

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

FILED

2001 JUN 27 P 4:51

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

OFFICE WEST VIRGINIA
SECRETARY OF STATE

AGENCY: Division of Natural Resources TITLE NUMBER: 58

RULE TYPE: Legislative CITE AUTHORITY: WV Code 20-2-23a

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: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 27, 2001 AT 4:30 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Lt. Colonel W. B. Daniel

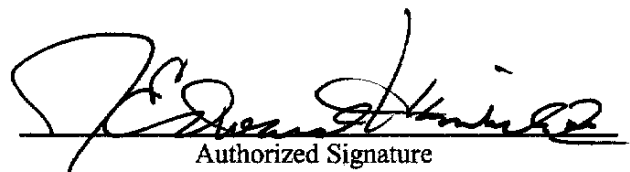
Division of Natural Resources

Building 3, Room 840

Capitol Complex

Charleston, WV. 25305

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


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

87-60

**TITLE 58
LEGISLATIVE RULE
DIVISION OF NATURAL RESOURCES**

SERIES 12

SUMMARY

Series 12 provides for the regulation of commercial whitewater rafting, outfitting and related activities to assure safe operations and protect the environment.

**TITLE 58
LEGISLATIVE RULE
DIVISION OF NATURAL RESOURCES**

SERIES 12

CIRCUMSTANCE

The Division of Natural Resources and the Whitewater Commission proposes to further clarify the requirements to qualify as a commercial whitewater guide and to make additional changes to better understand the requirements of the licensed commercial whitewater outfitter.

FISCAL NOTE FOR PROPOSED RULE

Rule Title: Title 58, Series 12, Commercial Whitewater Outfitters

Type of Rule X **Legislative** **Interpretive** **Procedural**

Agency Division of Natural Resources, Law Enforcement Section

Address Building 3, Room 840

Capitol Complex

Charleston, WV. 25305

1. Effect of Proposed Rule

	ANNUAL			FISCAL YEAR	
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	0	0	0	0	0
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates: No additional cost to emplement the changes to this rule.

3. Objective of these rules: This rule provides for the regulation of the whitewater industry to ensure the safety of the users and to protect the environment.

Rule Title: Title 58, Series 12, 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: July 27, 2001

**Signature of Agency or
Authorized Representative:**


Ed Hamrick, Director

**TITLE 58
LEGISLATIVE RULE
BUREAU OF COMMERCE
DIVISION OF NATURAL RESOURCES
SERIES 12**

COMMERCIAL WHITEWATER OUTFITTERS

FILED

2001 JUN 27 P 4: 51

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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. --

1.4. Effective Date. --

1.5. Repeal of Former Rule. -- This rule repeals and replaces Legislative Rule 58CSR12, "Commercial Whitewater Outfitters", which was filed on April 7, 1994 became effective on April 7, 1994.

58-12-2. Definitions.

2.1. "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.

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

2.3. "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, said equipment at the completion of its use.

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

2.5. "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.

2.6. "Whitewater Zone" means all rivers, portions of rivers or other waters of the state as identified in sections 3.1. and 9.7. of this rule.

2.7. ~~All other terms shall have the meaning prescribed in W. Va. Code §§20-1-2 and 20-2-23a.~~
"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 chapter 20, article 2, sections 23 and 23a and this rule.

2.8. "Training Trip" means a trip provided by a commercial whitewater outfitter licensed in the state which offer to the trainee substantial opportunity to acquire the necessary skills required by section 12.1. of this rule. Except as otherwise noted in section 12.1.2, a total of fifteen (15) training trips are required and includes at least five (5) training trips in the same or similar type of raft used by the outfitter for commercial whitewater activities. The other ten (10) training trips may be in the same or similar type of watercraft used by the outfitter for commercial whitewater activities.

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

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

2.10. "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.

2.10.a. At least one (1) familiarization trip must be completed in the same or similar type of raft used by the outfitter for commercial whitewater activity as specified in section 12.10. of this rule.

2.10.b. All familiarization trips must be documented on the guide trainee's Whitewater Guide Information Sheet and maintained with the guide's records.

2.10.c. For familiarization purposes, a trainee may act as a trip guide on a commercial whitewater expedition as long as the trainee is directed and actively supervised by a qualified commercial whitewater guide who is present in the watercraft.

2.11. "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 12.12.a. of this rule.

2.11.a. The evaluation trip must be completed in the same or similar type of raft used by the outfitter for commercial whitewater activities as specified in section 12.10. of this rule.

2.11.b. All evaluation trips must be documented on the guide trainee's Whitewater Guide Information Sheet and maintained with the guide's records.

2.11.c. For evaluation purposes, a trainee may act as a trip guide on a commercial whitewater expedition so long as the trainee is directed and actively supervised by a qualified commercial whitewater guide who is present in the watercraft.

2.12. "Watercraft" means 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 the meet the requirements set forth in section 12.10. of this rule.

2.12.a. "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.

2.12.b. "Raft" means an inflatable craft rated to carry three (3) or more passengers and meets the requirements outlined in section 12.10. of this rule.

2.12.c. "Inflatable Kayak" means an inflatable craft rated to carry one (1) or two (2) passengers and meets the requirements outlined in section 12.10. of this rule.

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

2.14. All other terms shall have the meaning prescribed in W. Va. Code §§20-1-2 and 20-2-23a.

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 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 must 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 must 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/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 these regulations. Public notice of the director's intent to issue new licenses for a designated whitewater zone shall be made immediately upon such a finding.

4.4. Before any outfitting services are offered or rendered, each commercial whitewater 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 in the name of the licensee with minimum coverage of ~~or which the minimum acceptable coverage shall be~~ three hundred thousand dollars (\$300,000) per occurrence for bodily injury and twenty-five thousand (\$25,000) aggregate for property damage. Proof of coverage and the surety bond must be submitted 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. 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. The director shall have the authority to lower the current limits in the event insurance in these amounts cannot be obtained.~~

~~4.5. Annual license fees shall be paid to the Division of Natural Resources not later than February 15th.~~

~~4.5 6. An applicant for a commercial whitewater outfitter's seeking a 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 deems necessary for consideration of the application by March 15th. Upon review and consideration, a reply in writing stating whether or not the license will granted will be sent to the applicant by September 30th. Any change in the submitted information must be reported by the licensee to the director within thirty (30) days of such change.~~

~~4.6 7. 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.~~

~~4.7. Licensees shall keep a current record or file containing "Whitewater Guide-Trainee Information Sheets" and "Whitewater Guide Rosters". These records shall be maintained for a period of three (3) years and shall be submitted to the director annually as follows:~~

~~4.7.1. Cheat River - April 15~~

~~4.7.2. Gauley River - September 15~~

~~4.7.3. New River - April 15~~

~~4.7.4. Shenandoah River - April 15~~

~~4.7.5. Tygart River - April 15~~

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. ~~which will list experience gained by including the company worked for, the river and section traveled, and the date of each trip.~~ Forms are to be provided to individual guides or guide-trainees by the employer.

4.8.2. ~~Individual guides or guide-trainees will certify that information contained on this form is true and correct to the best of his or her knowledge by signing and listing a permanent address and by having the completed form notarized.~~ A commercial whitewater outfitter 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. ~~Guide and guide-trainees will be responsible for submitting the completed form at the time of employment with a licensed whitewater company.~~ A West Virginia commercial whitewater guide need not supplement the guide trainee information sheet except to show qualifications for additional rivers or sections of rivers.

4.8.4. ~~If the guide or guide-trainee will be taking additional training with West Virginia whitewater companies, the form should not be notarized until all training is completed and the guide-trainee is certified to work as a guide under these regulations.~~

4.8.5 4. The licensee will be responsible for keeping on file the original; or a certified copy of the completed whitewater guide-trainee information form. These records shall be maintained by the licensee for two (2) years past the last date of employment. The licensee shall provide the guide with a certified copy of the trainee information sheet and a copy shall be forwarded for forwarding a photocopy to the Division of Natural Resources, Law Enforcement Section, State Capitol Complex,

Building 3, Charleston, West Virginia 25305 upon request, not later than the date specified in Section 4.7 of these regulations.

4.9. ~~Whitewater Guide Roster~~ Trip Leader Information Sheet.

4.9.1. ~~The owner/operator of a licensed whitewater company, or a designee, will be responsible for transferring information from whitewater guide-trainee information sheets to the Whitewater Guide Roster. Individual guides are responsible for completing the Whitewater Guide Trip Leader Information Sheet furnished by the division.~~

4.9.2. ~~In addition to information contained on the Whitewater Guide-Trainee Information sheets, the owner/operator or designee, will list the social security number, age, and ranking (TL-Trip Leader, TG-Trip Guide) of each guide. The owner/operator or designee, will also be responsible for ascertaining that each guide holds a valid first aid card and a CPR card and list the expiration dates on the Whitewater Guide Roster. A commercial whitewater outfitter shall not employ a guide as a Trip Leader until the outfitter has received the guide's Trip Leader Information Sheet.~~

4.9.3. ~~It will be the responsibility of each guide to keep his or her CPR card and first aid card current: A West Virginia commercial whitewater guide Trip Leader need not supplement the guide trainee information sheet except to show qualifications for additional rivers or sections of rivers.~~

4.9.4. ~~The licensed whitewater company will be responsible for certifying that information contained on the whitewater guide roster is true and correct to the best of his or her knowledge by signing and listing a permanent address and by having it notarized.~~

4.9.5. ~~At the end of each guide training period, all licensed whitewater companies will be responsible for keeping a copy of the whitewater guide roster on file and forwarding the original to~~

~~the Division of Natural Resources, Law Enforcement Section, not later than the date specified in Section 4.7 of these regulations.~~

4.10. ~~New Hires After Start of Season.~~

~~4.10.1. When guides or guide-trainees are hired after the original whitewater guide roster and copies of the whitewater guide-trainee information sheets are filed with the Division of Natural Resources, a new whitewater guide roster, with accompanying whitewater guide-trainee information sheets, listing information pertaining to the new employee(s) must be forwarded to the Division of Natural Resources within fifteen (15) days after the hire date. Guides and guide-trainees will be responsible for submitting the completed Whitewater Guide Trainee Information Sheet on the first day of employment with a licensed whitewater company.~~

58-12-5. Special Whitewater Study and Improvement Fee.

5.1. In accordance with W. Va. Code §20-2-23a, as amended, 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 shall be ~~fifty cents (50¢)~~ thirty-five (35¢) per customer. If the trip exceeds one day then the fee shall be collected for each day, or part thereof, of the trip.

5.3. These fees shall be paid to the division by the fifteenth (15th) day of the month following the month in which the fee was assessed and deposited in the whitewater study and improvement fund forthwith.

5.4. Said fees paid prior to the effective date of these regulations may be credited against fees required pursuant to these regulations.

58-12-6. Transfer of License.

6.1. No sale of controlling stock of assets of a licensee may include the sale or transfer of a license without written approval from the director, which may not be unreasonably withheld.

6.2. No sale or transfer of use allocation or other privileges conferred by a license may occur without the express written approval of the director, which may not be unreasonably withheld.

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 these regulations.

7.2. A licensee may sell all of his/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/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 which may not be unreasonably withheld.

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 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.

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

~~8.2. Variances. Written requests for variances in the daily use allocations may be made to the director and may be granted by the director in writing. On the Gauley River, variances may not be granted for any Saturday or the first Sunday of the season. Variances may be granted for any day on all other whitewater zones.~~

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 individuals who might not otherwise be able to participate in whitewater recreation. Special use permits may also be issued 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 trip. The non-motorized trip 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 Section 10.2 of these regulations. Each personal flotation device shall be maintained in a good and serviceable condition.

9.6. Minimum Number of Guides.

9.6.1. Each commercial whitewater trip expedition shall have a minimum of one (1) trip guide for every ten (10) customers passengers or any portion thereof. There shall be a minimum of two guides on each whitewater expedition of more than six (6) watercraft. For more than four (4) passengers over an even multiple of ten (10), the higher multiple of ten (10) will be used to determine the minimum number of trip guides. In no case will there be less than (1) trip guide on a commercial whitewater trip. The trip leader may count as a trip guide for the purpose of meeting this requirement.

9.6.2. On a commercial whitewater expedition 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 section 9.7. of this rule.

9.6.3. A West Virginia commercial whitewater outfitter may run their whitewater expedition in conjunction with another West Virginia commercial whitewater outfitter's whitewater expedition in order to fulfill the requirements of this sub-section.

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

9.6.5. A trip leader may count as a trip guide for the purpose of meeting the requirements of this sub-section.

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

9.7. Special regulations for specific rivers, or portions thereof, are as follows: 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:

9.7.1. Cheat River. ~~Between Albright and Cheat Lake, there shall be a minimum of one (1) trip guide in each watercraft when river flow equals or exceeds two thousand two hundred (2,200) cubic feet per second (equivalent to a level of 2.5 feet on the visual gauge on the Albright bridge pier.)~~

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

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

9.7.2. 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 or kayak instruction shall be allowed between Mann's Creek and Teays Landing.

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

9.7.3.a. From the Summersville Lake Dam to Mason's Branch Road there shall be a minimum of two (2) guides per trip. At flows in excess of one thousand (1,000) cfs 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

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

~~9.7.4. Gauley River. At flows in excess of one thousand (1,000) cubic feet per second between Summersville Dam and Sweet's Falls, there shall be a minimum of one (1) trip guide in each watercraft. In watercraft other than duckies there shall be a minimum of one (1) guide per craft between the Summersville Dam and the Railroad Bridge at Jodie.~~ New River from its confluence with the Greenbrier River to its confluence with the Gauley River.

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

9.7.4.b. From the confluence of Manns Creek to Teays Landing there shall be a minimum of one (1) guide in each watercraft except on a kayak clinic Sundays through Fridays between Memorial Day and Labor Day where the instructor and guests are in kayaks. No inflatable kayak expeditions are permitted. There shall be a minimum of two (2) guides per trip.

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

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

9.7.5. 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) guide per trip.

9.7.6. 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) guides per trip.

9.8. ~~The use or possession of firearms is prohibited.~~ Firearms shall not be carried in watercraft during a whitewater expedition.

9.9. ~~It is unlawful to discard litter, equipment, or other refuse along river banks, into water, or along trails.~~ The use of alcohol is prohibited while underway during a whitewater expedition.

9.10. ~~It is unlawful to damage, remove, or destroy any private property or natural plants without written permission from the property owner.~~

~~9.11. It is unlawful to make use of any alcohol or controlled substance, as defined in W. Va. §60A et seq., as amended, while underway.~~

58-12-10. Equipment.

~~10.1. A commercial whitewater outfitter has a duty under W. Va. Code §20-2-24 to operate safe watercraft.~~

10.2 1. Type V vest-type personal flotation devices approved by the United States Coast Guard for commercial whitewater use shall be provided to each passenger to be transported in watercraft by the outfitter and shall be worn and securely fastened 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.

10.3 2. The minimum watercraft size that may be used on any river is an eight (8) foot, two (2) compartmentized watercraft unless otherwise specified in Section 10.4 of these regulations. 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.

10.4 3. Special regulations for specific rivers, or portions thereof, are as follows:

10.4 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) ~~compartmentized~~ compartmentalized watercraft.

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

10.5 4.1. At least one (1) first aid kit per trip.

10.5 4.2. At the beginning of each trip at least one (1) ~~professional-quality~~ professional-quality throw line or throw bag not less than ~~fifty (50)~~ forty (40) feet in length shall be in the possession of each trip leader or trip guide. One (1) professional quality rescue rope 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.

10.6 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 such 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 an accident which requires medical treatment administered by a licensed health care professional excluding diagnostic analysis occurs during the performance of a licensee's services while underway, the licensee must file a report with the director within fifteen (15) 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. The report shall be on the form prescribed by the division. If a participant reports an injury to a commercial whitewater outfitter or the commercial whitewater outfitter 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 will utilize the injury report form prescribed by the Whitewater Commission. The form will include the name, address, age of person injured, the nature of the injury, the time and place of the accident and the circumstances of the accident. The report shall be filed with the director within fifteen (15) days after the accident.

11.2. 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 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. ~~It shall be the responsibility of the licensee to instruct all trip leaders and trip guides in applicable safety and emergency procedures.~~ Commercial Whitewater Trip Guides. A Commercial Whitewater Trip Guide must meet the following minimum requirements:

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

12.1.2. Shall have completed a minimum of fifteen (15) training trips, two (2) familiarization 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 and one (1) evaluation trip.
The second familiarization trip may count as the evaluation trip; or

12.1.3. Shall 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 and one (1) evaluation trip. The second familiarization trip may count as the evaluation trip.

12.1.4. In order to be qualified to guide on the Gauley River between the Summersville Lake Dam and Mason's Branch a guide shall 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. The second familiarization trip may count as the evaluation trip.

12.1.5. Shall 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. Shall supervise passengers and be capable of giving a suitable orientation talk to the passengers in their 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. Shall have a valid American Red Cross first aid card or the 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. Shall have a general knowledge of emergency access and evacuation routes.

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

12.1.10 A commercial whitewater trip guide qualified on any river or portion of a river prior to the effective date of this rule will continue to remain qualified on those rivers or portions of rivers as long as he or she maintains the requirements set forth in subsection 12.1.7 of this rule.

12.2. Commercial Whitewater Trip Leaders. Each commercial whitewater trip expedition must include a trip leader. A trip leader ~~must~~ shall meet all commercial whitewater trip guide qualifications specified in Section 12.3 1 of this regulations rule. In addition, a trip leader:

12.2.1. Must Shall be at least twenty (20) years old, unless approved in writing by the director.

12.2.2. Must Shall have ~~made a minimum of twenty trips on a~~ 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.

12.2.3. Must be knowledgeable and capable of giving a suitable orientation talk to and supervise the passengers on commercial whitewater expedition for whom they are employed on such subjects which may include but not be limited to, trip safety, trip description, as personal flotation devices and safety , 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 will continue to remain qualified on those rivers or portions of rivers as long as he or she maintains the requirements set forth in subsection 12.1.7 of this rule.

~~12.3. Trip Guides. A trip guide: For 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 Sections 9.6 and 12.1 of this rule.~~

~~12.3.1. Must be at least eighteen (18) years old, unless approved in writing by the director.~~

~~12.3.2. Must have made a minimum of ten (10) trips on a river or rivers of comparable or higher American Whitewater Affiliation class rating to the river portion to be guided, of which three (3) trips were on the river portion to be guided.~~

~~12.3.3. Must be able to operate watercraft used in the licensee's commercial whitewater operation and supervise passenger safety.~~

~~12.3.4. Must have a valid American Red Cross standard first aid card or the equivalent and a CPR certification card or the equivalent.~~

~~12.3.5. Must have a knowledge of the area traversed.~~

~~12.3.6. Must be familiar with floating in whitewater conditions in a personal flotation device.~~

~~12.4. For 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 Sections 9.6 and 12.3 of these regulations.~~

~~12.5. For commercial whitewater operations on the Gauley River, the director may require a trip guide to attest that he has made a minimum of three (3) trips on the Gauley River when the river flow equaled or exceeded one thousand (1,000) cubic feet per second. The director may also require the licensee to submit a roster of trip guides who meet the qualifications set forth in this subsection and who are expected to be employed by the licensee throughout the designated peak season on the~~

~~Gauley River. The director may also require the licensee to notify his/her of any changes in such roster made during the course of such season.~~

12.6 4. Variation from the qualifications of trip leader or trip guide as set forth in this section may be approved by the director. Requests for variation must be made in writing to the director and such requests must substantiate that the variation does not reduce the intent of the qualifications set forth in these regulations.

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

58-12-13. Enforcement and Penalties.

13.1. Penalty for Violation. ~~A commercial whitewater outfitter who violates the terms and conditions of his/her license or any provisions of W. Va. Code §20 et seq., or rules, orders, or regulations promulgated thereunder shall be subject to the penalties prescribed in W. Va. Code §20-7-9: Any person who violates any provision of chapter twenty §§20-2-23a, 20-2-23d or this rule shall be subject to the penalties prescribed in §20-2-23d~~

~~13.2. Penalty for Failure to Obtain a License. A commercial whitewater outfitter who does not obtain a license shall be subject to the penalties prescribed in W. Va. Code §20-2-26.~~

13.3 2. Modification, Suspension or Revocation of License. If the director determines that a pattern of violations of any requirement of ~~these regulations~~ 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 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 W.

Va. Code §29A-5. Within sixty (60) days following such hearing, the director shall issue and furnish to the licensee a written decision, and the reasons therefor, concerning the modification, suspension, or revocation of 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 23d, and give notice to the Attorney General of the State to seek collection of the forfeiture without delay.

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

58-12-14. Appeals.

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