater outfitter for the purpose of familiarizing a guide trainee on the river or sections of river to be guided.

2.7. "Guide Trainee" means a person who is attempting to become qualified as a commercial whitewater guide in accordance with the provisions of this rule.

2.8. "Inflatable Kayak" means an inflatable craft rated to carry one (1) or two (2) passengers and meets the requirements outlined in section 10. of this rule.

2.9. "Kayak or C-1" is a hard shell boat that requires a spray skirt and is made of plastic, fiberglass or other hard material. This type of boat does not use rubberized material like that commonly used for rafts.

2.10. "Raft" means an inflatable craft rated to carry three (3) or more passengers and meets the requirements outlined in section 10. of this rule.

2.11. "Rent" means to provide for monetary profit or gain any equipment including watercraft, inner tubes or other vessels to be used in a whitewater expedition. This term also includes the offering for sale with a written or oral agreement or any other arrangement, to repurchase, at a reduced cost, the equipment at the completion of its use.

2.12. "Training Trip" means a trip provided by a commercial whitewater outfitter licensed in the state which offers to the guide trainee substantial opportunity to acquire the necessary skills required by subsection 12.1. of this rule.

2.13. "Underway" means that the watercraft is not at anchor, or secured to the shore, or aground.

2.14. "Watercraft" means a kayak or C-1, raft, inflatable kayak or any boat or watercraft in the licensee's fleet used for commercial or non-commercial whitewater expeditions and which meet the requirements set forth in section 10. of this rule.

2.15. "Whitewater Expedition" means the act of floating, traveling or traversing, in any manner, in or on any description of watercraft or vessel, including 'inner tubes', by a commercial whitewater outfitter, any river or other waters of the state that contains any whitewater and/or rapids or turbulent water.

2.16. "Whitewater Zone" means all rivers, portions of rivers or other waters of the state as identified in subsections 3.1. and 9.12. of this rule.

### **§ 58-12-3. Designated Whitewater Zones.**

3.1. The following rivers, portions of rivers, or waters of the State are designated as whitewater zones. For the purposes of conducting studies as required by W. Va. Code §20-2-23a, the New, Gauley, Cheat, Shenandoah and Tygart Valley Rivers are further divided into special "study zones".

3.1.1. Cheat River from its confluence with Saltlick Creek to the confluence of Big Sandy Creek.

3.1.1.a. From its confluence with Saltlick Creek to the State Route 26 Bridge at Albright.

3.1.1.b. From the State Route 26 Bridge at Albright to the confluence of Big Sandy Creek.

3.1.2. Gauley River from the Summersville Lake Dam to the Railroad Bridge at Jodie.

3.1.2.a. From the Summersville Lake Dam to Mason's Branch Road.

3.1.2.b. From Mason's Branch Road to the Railroad Bridge at Jodie the confluence of Bucklick Creek.

~~3.1.2.c. From the confluence of Bucklick Creek to the Railroad Bridge at Jodie.~~

3.1.3. New River from its confluence with the Greenbrier River to its confluence with the Gauley River.

3.1.3.a. From its confluence with the Greenbrier River to the State Route 41 Bridge at Prince.

3.1.3.b. From the State Route 41 Bridge at Prince to the Railroad Trestle at Dunloup Creek.

3.1.3.c. From the Railroad Trestle at Dunloup Creek to the confluence of Manns Creek.

3.1.3.d. From the confluence of Manns Creek to Teays Landing.

3.1.3.e. From Teays Landing to the Hawks Nest State Park Dam.

3.1.3.f. From the Hawks Nest State Park Dam to its confluence with the Gauley River.

3.1.4. Shenandoah River from the Potomac Edison Power Station Dam at Millville to its confluence with the Potomac River

3.1.5. Tygart Valley River from the confluence of Mill Creek at Belington to the County Route 62 Bridge at Colfax.

3.1.5.a. From the confluence of Mill Creek at Belington to the covered bridge at Philippi.

3.1.5.b. From the covered bridge at Philippi to the Tygart Lake Dam.

3.1.5.c. From the Tygart Lake Dam to the County Route 62 Bridge at Colfax.

**§ 58-12-4. Commercial Whitewater Outfitters License.**

4.1. A commercial whitewater outfitter shall obtain a license from the director prior to the commencement of operations on any waters of the State.

4.2. A commercial whitewater outfitter issued a license by the director shall comply with the terms and conditions of that license.

4.3. The director may issue new licenses valid for one or more designated whitewater zones upon a finding by him or her, and with the approval of the Whitewater Commission, that the licensees currently operating in the same whitewater zone or zones have not fully utilized the daily use limits set under the provisions of section 8 of this rule. The director shall file public notice of his or her intent to issue new licenses for a designated whitewater zone immediately upon such a finding.

4.4. Before any outfitting services are offered or rendered, each commercial whitewater outfitter shall execute a surety bond in the penal sum of one thousand dollars (\$1,000) payable to the State of West Virginia and shall hold valid public liability insurance in the name of the licensee with minimum coverage of three hundred thousand dollars (\$300,000) per occurrence for bodily injury and twenty-five thousand (\$25,000) aggregate for property damage. The licensee shall submit proof of liability insurance coverage and the surety bond to the director not later than February 15th of each year. The issuing insurance company shall furnish immediate written notification of the cancellation of the policy and/or the surety bond to the director. The requirement of cancellation notification shall be printed on the bottom of every policy.

4.5. Annual license fees shall be paid by the licensee to the Division not later than February 15th.

4.6. An applicant for a commercial whitewater outfitter's license for the ensuing year shall provide the director with the information specified on the Division's application and any additional information that the director considers necessary for consideration of the application by March 15th. Upon review and consideration by the whitewater commission, a written reply stating whether or not the license will be granted shall be sent to the applicant by September 30th.

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

4.8. Whitewater Guide-Trainee Information Sheet.

4.8.1. Individual guides are responsible for completing the Whitewater Guide-Trainee Information Sheet furnished by the division. Forms are to be provided to individual guides or guide-trainees by the licensee.

4.8.2. A licensee shall not employ a guide trainee for the purpose of guiding on a commercial whitewater expedition until the outfitter has received the guide trainee's information sheet.

4.8.3. A West Virginia commercial whitewater guide is not required to supplement the guide trainee information sheet except to show qualifications for additional rivers or sections of rivers.

4.8.4. The licensee is responsible for keeping on file the original or a certified copy of the completed whitewater guide-trainee information sheet. These records shall be maintained by the licensee for two (2) years following the last date of employment. The licensee shall provide the guide or guide trainee with a certified copy of the trainee information sheet and shall forward a copy to the Division of Natural Resources, Law Enforcement Section, Capitol Complex, Building 3, Charleston, West Virginia 25305 upon request.

#### 4.9. Whitewater Guide Trip Leader Information Sheet.

4.9.1. Individual guides shall complete the Whitewater Guide Trip Leader Information Sheet furnished by the division.

4.9.2. A licensee shall not employ a guide as a Trip Leader until the outfitter has received the guide's Trip Leader Information Sheet.

4.9.3. A West Virginia commercial whitewater guide Trip Leader is not required to supplement the guide Trip Leader information sheet except to show qualifications for additional rivers or sections of rivers.

4.9.4. The licensee is responsible for keeping on file the original or a certified copy of the completed whitewater guide Trip Leader information sheet. These records shall be maintained by the licensee for two (2) years following the last date of employment. The licensee shall provide the guide Trip Leader with a certified copy of the guide Trip Leader information sheet and shall forward a copy to the Division of Natural Resources, Law Enforcement Section, Capitol Complex, Building 3, Charleston, West Virginia 25305 upon request.

#### 4.10. New Hires

4.10.1. Guides and guide-trainees are responsible for submitting the completed Whitewater Guide Trainee Information Sheet on the first day of employment with a licensee.

**§ 58-12-5. Special Whitewater Study and Improvement Fees.**

5.1. In accordance with W. Va. Code §20-2-23a, there will be a special whitewater study and improvement fee paid by each licensee for each customer that is transported on a commercial whitewater trip in the study zones on the Cheat, Gauley, New, Shenandoah and Tygart Valley Rivers.

5.2. The fee is thirty-five cents (35¢) per customer. If the trip exceeds one day then the fee shall be collected for each day, or part of a day, of the trip.

5.3. The licensee shall pay these fees to the division by the fifteenth (15th) day of the month following the month in which the fee was assessed and deposit them in the whitewater study and improvement fund.

5.4. An additional improvement fee of thirty-five cents (35¢) ("additional Gauley River fee") will be paid by each licensee for each customer that is transported by a commercial whitewater outfitter through each study zone of the Gauley River. If the trip exceeds one day, then an additional Gauley River fee shall be collected for each day, or part of a day, of the trip.

5.4.1. Any and all additional Gauley River fees collected hereunder shall be used only to fund trout stocking in the Gauley River in the spring and fall, in mitigation of the loss of fishing opportunities resulting from additional whitewater flows on the Gauley River. The Whitewater Commission may hire a private contractor to administer the trout stocking program.

5.4.2. The licensee shall pay all additional Gauley River fees collected by the licensee to the division by the fifteenth (15th) day of the month following the month in which such additional Gauley River fees were assessed, and these fees shall be deposited in a sub-account within the whitewater study and improvement fund. The Whitewater Commission shall review the amount charged as an additional Gauley River fee every four years, with a view to setting the additional Gauley River fee at an amount sufficient to assure adequate funding for the trout stocking program from time to time.

**§ 58-12-6. Transfer of License.**

6.1. A licensee shall obtain prior written approval of the director to sell or transfer a commercial whitewater license.

6.2. A licensee shall obtain the express written approval of the director to sell or transfer any use allocation or other privilege conferred by a license.

6.3. The director may not withhold approval of a sale or transfer except for just cause.

**§ 58-12-7. Use Allocations.**

7.1. The director shall establish, modify, or limit use allocations for all licensees operating within a designated whitewater zone in conformance with section 8 of this rule.

7.2. A licensee may sell all of his or her use allocation for a designated whitewater zone upon the review and approval of the director. A licensee may sell or transfer a portion of his or her use allocation for a designated whitewater zone to another licensee holding an allocation on those waters upon the review and approval of the director.

7.3. The director may not withhold approval of a sale or transfer except for just cause.

**§ 58-12-8. Daily Use Limits.**

8.1. Total daily use limits for each designated whitewater zone shall be set by the director under the criteria set forth in W. Va. Code §20-2-23a, unless studies contracted for by the division determine that a different daily use limit is appropriate based upon the following criteria:

8.1.1. The assurance of safety in commercial whitewater operations;

8.1.2. The best interests of persons seeking to enjoy whitewater rafting and the interests of the State in the promotion of tourism; and

8.1.3. The sound recreational and ecological use of the State's natural resources.

**§ 58-12-9. Commercial Whitewater Operations.**

9.1. Towing rafts through water pools is permitted.

9.2. Motorized watercraft are permitted on the New River between Thurmond and Fayette Station when river flow equals or exceeds sixteen thousand five hundred (16,500) cubic feet per second at Thurmond.

9.3. The director may issue special use permits to licensees for the use of motorized watercraft to provide whitewater trips to senior citizens, disabled persons, and other persons who

might not otherwise be able to participate in whitewater recreation. The director may also issue special use permits to licensees to conduct whitewater trips for the purpose of making documentary recordings or to provide emergency transport services.

9.4. Motorized watercraft shall not pass non- motorized trips unless signaled to do so by the trip leader of the non-motorized watercraft. The non- motorized watercraft shall make all reasonable efforts to facilitate passing of the motorized watercraft.

9.5. While underway, each passenger, trip guide, and trip leader shall wear a securely fastened vest-type personal flotation device as prescribed in subsection 10.1 of this rule. The licensee shall maintain all personal flotation devices in a good and serviceable condition.

9.6. Each commercial whitewater expedition shall have a minimum of one (1) trip guide for every ten (10) passengers or any portion thereof. There shall be a minimum of two guides on each whitewater expedition of more than six (6) watercraft.

9.7. There shall be no less than one (1) trip guide on a commercial whitewater expedition on rivers or sections of rivers unless otherwise designated in subsection 9.12. of this rule.

9.8. A West Virginia licensee may run their whitewater expedition in conjunction with another West Virginia licensee's whitewater expedition in order to fulfill the requirements of this subsection.

9.9. There shall be one commercial whitewater trip leader on each commercial whitewater trip.

9.10. A trip leader may count as a trip guide for the purpose of meeting the requirements of this subsection.

9.11. Each commercial kayak clinic shall have a minimum of one (1) trip guide for each six (6) customers or any portion thereof.

9.12. The following rivers, portions of rivers or waters of the State are designated as whitewater zones for the purpose of rafting West Virginia's rivers, portions of rivers, or waters of the State to determine the minimum number of guides per trip by whitewater zones:

9.12.1. Cheat River.

9.12.1.a. From its confluence with Saltlick Creek to the State Route 26 Bridge at Albright there shall be a minimum of one (1) trip guide per trip.

9.12.1.b. From the State Route 26 Bridge at Albright to the confluence of Big Sandy Creek there shall be a minimum of two (2) trip guides per trip. When river flows equal or exceed two thousand two hundred (2,200) cubic feet per second there shall also be a trip guide in every watercraft.

9.12.2. New River. Between Mann's Creek and Teays Landing there shall be a minimum of one (1) trip guide in each watercraft. No duckie expeditions are allowed between Mann's Creek and Teays Landing.

9.12.3. Gauley River. From the Summersville Lake Dam to the Railroad Bridge at Jodie there shall be a minimum of one (1) trip guide in each watercraft, except for inflatable kayaks and kayaks,

9.12.3.a. From the Summersville Lake Dam to Mason's Branch Road there shall be a minimum of two (2) trip guides per trip. At flows in excess of one thousand (1,000) cubic feet per second between the Summersville Lake Dam and Sweet's Falls there shall be minimum of one (1) trip guide in each watercraft with the exception of a commercial kayak clinic.

9.12.3.b. From Mason's Branch Road to the Railroad Bridge at Jodie there shall be a minimum of two (2) trip guides per trip.

9.12.4. New River from its confluence with the Greenbrier River to its confluence with the Gauley River.

9.12.4.a. From its confluence with the Greenbrier River to the confluence of Manns Creek there shall be a minimum of one (1) trip guide per trip.

9.12.4.b. From the confluence of Manns Creek to Teays Landing there shall be a minimum of one (1) trip guide in each watercraft except on a kayak clinic where the instructor and guests are in kayaks. Kayak clinics may be held by a commercial whitewater outfitter. Daily use is restricted to nine students per day per license and must have a ratio of one (1) trip guide per three (3) students. Kayak clinics are not permitted in this section of the New River on Saturdays between Memorial Day and Labor Day. There shall be a minimum of two (2) trip guides per trip on all other trips. Inflatable kayak expeditions or trips are not permitted in this section of the New River.

9.12.4.c. From Teays Landing to the Hawks Nest State Park Dam there shall be a minimum of one (1) trip guide per trip.

9.12.4.d. From the Hawks Nest State Park Dam to its confluence with the Gauley River there shall be a minimum of two (2) trip guides per trip.

9.12.4.e. From the confluence of the Greenbrier River and the New River to the top of Brooks Falls outfitters may rent inflatable kayaks and rafts that meet the requirements of section 10 of this rule: Provided, that the inflatable kayaks and the rafts are rented only for use in this section of the New River. Trip guides are not required to accompany these rental trips.

9.12.5. Shenandoah River from the Potomac Edison Power Station Dam at Millville to its confluence with the Potomac River. There shall be a minimum of one (1) trip guide per trip.

9.12.5.a. From the West Virginia border to Millville, outfitters may rent inner tubes, canoes, inflatable kayaks, kayaks, and rafts that meet the requirements of section 10 of this rule: Provided, that the inner tubes, canoes, inflatable kayaks, kayaks, and rafts are rented only

for use in this section of the Shenandoah River. Trip guides are not required to accompany these rental trips.

9.12.6. Tygart Valley River from the confluence of Mill Creek at Belington to the County Route 62 Bridge at Colfax there shall be a minimum of two (2) trip guides per trip.

9.13. No person shall carry a firearm in watercraft during a whitewater expedition.

9.14. No person may use alcohol while the watercraft is underway during a whitewater expedition.

#### **§ 58-12-10. Equipment.**

10.1. The licensee shall provide a Type V vest-type personal flotation device approved by the United States Coast Guard for commercial whitewater use to each passenger to be transported in watercraft by the licensee and shall be securely fastened and worn by the passengers while underway. Trip leaders and trip guides shall wear either Type III or Type V vests approved by the United States Coast Guard for commercial whitewater use and shall securely fasten them while underway. The use of Type III or Type V personal flotation devices by passengers is acceptable for kayak or canoe instruction.

10.2. The minimum watercraft size that may be used on any river is an eight (8) foot, two (2) compartmentalized watercraft (except inner tubes) unless otherwise specified in subsection 10.4 of this rule. The size of an inflatable watercraft shall be measured from the outside tube surface in the bow to the outside tube surface in the stern when fully inflated, plus or minus six (6) inches.

10.3. Special regulations for specific rivers, or portions of specific rivers, are as follows:

10.3.1. Gauley River. At flows in excess of one thousand (1,000) cubic feet per second between Summersville Dam and Sweet's Falls, the minimum watercraft size shall be a twelve (12) foot, four (4) compartmentalized watercraft.

10.4. Every commercial whitewater trip shall be equipped with the following:

10.4.1. At least one (1) first aid kit per trip.

10.4.2. At the beginning of each trip, each trip leader or trip guide shall possess at least one (1) throw line or throw bag not less than forty (40) feet in length. One (1) professional quality rescue rope which is seventy (70) feet in length shall be carried on each whitewater expedition. The seventy (70) foot rescue rope may be counted as one of the required throw lines or throw bag.

10.5. All watercraft used in a licensee's commercial whitewater operations shall be marked with the name, initials, or an easily recognizable logo of the licensee and the markings shall be plainly visible and legible from a distance of one hundred (100) feet.

## **§ 58-12-11. Accidents Reports.**

11.1. Injury Report. If a customer reports an injury to a licensee or the licensee is aware of an injury or accident that requires medical services at an established medical facility and the injury or accident occurs during the performance of a licensee's services from the put-in to the take-out, the licensee shall file an accident report with the director. The licensee shall use the injury report form prescribed by the Whitewater Commission. The form shall include the name, address, and age of the person injured, the nature of the injury, the time and place of the accident and the circumstances of the accident. The licensee shall file the report with the director within fifteen (15) days after the accident.

11.2. Property Damage Report. If an accident occurs during the performance of a licensee's services which results in non-vehicular property damage in excess of five hundred dollars (\$500), the licensee shall file a report with the director within fifteen (15) 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.

## **§ 58-12-12. Trip Guides and Trip Leaders.**

12.1. Commercial Whitewater Trip Guides. A Commercial Whitewater Trip Guide shall:

12.1.1. Be at least eighteen (18) years old, unless approved in writing by the director; and

12.1.2. Have completed a minimum of fifteen (15) training trips including at least five (5) training trips in the same or similar type of raft used by the outfitter for commercial whitewater activities, two (2) familiarization trips and one (1) evaluation trip on the section of river to be guided, except that on the Shenandoah River only ten (10) training trips will be required plus the two (2) familiarization trips and one (1) evaluation trip. One (1) of the familiarization trips and the evaluation trip shall be in the same or similar type of raft used by the outfitter for commercial whitewater activity. The second familiarization trip may count as the evaluation trip; or

12.1.3. Have acted as a commercial whitewater guide and completed a minimum of fifteen (15) commercial whitewater expeditions in a raft on a river in which a guide is required in every raft, two (2) familiarization trips and one (1) evaluation trip. The second familiarization trip may count as the evaluation trip;

12.1.4. Have completed a minimum of forty (40) commercial whitewater expeditions in a raft on a river in which a commercial whitewater guide is required in every raft, two (2) familiarization trips and one (1) evaluation trip in order to be qualified on the Gauley River between Summersville Lake and Mason's Branch. The second familiarization trip may count as the evaluation trip.

12.1.5. Be able to operate watercraft used in the licensee's commercial whitewater operation on the rivers or sections of rivers to be guided;

12.1.6. Supervise passengers and be capable of giving a suitable orientation talk to the passengers in his or her watercraft on subjects which may include, but not be limited to, safety personal flotation devices and how to stay in the boat and paddle;

12.1.7. Have a valid American Red Cross first aid card or its equivalent and current CPR certification by either the American Red Cross as a Professional Rescuer or American Heart Association as a Healthcare Provider or the equivalent;

12.1.8. Have a general knowledge of emergency access and evacuation routes; and

12.1.9. Be familiar with floating and swimming in whitewater conditions in a personal flotation device.

12.1.10. For training and evaluation purposes, a guide trainee may act as a trip guide on a commercial whitewater expedition as long as the guide trainee is directly and actively supervised by a commercial whitewater trip guide who is present in the watercraft.

12.1.11. The licensee shall document all familiarization trips and evaluation trips on the guide trainee's Whitewater Guide Information Sheet and maintained with the guide's records.

12.1.12. A commercial whitewater trip guide qualified on any river or portion of a river prior to the effective date of this rule remains qualified on those rivers or portions of rivers as long as he or she meets the requirements set forth in subdivision 12.1.7 of this rule.

12.2. Commercial Whitewater Trip Leaders. Each commercial whitewater expedition shall include a trip leader. A trip leader shall meet all commercial whitewater trip guide qualifications specified in Sub Section 12.1 of this rule. In addition, a trip leader shall:

12.2.1. Be at least twenty (20) years old, unless approved in writing by the director;

12.2.2. Have completed at least six (6) commercial whitewater expeditions as a commercial whitewater guide on the section of river that he or she will act as a trip guide. On the Upper Gauley between Summersville Lake Dam and Mason's Branch a trip leader shall have completed at least twenty (20) commercial whitewater expeditions as a commercial whitewater guide on the section of river that he or she will act as a trip guide; and

12.2.3. Be knowledgeable and capable of giving a suitable orientation talk to and supervise the passengers on the commercial whitewater expedition on subjects which may include, but not be limited to, trip safety, trip description, personal flotation devices, how to stay in the boat and how to paddle and throw lines.

12.2.4. A commercial whitewater trip leader qualified on any river or portion of a river prior to the effective date of this rule remains qualified on those rivers or portions of rivers as long as he or she meets the requirements set forth in subdivision 12.1.7 of this rule.

12.3. Trip Guides or commercial whitewater operations on the Shenandoah River, a licensee may employ the services of guides who are at least sixteen (16) years old and otherwise meet the qualifications set forth in subsection 12.1. of this rule.

12.4. Licensees may request variations from the trip leader or trip guide qualifications set forth in this section. Requests for variations must be made in writing to the director and the request shall substantiate that the variation does not reduce the intent of the qualifications set forth in this rule.

12.5. Documents relating to the requirements of this section shall be kept at the licensee's base camp for inspection by the director or his or her representative.

#### **§ 58-12-13. Enforcement and Penalties.**

13.1. Penalty for Violation. Any person who violates any provision of W. Va. Code §§20-2-23a and 20-2-23d or this rule is subject to the penalties prescribed in W. Va. Code §20-2-23d.

13.2. Modification, Suspension or Revocation of License. If the director determines that a pattern of violations of any requirement of this rule 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 the 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 W. Va. Code §29A-5-1 et. seq. Within sixty (60) days following the hearing, the director shall issue and furnish to the licensee a written decision, and the reasons for the decision, concerning the modification, suspension, or revocation of his or her 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 §20-2-23d, and give notice to the Attorney General of the State to seek collection of the forfeiture without delay.

13.3. License modification, suspension, and revocation procedures are governed by the provisions of W. Va. Code §29A-5-1 et. seq. unless otherwise specified in this rule.

#### **§ 58-12-14. Appeals.**

14.1. The terms and conditions of a license are appealable under the provisions of W. Va. Code §29A-5-1 et. seq.