

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: Commercial Whitewater Advisory Board TITLE NUMBER: ~~182~~ 182

AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 1

TITLE OF RULE BEING PROPOSED: _____

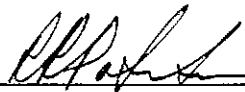
Commercial Whitewater Outfitters

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) Senate Bill No. 761

SECTION 64-2-20(2)(23a), PASSED ON May 13, 1987

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: October 8, 1987



PROMULGATION HISTORY

West Virginia Administrative Regulations
Commercial Whitewater Advisory Board
Series 1
Commercial Whitewater Outfitters
Legislative Rules

Proposed Rule Filed: October 20, 1986

Public Hearing(s) Held: November 19, 1986

End of Comment Period: November 21, 1986

Agency-Approved Rule Filed: December 11, 1986

LRRC Approval: January 10, 1987

Legislative Authorization: May 13, 1987

Final Filing: July 10, 1987

Effective Date: October 8, 1987

*Title 182
Legislative Rule*

~~West Virginia Administrative Regulations~~
Commercial Whitewater Advisory Board
Series 1
Commercial Whitewater Outfitters
~~Legislative Rules~~

Section 1. Scope and Authority.

- 1.1. **Scope and Purpose.** The purpose of these regulations is to provide for the regulation of commercial whitewater rafting, outfitting, and related activities to assure safe operations and protect the environment.
- 1.2. **Authority.** These regulations are promulgated under the authority of Chapter 20, Article 2, Section 23a of the West Virginia Code.
- 1.3. **Effective Date.** -- October 8, 1987.
- 1.4. **Filing Date.** -- July 10, 1987.
- 1.5. ***Repeal of Former Rule*** ~~Promulgation History.~~ These regulations supercede West Virginia Administrative Regulations, Department of Natural Resources, Series XI, Sections 6 through 9, that were filed on December 30, 1982 and effective on January 1, 1983.
- 1.6. **Termination of the Advisory Board.** The director shall have the authority to modify these regulations in accordance with the provisions of Chapter 29A of the West Virginia Code, and under the authority of Sections 20-1-7, 20-2-23, and 20-2-23a of the Code, upon the termination of the Commercial Whitewater Advisory Board.

Section 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. All other terms shall have the meaning prescribed in West Virginia Code §20-1-2.

Section 3. Designated Whitewater Recreation Zones.

- 3.1. The following rivers, portions of rivers, or waters of the State are designated as whitewater recreation zones:
 - 3.1.1. Cheat River from its headwaters to Lake Lynn (Cheat Lake).

- 3.1.2. Gauley River from the Summersville Dam to its confluence with the New River.
- 3.1.3. New River from its confluence with the Greenbrier River to its confluence with the Gauley River.
- 3.1.4. Shenandoah River from the Virginia-West Virginia boundary line to its confluence with the Potomac River.

Section 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 recreation zones upon a finding by him, and with the recommendation of the Commercial Whitewater Advisory Board, that the licensees currently operating in the same whitewater zone or zones have not fully utilized the daily use limits set as prescribed under Section 7 of these regulations. Public notice of the director's intent to issue new licenses for a designated whitewater recreation 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 payable to the State of West Virginia and must hold valid public liability insurance for which the minimum acceptable coverage shall be \$300,000 per occurrence for bodily injury and \$25,000 per occurrence and \$25,000 aggregate for property damage. The licensee shall provide the director with a copy of the required insurance policy or appropriate certification by the insurer that the required insurance coverage is in effect. 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 Department'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 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 years and shall be made available to the director upon request.

Section 5. Transfer of License.

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

Section 6. Use Allocations.

- 6.1. The director shall establish, modify, or limit use allocations for all licensees operating within a designated whitewater recreation zone in conformance with Section 7 of these regulations.
- 6.2. A licensee may sell all of his use allocation for a designated whitewater recreation zone upon the review and approval of the director. A licensee may sell or transfer a portion of his use allocation for a designated whitewater recreation zone to another licensee holding an allocation on those waters upon the review and approval of the director.
- 6.3. The director may require any person using a designated whitewater recreation zone for whitewater rafting to submit reports or other information relevant to the determination of use allocations.

Section 7. Daily Use Limits.

- 7.1. Total daily use limits for each designated whitewater recreation 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:
 - 7.1.1. The assurance of safety in commercial whitewater operations.
 - 7.1.2. The best interests of persons seeking to enjoy whitewater rafting and the interests of the State in the promotion of tourism.
 - 7.1.3. The sound recreational and ecological use of the State's natural resources.

Section 8. Commercial Whitewater Operations.

- 8.1. Towing rafts through flat water pools is permitted.
- 8.2. Motorized watercraft are permitted on the New River between Thurmond and Fayette Station when river flow equals or exceeds 16,500 cubic feet per second at Thurmond.

- 8.3. 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.
- 8.4. 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.
- 8.5. While on whitewater each passenger, trip guide, and trip leader shall wear a securely fastened vest-type personal flotation device as prescribed in Section 9.2 of these regulations. Each personal flotation device shall be maintained in a good and serviceable condition.
- 8.6. Each commercial whitewater trip shall have a minimum of one trip guide for every ten customers. For more than four passengers over an even multiple of ten, the higher multiple of ten will be used to determine the minimum number of trip guides. In no case will there be less than one trip guides on a commercial whitewater trip. The trip leader may count as a trip guide for the purpose of meeting this requirement.
- 8.7. Special regulations for specific rivers, or portions thereof, are as follows:
 - 8.7.1. Cheat River. Between Albright and Cheat Lake, there shall be a minimum of one trip guide in each watercraft when river flow equals or exceeds 2,200 cubic feet per second (equivalent to a level of 2.5 feet on the Albright gauge).
 - 8.7.2. New River. Between Cunard and Fayette Station, there shall be a minimum of one trip guide in each watercraft. No duckie expeditions shall be allowed between Cunard and Fayette Station.
 - 8.7.3. Gauley River. Between Summersville Dam and Sweet's Falls, there shall be a minimum of one trip guide in each watercraft.
- 8.8. The use of firearms is prohibited.
- 8.9. It is unlawful to discard litter, equipment, or other refuse along river banks, into water, or along trails.
- 8.10. It is unlawful to damage, remove, or destroy any private property or natural plants without written permission from the property owner.

Section 9. Equipment.

- 9.1. A commercial whitewater outfitter has a duty under West Virginia Code §20-2-24 to operate safe watercraft.
- 9.2. 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.
- 9.3. The minimum watercraft size that may be used on any river is an eight-foot, two-compartmentized watercraft unless otherwise specified in Section 9.4 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 inches.
- 9.4. Special regulations for specific rivers, or portions thereof, are as follows:
 - 9.4.1. Gauley River. Between Summersville Dam and Sweet's Falls, the minimum watercraft size shall be a twelve-foot, four-compartmentized watercraft.
- 9.5. Every commercial whitewater trip shall be equipped with the following:
 - 9.5.1. At least one first aid kit.
 - 9.5.2. At least one fifty-foot floating throwline per trip.
- 9.6. 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 feet.

Section 10. Accident Reports.

- 10.1. **Injury Report.** If an accident which requires medical treatment occurs during the performance of a licensee's services, the licensee must file a report with the director within five days after the accident. This injury report shall include the name, address, and age of the injured person; the nature of the injury; and the time, place, and circumstances of the accident.
- 10.2. **Property Damage Report.** If an accident occurs during the performance of licensee services which results in non-vehicular property damage in excess of five hundred dollars, the licensee must file a report with the director within five days after the accident. This property damage report shall include the name of the owner of the property; an estimate of the amount of the loss; the time and location

of the event causing the damage; and a description of the accident.

Section 11. Trip Leaders and Trip Guides.

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

11.2. Trip Leaders. Each commercial whitewater trip must include a trip leader. A trip leader must meet all trip guide qualifications specified in Section 11.3 of these regulations. In addition, a trip leader:

11.2.1. Must be at least 20 years old, unless approved in writing by the director.

11.2.2. 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 trips were on the river portion to be guided.

11.2.3. Must have a thorough knowledge of the area traversed.

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

11.3. Trip Guides. A trip guide:

11.3.1. Must be at least 18 years old, unless approved in writing by the director.

11.3.2. Must have made a minimum of ten 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 trips were on the river portion to be guided.

11.3.3. Must be able to operate watercraft used in the licensee's commercial whitewater operation and assume responsibility for passenger safety.

11.3.4. Must have a valid American Red Cross standard first aid card, or the equivalent.

11.3.5. Must have a thorough knowledge of the area traversed.

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

11.4. For commercial whitewater operations on the Shenandoah River, a licensee may employ the services of trainee guides provided that all requirements concerning the number of trip guides set forth in Section 8.6 of these regulations are

met. Trainee guides shall be at least 16 years old and otherwise meet the qualifications set forth in Section 11.3 of these regulations.

- 11.5. 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 trips on the Gauley River when the river flow equalled or exceeded 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 of any changes in such roster made during the course of such season.
- 11.6. Variations 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.
- 11.7. Documents relating to the requirements of this section may be kept at the licensee's base camp for inspection by the director or his representative.

Section 12. Enforcement and Penalties.

- 12.1. **Penalty for License Violation.** A commercial whitewater outfitter who violates the terms and conditions of his license shall be subject to the penalties prescribed in West Virginia Code §20-7-9.
- 12.2. **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.
- 12.3. **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 days in which to request a hearing subject to the provisions of West Virginia Code §29A-5. Within sixty days following such hearing, the director shall issue and furnish to the licensee a written decision, and the reasons therefore, concerning the modification, suspension, or revocation of the license. Upon a licensee's failure to show cause why the license should not be modified, suspended, or

revoked, the director may modify, suspend, or revoke the license, forfeit the licensee's bond posted under West Virginia Code §20-2-26, and give notice to the Attorney General of the State to seek collection of the forfeiture without delay.

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

Section 13. Appeals.

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

H. B. 2586

Delegate Knight

(By _____)

(Introduced February 4, 1987; referred to the

Committee on Agriculture and Natural Resources
then the Judiciary)

10 A BILL to amend article two, chapter sixty-four of the code of
11 West Virginia, one thousand nine hundred thirty-one, as
12 amended, by adding thereto a new section designated section
13 twenty (two) (twenty-three-a), relating to authorizing the
14 commercial whitewater advisory board to promulgate
15 legislative rules governing commercial whitewater outfitters.
16 Be it enacted by the Legislature of West Virginia:

17 That article two, chapter sixty-two of the code of West
18 Virginia, one thousand nine hundred thirty-one, as amended, be
19 amended by adding thereto a new section, designated section
20 twenty (two) (twenty-three-a), to read as follows:

21 ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE
22 LEGISLATIVE RULES.

23 §64-2-20(2)(23a). Department of natural resources; commercial
24 whitewater advisory board.

25 The legislative rules filed in the state register on the
26 twentieth day of December, one thousand nine hundred eighty-six,

1 modified by the commercial whitewater advisory board to meet the
2 objections of the legislative rule-making review committee and
3 refiled in the state register on sixteenth day of January, one
4 thousand nine hundred eighty-seven, relating to the commercial
5 whitewater advisory board (commercial whitewater outfitters) are
6 authorized.

7 NOTE: The purpose of this bill is to authorize the
8 Commercial Whitewater Advisory Board to promulgate legislative
9 rules governing commercial whitewater outfitters.

10

11 This section is new; therefore, strike-throughs and
12 underscoring have been omitted.

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Senate Bill No. 347
(By Senator Tucker)

[Introduced February 4, 1987; referred to the Committee
on NATURAL RESOURCES ; then to the
Committee on [THE JUDICIARY .]

A BILL to amend article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section designated section twenty (two) (twenty-three-a), relating to authorizing the commercial whitewater advisory board to promulgate legislative rules governing commercial whitewater outfitters.

Be it enacted by the Legislature of West Virginia:

That article two, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty (two) (twenty-three-a), to read as follows:

ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-20(2)(23a). Department of natural resources; commercial whitewater advisory board.

The legislative rules filed in the state register on the twentieth day of December, one thousand nine hundred eighty-six,

1 modified by the commercial whitewater advisory board to meet the
2 objections of the legislative rule-making review committee and
3 refiled in the state register on sixteenth day of January, one
4 thousand nine hundred eighty-seven, relating to the commercial
5 Whitewater advisory board (commercial whitewater outfitters) are
6 authorized.

7 NOTE: The purpose of this bill is to authorize the
8 Commercial Whitewater Advisory Board to promulgate legislative
9 rules governing commercial whitewater outfitters.

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12 underscoring have been omitted.