

58 CSR 27

This legislative rule is filed for technical purposes

by the

Division of Natural Resources Law Enforcement Section

All changes are shown by strike-throughs for deleted
language and underlined for new language

August 1, 1995

TECHNICAL CHANGES TO

TITLE 58

DIVISION OF NATURAL RESOURCES
LEGISLATIVE RULES

"BUREAU OF COMMERCE" was added to the title of this rule. In addition, the following technical changes were made:

58 CSR 27 - Commercial Whitewater Outfitters

1. 58 CSR 27 is changed to 58 CSR 12 and renumbered accordingly throughout the rule.
2. After the word "his" added "/her" throughout the rule.
3. After the word "Him" added "/her" throughout the rule.

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AUG 1 4 14 PM '95

TITLE 58
LEGISLATIVE RULE
BUREAU OF COMMERCE
DIVISION OF NATURAL RESOURCES

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 27 12
COMMERCIAL WHITEWATER OUTFITTERS

58-27 12-1. Scope and Authority.

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 7, 1994

1.4. Effective Date. -- April 7, 1994

1.5. Repeal of Former Rule. -- This regulation repeals and replaces 182. CSR 1 "Commercial Whitewater Outfitters", Series 11, which were filed on July 10, 1987 and, became effective on October 8, 1987.

58-27 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 re-purchase, 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 as described by the International Scale of River Difficulty published by the American Whitewater Affiliation.

2.6. "Whitewater Zone" means all rivers, portions of rivers or other waters of the state that contain whitewater as described by the International Scale of River Difficulty published by the American Whitewater Affiliation.

2.7. All other terms shall have the meaning prescribed in West Virginia Code §20-1-2 and §20-2-23a.

58-27 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 West Virginia 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.

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

3.1.1b. 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.

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

3.1.2b. From Mason's Branch Road to the confluence of Bucklick Creek.

3.1.2c. 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.

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

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

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

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

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

3.1.3f. 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.

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

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

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

58-27 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 for 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. 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. A commercial whitewater outfitter seeking a license 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. Any change in the submitted information must be reported by the licensee to the director within thirty (30) days of such change.

4.6. 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 - | <u>April 15</u> |
| 4.7.2. | Gauley River - | <u>September 15</u> |
| 4.7.3. | New River - | <u>April 15</u> |
| 4.7.4. | Shenandoah River - | <u>April 15</u> |
| 4.7.5. | Tygart River - | <u>April 15</u> |

4.8. Whitewater Guide-Trainee Information Sheet.

4.8.1. Individual guides are responsible for completing the Whitewater Guide-Trainee Information Sheet 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.

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.

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. The licensee will be responsible for keeping on file the original, completed whitewater guide-trainee information form and for forwarding a photocopy to the Division of Natural Resources, Law Enforcement Section, State Capitol, Building 3, Charleston, West Virginia 25305 not later than the date specified in Section 4.7 of these regulations.

4.9. Whitewater Guide Roster.

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.

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.

4.9.3. It will be the responsibility of each guide to keep his or her CPR card and first aid card current.

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 days after the hire date.

58-27 12-5. Special Whitewater Study and Improvement Fee.

5.1. In accordance with section twenty-three a, article two, chapter twenty of the West Virginia Code, 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 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 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.

58-27 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.

58-27 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.

58-27 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 West Virginia 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.

58-27 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. Each commercial whitewater trip shall have a minimum of one (1) trip guide for every ten (10) customers. 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.

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

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.)

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

9.7.3. 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.

9.8. The use or possession of firearms is prohibited.

9.9. It is unlawful to discard litter, equipment, or other refuse along river banks, into water, or along trails.

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 chapter sixty-A of the Code of West Virginia, as amended, while underway.

58-27 12-10. Equipment.

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

10.2. 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. 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. The use of Type III or Type V personal flotation devices by passengers is acceptable for kayak or canoe instruction.

10.3. 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. Special regulations for specific river, or portions thereof, are as follows:

10.4.1. 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 watercraft.

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

10.5.1. At least one (1) first aid kit.

10.5.2. At least one (1) professional quality throwline not less than fifty (50) feet in length shall be in the possession of each trip leader or trip guide.

10.6. All watercraft used in 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.

58-27 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.

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.

58-27 12-12. Trip Leaders and Trip Guides.

12.1. It shall be the responsibility of the licensee to instruct all trip leaders and trip guides in applicable safety and emergency procedures.

12.2. Trip Leaders. Each commercial whitewater trip must include a trip leader. A trip leader must meet all trip guide qualifications specified in Section 12.3 of these regulations. In addition, a trip leader:

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

12.2.2. Must have made a minimum of twenty trips on a river or rivers of comparable or higher American Whitewater Affiliation class rating to the river portion to be guided, of which six (6) trips were on the river portion to be guided.

12.2.3. Must be knowledgeable and capable of giving a suitable orientation talk to passengers on such subjects as personal flotation devices and safety.

12.3. Trip Guides. A trip guide:

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 equalled 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 him/her of any changes in such roster made during the course of such season.

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

58-27 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 Chapter 20, West Virginia Code, or rules, orders, or regulations promulgated thereunder shall be subject to the penalties prescribed in West Virginia Code §20-7-9.

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 West Virginia Code §20-2-26.

13.3. Modification, Suspension or Revocation of License. If the director determines that a pattern of violations of any requirement of these regulations or any term or condition of a license exists or has existed as a result of the licensee's lack of reasonable care or diligence, or that such violations are willfully caused by the licensee, the director shall immediately issue an order directing the licensee to show cause why the license should not be modified, suspended, or revoked and giving the licensee thirty (30) days in which to request a hearing subject to the provisions of West Virginia 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 West Virginia Code §20-2-26, and give notice to the Attorney General of the State to seek collection of the forfeiture without delay.

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

58-27 12-14. Appeals.

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