



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Natural Resources TITLE-SERIES: 58-12

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Commercial Whitewater Outfitters

CITE STATUTORY AUTHORITY: §20-2-23a

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 07/27/2022 5:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Wendy Greene

ADDRESS: 324 4th Avenue
Room 328

EMAIL: dnrcomments@wv.gov

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

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.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

The changes in this rule are approved by the Whitewater Commission and encompass flow rate changes to expand the perimeters related to rentals permitted on whitewater zones and includes changes that offer regulatory relief on some waters previously designated whitewater zones and adds additional permitted rental zones. Other changes are technical in nature.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

With a new section of whitewater on the New River opened to permitted rental use an increase in revenue is expected. River users are charged a \$0.35 fee per person. Estimating an additional 150 users show a potential revenue increase of \$525.00. Outfitter and guide services require licensure by the Division with an annual application fee of \$10 per application. Estimating an additional five outfitter and guide business applications show an increase of \$50.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

With a new section of whitewater on the New River opened to permitted rental use an increase in revenue is expected. River users are charged a \$0.35 fee per person. Estimating an additional 150 users show a potential revenue increase of \$525.00. Outfitter and guide services require licensure by the Division with an annual application fee of \$10 per application. Estimating an additional five outfitter and guide business applications show an increase of \$50.

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

There is no change anticipated to administrative expenditures as a result of the rule change. There is no economic impact to the state or its residents as a result of this rule change.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2022 Increase/Decrease (use "-")	2023 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	575.00	00	575.00

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

With a new section of whitewater on the New River opened to permitted rental use an increase in revenue is expected. River users are charged a \$0.35 fee per person. Estimating an additional 150 users show a potential revenue increase of \$525.00. Outfitter and guide services require licensure by the Division with an annual application fee of \$10 per application. Estimating an additional five outfitter and guide business applications show an increase of \$50.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

James Bailey -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 58
LEGISLATIVE RULE
DEPARTMENT OF COMMERCE
DIVISION OF NATURAL RESOURCES

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. -- ~~March 27, 2020.~~

1.4. Effective Date. -- ~~March 28, 2020.~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on ~~March 28, 2025~~ August 1, 2028.

§58-12-2. Definitions.

2.1. "Commercial Watercraft Clinic" means an instructional class to teach the Eskimo roll, paddling, reading whitewater, navigating, portaging, surfing, and scouting whitewater, as applicable.

2.2. "Commercial Watercraft Clinic Instructor" means a person who is qualified to teach a commercial watercraft clinic pursuant to the relevant American Canoe Association (ACA), or comparable, industry standards, and who has appropriate first aid and CPR training.

2.3. "Commercial Whitewater Guide" or "trip 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 20-2-23a and this rule.

2.4. "Commercial Whitewater Expedition" means the act of floating, traveling or traversing whitewater, in any manner, using a watercraft by a commercial whitewater outfitter.

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

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

2.7. "Evaluation Trip" means a trip provided by a commercial whitewater outfitter, licensed in this state, to determine the guide trainee meets the criteria outlined in section 12 of this rule. Evaluation trips must be conducted on the river or sections of river to be guided.

2.8. "Familiarization Trip" means a trip provided by a commercial whitewater outfitter, licensed in this state, to familiarize a guide trainee on the river or sections of river to be guided. Familiarization trips must be conducted on the river or sections of river to be guided.

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

2.10. "Out of State Commercial Guided Trip" means the act of floating, traveling or traversing whitewater on waters outside the state on a river or section of river in which an out of state commercial whitewater guide is required in every raft by an out of state commercial whitewater outfitter.

2.11. "Out of State Commercial Whitewater Expedition" means the act of floating, traveling or traversing whitewater on waters outside the state on a river or section of river, in any manner, using a watercraft by an out of state commercial whitewater outfitter.

2.12. "Out of State Commercial Whitewater Guide" or "trip guide" means any person who is an owner, agent, or employee of an out of state commercial whitewater outfitter, and who is qualified and authorized to provide out of state commercial whitewater guided trips.

2.13. "Out of State Commercial Whitewater Outfitter" means any person, partnership, corporation, or other organization, or any combination thereof, duly licensed, authorized and operating from within or without the state, which for monetary profit or gain, provides whitewater expeditions or rents watercraft or equipment for use in out of state commercial whitewater expeditions on any river, portions of rivers, or waters outside of the state.

2.14. "Outfitter" means any person who, operating from any temporary or permanent camp, private or public lodge, or private or incorporated home situated within this state, provides for monetary profit or gain, saddle or pack animals or other animals, vehicles, boats, conveyances or equipment, or guide services for any person or persons hunting game animals, game birds, fishing or taking expeditions, on both land and water, in this state. The term "outfitter" shall not include, however, any person who occasionally for accommodation or favor rather than profit or gain, rents equipment to hunters, fishermen or other persons as a service incidental to his or her principal occupation or business without advertising outfitter or guide services or holding out to the public his or her offering of those services.

2.15. "Rent" means to provide for monetary profit or gain any equipment or watercraft, used in a commercial activity. 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.

2.16. "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 section 12.1 of this rule.

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

2.18. "Watercraft" means a vessel in the commercial whitewater outfitter's fleet used for commercial whitewater expeditions, or other watercraft in an outfitter's fleet, including a vessel in an out of state commercial whitewater outfitter's fleet used for out of state commercial whitewater expeditions for the purposes of meeting guide training criteria required by section 12 of this rule. It shall include, but not be limited to the following vessels that further meet the requirements set forth in this rule:

2.18.1. A canoe;

2.18.2. An inflatable kayak or duckie rated to carry one or two persons;

2.18.3. An inner tube;

2.18.4. A kayak or C-1 that is a hard-shell boat that is made of plastic, fiberglass or other hard material, not rubberized material;

2.18.5. A raft that is an inflatable craft rated to carry three or more passengers;

2.18.6. A river board; or

2.18.7. A stand-up paddleboard.

2.19. "Whitewater" means water, in part of a river, that is white because it is moving swiftly over rocks, including rapids and falls.

2.20. "Whitewater Zone" means all rivers, portions of rivers or other waters of the state as identified in sections 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 bridge at Jodie.

3.1.2.c. From the bridge at Jodie to confluence at Gauley Bridge.

3.1.3. New River from its confluence with the Greenbrier River to its confluence with the Gauley River, excluding the section from the railroad bridge at Hawks Nest State Park to the Hawks Nest Dam, as follows by section:

3.1.3.a. Brooks Falls Canyon: From the confluence of the Greenbrier River to Sandstone Falls.

3.1.3.b. Sandstone Canyon: From Sandstone Falls to Glade Creek.

3.1.3.c. Glade Creek Canyon: From Glade Creek to Piney Creek.

3.1.3.d. Stonecliff Canyon: From Piney Creek to Stonecliff.

3.1.3.e. Surprise Canyon: From Stonecliff to Manns Creek.

3.1.3.f. New River Gorge: From Manns Creek to ~~Teays Landing~~ the railroad bridge at Hawks Nest State Park.

~~3.1.3.g. Hawks Nest Lake: From Teays Landing to Hawks Nest Dam.~~

~~3.1.3.h.~~ 3.1.3.g. Hawks Nest Canyon: From Hawks Nest Dam to the confluence of the Gauley River.

3.1.4. Shenandoah River from 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, excluding the section from Big Cove Run to the top of Valley Falls.

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~~ Big Cove Run.

3.1.5.c. From the ~~Tygart Lake Dam~~ top of Valley Falls 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 commercial whitewater outfitters currently operating in the same whitewater zone or zones have not fully used 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 \$1,000 payable to the State of West Virginia and shall hold valid public liability insurance in the name of the commercial whitewater outfitter with minimum coverage of \$300,000 per occurrence for bodily injury and \$25,000 aggregate for property damage. The commercial whitewater outfitter 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. The commercial whitewater outfitter shall pay its annual license fees 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, the director shall send the applicant a written reply by September 30th stating whether the license will be granted.

4.7. A commercial whitewater outfitter shall keep a current record or file containing the name, address, age, and residency of all persons who have used his or her services. An outfitter operation shall keep a current record or file containing the name, address, age, and residency of all persons who have used his or her services in a whitewater zone. These records shall be kept for a period of two 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. The commercial whitewater outfitter shall provide forms to individual guides or guide trainees.

4.8.2. A commercial whitewater outfitter shall not employ a guide trainee to guide on a commercial whitewater expedition until it 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 commercial whitewater outfitter 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 commercial whitewater outfitter for two years following the guide's last date of employment. The commercial whitewater outfitter shall provide the guide or guide trainee with a certified copy of the trainee information sheet and, upon request, shall forward a copy to the Division of Natural Resources, Law Enforcement Section, 324 Fourth Avenue, South Charleston, West Virginia 25303-1228.

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 commercial whitewater outfitter shall not employ a guide as a Trip Leader until it 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 commercial whitewater outfitter is responsible for keeping on file the original copy or a certified copy of the original completed Whitewater Guide Trip Leader Information Sheet. These records shall be maintained by the commercial whitewater outfitter for two years following the guide's last date of employment. The commercial whitewater outfitter shall provide the guide Trip Leader with a certified copy of the guide Trip Leader information sheet and upon request, shall forward a copy to the Division of Natural Resources, Law Enforcement Section, 324 Fourth Avenue, South Charleston, West Virginia 25303-1228.

4.10. New Hires. Guides and guide trainees shall submit the completed Whitewater Guide Trainee Information Sheet on the first day of employment with a commercial whitewater outfitter.

§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 commercial whitewater outfitter or outfitter for each customer who is transported in a commercial activity in the study zones on the Cheat, Gauley, New, Shenandoah and Tygart Valley rivers.

5.2. Fee Amount.

5.2.1. The study and improvement fee is 35 cents for each customer transported on a commercial activity in study zones on the Cheat, New, Shenandoah and Tygart Valley rivers.

5.2.2. The study and improvement fee is 70 cents for each customer transported on a commercial activity in study zones on the Gauley River.

5.2.3. If a commercial activity exceeds one day in duration, the appropriate fee shall be collected for each day, or part of a day, of the trip.

5.3. The commercial whitewater outfitter or outfitter shall pay these fees to the Division by the 15th day of the month following the month in which the fee was assessed, ~~and deposit them in~~ The Division shall deposit the monies collected in the Whitewater Study and Improvement Fund.

5.4. Gauley River Study and Improvement Fee.

5.4.1. For the purpose of improving and promoting the whitewater industry on the Gauley River, one-half of all study and improvement fees collected pursuant to subsection 5.2.2 of this rule shall be used to stock the Gauley River with fish during the spring and fall seasons of each year to mitigate the loss of fishing opportunities resulting from the additional water volume on the Gauley River. The Whitewater Commission may hire a private contractor to administer the fish stocking program.

5.4.2. The Whitewater Commission shall review the amount of the study and improvement fee collected pursuant to subsection 5.2.2 of this rule every four years to determine whether the fee is sufficient to assure adequate funding for the fish stocking program.

§58-12-6. Transfer of License.

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

6.2. A commercial whitewater outfitter 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 commercial whitewater outfitters operating within a designated whitewater zone in conformance with section 8 of this rule.

7.2. A commercial whitewater outfitter may sell all of his or her use allocation for a designated whitewater zone upon the review and approval of the director. A commercial whitewater outfitter may sell or transfer a portion of his or her use allocation for a designated whitewater zone to another commercial whitewater outfitter 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. The director shall set total daily use limits for each designated whitewater zone 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 16,500 cubic feet per second as determined by the U.S. ~~Geological Survey~~ Thurmond gauge Army Corps of Engineers for the Thurmond location.

9.3. The director may issue special use permits to commercial whitewater outfitters 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 commercial whitewater outfitters to conduct whitewater trips to make 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, guide trainee, commercial watercraft clinic instructor, trip guide, and trip leader shall wear a securely fastened vest-type personal flotation device of an appropriate design and fit for each activity type and person as defined and approved by the United States Coast Guard pursuant to 33 C.F.R. §175.13 2014 et seq. as authorized by 46 U.S.C. §4302 and as prescribed in section 10.1 of this rule. The commercial whitewater outfitter shall maintain all personal flotation devices in a good and serviceable condition.

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

9.7. There shall be no less than one trip guide on a commercial whitewater expedition on rivers or sections of rivers, unless otherwise designated in section 9.12 or section 14 of this rule. Section 14 requirements shall only apply to rented watercraft on sections specifically permitting rental watercraft which are listed in section 14.

9.8. A commercial whitewater outfitter may run his or her whitewater expedition in conjunction with another commercial whitewater outfitter's whitewater expedition to fulfill the requirements of this section.

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

9.10. A trip leader may count as a trip guide to meet the requirements of this section.

9.11. Each commercial watercraft clinic shall have a minimum of one trip guide for each six customers or any portion thereof except as designated in Subdivision 9.12.3.b of this rule.

9.12. The following rivers, portions of rivers, or waters of the State are designated as whitewater zones for rafting West Virginia's rivers, portions of rivers, or waters of the State to determine the appropriate watercraft, student limits, guide qualifications, and 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 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 trip guides per trip. When river flows equal or exceed 2,200 cubic feet per second there shall also be a trip guide in every watercraft.

9.12.2. Gauley River from the Summersville Lake Dam to the bridge at Jodie there shall be a minimum of one trip guide in each watercraft and two guides per trip, except for inflatable kayaks and kayaks.

9.12.3. New River: From its confluence with the Greenbrier River to its confluence with the Gauley River:

9.12.3.a. From its confluence with the Greenbrier River to the confluence of Manns Creek there shall be a minimum of one trip guide per trip, ~~except as provided in section 14 of this rule~~ unless otherwise designated in Section 14 of this rule. Section 14 requirements only apply to rented watercraft on those sections specifically permitting rental watercraft listed in Section 14.

9.12.3.b. From the confluence of Manns Creek to Teays Landing there shall be a minimum of one trip guide in each watercraft, except on a commercial watercraft clinic where the instructor and guests are in separate watercraft. Commercial watercraft clinics may be held by a commercial whitewater outfitter. Daily use is restricted to nine students per day per license and the commercial whitewater outfitter must have a ratio of one trip guide per three students. Commercial watercraft 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 trip guides per trip on all other trips.

9.12.3.c. From Teays Landing to the ~~Hawks Nest Dam~~ railroad bridge at Hawks Nest State Park there shall be a minimum of one trip guide ~~per trip, or a~~ or commercial watercraft clinic instructor per trip.

9.12.3.d. From the Hawks Nest Dam to its confluence with the Gauley River there shall be a minimum of two trip guides per trip.

9.12.4. Shenandoah River from Millville to its confluence with the Potomac River. There shall be a minimum of one trip guide per trip unless otherwise designated in section 14 of this rule. Section 14 requirements shall only apply to rented watercraft on those sections specifically permitting rental watercraft listed in section 14.

9.12.5. Tygart Valley River from the confluence of Mill Creek at Belington to the County Route 62 bridge at Colfax, excluding the area from Big Cove Run to the top of Valley Falls, there shall be a minimum of two trip guides per trip.

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

9.14. No alcoholic liquor, nonintoxicating beer, nonintoxicating craft beer, wine, or controlled substances may be consumed while the watercraft is underway during a commercial whitewater expedition.

§58-12-10. Commercial Whitewater Equipment.

10.1. Commercial whitewater outfitters and commercial watercraft clinics shall provide to each passenger transported in a watercraft a vest-type personal flotation device of an appropriate design and fit for each activity and person as defined and approved by the United States Coast Guard pursuant to 33 C.F.R. §175.13 2014 *et seq.* as authorized by 46 U.S.C. §4302, which shall be worn and securely fastened by passengers while underway during commercial whitewater expeditions and commercial watercraft clinics.

10.2. Commercial watercraft clinic instructors, guide trainees, trip leaders, and trip guides shall wear a vest-type personal flotation device of an appropriate design and fit for each activity and person as defined and approved by the United States Coast Guard pursuant to 33 C.F.R. §175.13 2014 *et seq.* as authorized by 46 U.S.C. §4302, which shall be worn and securely fastened while underway during commercial whitewater expeditions, training trips, and commercial watercraft clinics.

10.3. The minimum raft size that may be used on any river is an eight foot, two compartmentalized raft. The size of raft 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.

10.4. Gauley River. At flows more than 1,000 cubic feet per second between Summersville Dam and Sweet's Falls, the minimum watercraft size shall be a 12 foot, four compartmentalized watercraft.

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

10.5.1. At least one first aid kit per trip.

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

10.6. All watercraft used by a commercial whitewater outfitter or outfitter shall be marked with its name, initials, or an easily recognizable logo, and shall be plainly visible and legible from 100 feet.

§58-12-11. Accident Reports.

11.1. Injury Report. If a commercial whitewater outfitter or outfitter receives a report of an injury from a customer or 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 its services from the put-in to the take-out, the commercial whitewater outfitter or outfitter shall file an accident report with the director using 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 and shall be filed with the director within 15 days after the accident.

11.2. Property Damage Report. If an accident occurs during the performance of a commercial whitewater outfitter's or outfitter's activities that result in non-vehicular property damage of more than \$2,000, ~~the commercial whitewater outfitter or outfitter~~ shall file a report with the director within 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. Commercial Whitewater Trip Guides and Trip Leaders.

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

12.1.1. Be at least 18 years old, except as provided in Sections 12.3 and 12.4 of this rule, unless approved in writing by the director; and

12.1.2. Have completed a minimum of 15 training trips including at least five training trips in the same or similar type of raft used by the commercial whitewater outfitter for commercial whitewater expeditions, two familiarization trips and one evaluation trip on the section of river to be guided, except that on the Shenandoah River and on the New River from its confluence with the Greenbrier River to Manns Creek only 10 training tips will be required plus the two familiarization trips and one evaluation trip. One of the familiarization trips and the evaluation trip shall be in the same or similar type of raft used by the commercial whitewater outfitter for commercial whitewater expeditions. 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 15 commercial whitewater expeditions in a raft on a river in which a guide is required in every raft, two familiarization trips and one evaluation trip. The second familiarization trip may count as the evaluation trip; or

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

12.1.5. For purposes of satisfying guide training requirements, out of state commercial whitewater outfitter, out of state commercial whitewater expeditions, out of state commercial whitewater guide and out of state commercial guided trip may be applied in reference to subsections ~~12.1.2.~~, 12.1.3., and 12.1.4. of this rule.

12.1.6. Be able to operate watercraft used by the commercial whitewater outfitter on the rivers or sections of rivers to be guided; and

12.1.7. Supervise passengers and capably provide suitable orientation instructions 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; and

12.1.8. Have a valid American Red Cross first aid card or its equivalent and have a current CPR certification by either the American Red Cross or the equivalent; and

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

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

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

12.1.12. The commercial whitewater outfitter shall document all familiarization trips and evaluation trips on the guide trainee's Whitewater Guide Information Sheet and maintain the sheet with the trip guide's records.

12.1.13 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 if he or she meets the requirements set forth in subsection 12.1.8 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 section 12.1 of this rule. In addition, a trip leader shall:

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

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

12.2.3. For new sections of river, except the Upper Gauley between Summersville Dam and Mason's Branch, have completed a minimum of 40 commercial whitewater expeditions as a trip leader, in a raft, on a river that requires a commercial whitewater guide in every raft, and have completed six familiarization trips on the section of the river that he or she will act as a trip leader; and

12.2.4. Be knowledgeable and capably provide suitable orientation instructions 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.

12.2.5. 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 subsection 12.1.8 of this rule.

12.3. Trip Guides operating on commercial whitewater operations on the Shenandoah River, a commercial whitewater outfitter may employ the services of guides who are at least 16 years old and otherwise meet the qualifications set forth in section 12.1 of this rule.

12.4. Trip Guides operating on commercial whitewater operations on the New River from its confluence with the Greenbrier River to Manns Creek, a commercial whitewater outfitter may employ the services of guides who are at least 16 years old and otherwise meet the qualifications set forth in section 12.1 of this rule.

12.5. Commercial whitewater outfitters 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.

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

12.7. All commercial whitewater guides providing services for whitewater expeditions in this state shall, while providing such services, conform to the standard of care expected of members of their profession.

§58-12-13. Outfitter Trip Guides, Operations and Equipment.

13.1. Applicability. All applicable provisions of the W. Va. Code of State Rules, including Title 58 Series 11, Hunting, Fishing and Other Outfitters and Guides, and W. Va. Code §20-7-18b apply to outfitter operations. Section 13 of this rule shall apply only to outfitters operating on the following river sections:

13.1.1. New River: From the confluence of Manns Creek to Teays Landing.

13.1.2. Gauley River: From the Summersville Lake Dam to Upper Swiss.

13.2. Definitions.

13.2.1. These definitions shall only apply to outfitters for the purposes of section 13 of this rule and shall not apply to commercial whitewater outfitters.

13.2.2. "Outfitter Evaluation Trip" means a trip provided by an outfitter, licensed in this state, to determine that the outfitter guide trainee meets the criteria outlined in section 13.2 of this rule. Evaluation trips must be conducted on the river or sections of river to be guided.

13.2.3. "Outfitter Familiarization Trip" means a trip provided by an outfitter, licensed in this state, to familiarize an outfitter guide trainee on the river or sections of river to be guided. Familiarization trips must be conducted on the river or sections of river to be guided.

13.2.4. "Outfitter Guide Trainee" means a person who is attempting to become qualified as an outfitter guide in accordance with the provisions of this section of this rule.

13.2.5. "Outfitter Training Trip" means a trip provided by an outfitter licensed in the state which offers to the outfitter guide trainee substantial opportunity to acquire the necessary skills required by section 13 of this rule.

13.3. Outfitter Trip Guides.

13.3.1. An Outfitter Trip Guide shall:

13.3.1.a. Be at least 18 years old, unless approved in writing by the director. However, they may begin training with an outfitter when at least 16 years old; and

13.3.1.b. For the New River from the confluence of Manns Creek to Teays Landing as listed in subsection 13.1.1 of this rule;

13.3.1.b.1. Have completed a minimum of 15 outfitter training trips including at least five outfitter training trips in the same or similar type of raft used by the outfitter for trips, two outfitter familiarization trips and one outfitter evaluation trip on the New River section as listed in subsection 13.1.1 of this rule. One of the outfitter familiarization trips and the outfitter evaluation trip shall be in the same or similar type of craft used by the outfitter for trips. The second outfitter familiarization trip may count as the outfitter evaluation trip. These training trips may be conducted by the outfitter instead of by a commercial whitewater outfitter. However, training trips conducted by an outfitter shall not be recognized nor counted for any commercial whitewater purpose; or

13.3.1.b.2. Have completed a minimum of 15 outfitter trips or commercial whitewater outfitter expeditions in a raft on a river in which a commercial whitewater guide is required in every raft; and two outfitter familiarization trips and one outfitter evaluation trip. The second outfitter familiarization trip may count as the outfitter evaluation trip; or

13.3.1.c. For the Gauley River from the Summersville Lake Dam to Upper Swiss as listed in subsection 13.1.2 of this rule;

13.3.1.c.1. Have completed a minimum of 40 outfitter trips or commercial whitewater expeditions in a raft on a river in which a commercial whitewater guide is required in every raft. And two outfitter familiarization trips and one outfitter evaluation trip. The second outfitter familiarization trip may count as the outfitter evaluation trip.

13.3.1.d. Be able to operate watercraft used by the outfitter on the rivers or sections of rivers to be guided; and

13.3.1.e. Supervise passengers and capably provide suitable orientation instructions 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 if applicable; and

13.3.1.f. Have a valid American Red Cross first aid card or its equivalent and have a current CPR certification by either the American Red Cross or the equivalent; and

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

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

13.3.1.i. For training and evaluation purposes, an outfitter guide trainee may act as an outfitter trip guide on an outfitter trip if the outfitter guide trainee is directly and actively supervised by an outfitter guide who is present in the watercraft.

13.3.1.j. The outfitter shall document all outfitter familiarization trips and outfitter evaluation trips on the outfitter guide trainee's Outfitter Guide Information Sheet and maintain it with the outfitter guide's records.

13.3.1.k. An outfitter trip guide qualified on those sections of rivers as listed in subsections 13.1.1 and 13.1.2 of this rule remains qualified if he or she meets the requirements set forth in subdivision 13.3.1.j of this rule.

13.3.1.l. Commercial Whitewater Guides used on Outfitter Trips. An outfitter may employ or utilize a qualified commercial whitewater guide on an outfitter trip for any river section listed under section 13.1 of this rule. Such guide must be qualified for each river section that he or she guides on and the outfitter must first obtain a copy of that guides whitewater guide trainee information sheet before utilizing or employing him or her and the outfitter must also maintain such record for two years after that last date the guide was utilized or employed. However, an outfitter guide shall not be used or employed by a commercial whitewater outfitter in the same manner.

13.3.1.m. All guides providing services for outfitter trips in this state shall, while providing such services, conform to the standard of care expected of members of their profession.

13.4. Outfitter Guide Trainee Information Sheet.

13.4.1. Individual guides are responsible for completing the Outfitter Guide Trainee Information Sheet furnished by the division. The outfitter shall provide forms to individual guides or guide trainees.

13.4.2. An outfitter shall not employ a guide trainee to guide an outfitter trip until it has received the outfitter guide trainee's information sheet.

13.4.3. A West Virginia outfitter guide is not required to supplement the outfitter guide trainee information sheet except to show qualifications for additional rivers or sections that require a certified outfitter guide.

13.4.4. The outfitter is responsible for keeping on file the original or a certified copy of the original completed outfitter guide trainee information sheet. These records shall be maintained by the outfitter for two years following the guide's last date of employment. The outfitter shall provide the guide or outfitter guide trainee with a certified copy of the outfitter trainee information sheet and upon request, shall forward a copy to the Division of Natural Resources, Law Enforcement Section, 324 Fourth Avenue, South Charleston, West Virginia 25303-1228.

13.4.5. Regarding new hires. Guides and outfitter guide trainees shall submit the completed Outfitter Guide Trainee Information Sheet on the first day of employment with an outfitter.

13.4.6. Documents relating to any of the requirements of this rule shall be maintained by the outfitter for inspection by the director or his or her representative.

13.5. Outfitter Operations.

13.5.1. While underway each passenger, outfitter guide trainee and outfitter trip guide shall have readily available a personal flotation device of an appropriate design and fit for each activity type and person as defined and approved by the United States Coast Guard pursuant to 33 C.F.R. §175.13 2014 et seq. as authorized by 46 U.S.C. §4302 and as prescribed in subsection 13.6.1. However, while underway any child under the age of 13 must wear a securely fastened vest-type personal flotation device of an appropriate design and fit for each activity type and person as defined and approved by the United States Coast Guard pursuant to 33 C.F.R. §175.13 2014 et seq. as authorized by 46 U.S.C. §4302 and as prescribed in subsection 13.6.1. The outfitter shall maintain all personal flotation devices in a good and serviceable condition.

13.5.2. There shall be a minimum of one outfitter trip guide in each watercraft, except for inflatable kayaks and kayaks, unless otherwise designated in section 14 of this rule. Section 14 requirements shall only apply to rented watercraft on river sections specifically permitting rental watercraft which are listed in section 14. There are no trip leader requirements for outfitter trips.

13.5.3. Each outfitter trip using kayaks or inflatable kayaks shall have a minimum of one outfitter trip guide for each six customers or any portion thereof on any river section listed under section 13.1 of this rule unless stated otherwise. However;

13.5.3.a. Only one outfitter guide is required for outfitter trips using inflatable kayaks and kayaks on the Gauley River from Mason's Branch to Upper Swiss if the river flow is under 1000 cubic feet per second.

13.5.3.b. Outfitter trips using kayaks or inflatable kayaks on the New River from the confluence of Manns Creek to Teays Landing as listed in subsection 13.1.1 of this rule shall be restricted to nine customers per day per license and the outfitter must have a ratio of one outfitter trip guide per three customers. These type of outfitter trips are not permitted in this section of the New River on Saturdays between Memorial Day and Labor Day.

13.6. Outfitter Equipment.

13.6.1. An outfitter shall provide to each passenger to be transported in a watercraft by the outfitter a readily accessible vest-type personal flotation device of an appropriate design and fit for each activity and person as defined and approved by the United States Coast Guard pursuant to 33 C.F.R. §175.13 2014 *et seq.* as authorized by 46 U.S.C. §4302. However, while underway any child under the age of 13 must wear a securely fastened vest-type personal flotation device of an appropriate design and fit for each activity type and person as defined and approved by the United States Coast Guard pursuant to 33 C.F.R. §175.13 2014 *et seq.* as authorized by 46 U.S.C. §4302.

13.6.2. The minimum raft size that may be used on any river section listed under section 13.1 of this rule is an eight-foot, two compartmentalized raft. The size of raft 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.

13.6.3. Gauley River. At flows more than 1,000 cubic feet per second between Summersville Dam and Sweet's Falls, the minimum watercraft size shall be a 12-foot, four compartmentalized watercraft.

13.6.4. Every outfitter trip shall be equipped with the following:

13.6.4.a. At least one first aid kit per trip.

13.6.4.b. At the beginning of each trip, each outfitter trip guide shall possess at least one throw line or throw bag not less than 40 feet in length.

13.6.4.c. All watercraft used by an outfitter shall be marked with its name, initials, or an easily recognizable logo, and shall be plainly visible and legible from 100 feet.

§58-12-14. Designated Rental Sections, Operations and Equipment in Whitewater Zones.

14.1. Gauley River: From the bridge at Jodie to the confluence at Gauley Bridge commercial whitewater outfitters and outfitters licensed on this section may rent inner tubes, canoes, inflatable kayaks, kayaks, stand up paddle boards and rafts that meet the requirements of section 10.3 of this rule for use only in this section of the Gauley River. Trip guides are not required to accompany these rental trips.

14.1.2. Renting of any vessel or watercraft is not permitted at river flows more than 8,000 cubic feet per second as determined by the U.S. Army Corp of Engineers Belva gauge for the Belva location.

14.2. New River: From the confluence of the Greenbrier River and the New River to the top of Brooks Falls commercial whitewater outfitters and outfitters licensed on this section may rent inner tubes, canoes, inflatable kayaks, kayaks, stand-up paddle boards and rafts that meet the requirements of section 10.3 of this rule for use only in this section of the New River. Trip guides are not required to accompany these rental trips.

14.2.1. Inner tubes are not permitted at river flows more than ~~5,000~~ 7,000 cubic feet per second as determined by the U.S. Army Corp of Engineers ~~Hinton gauge~~ for the Hinton location.

14.2.2. Renting of any vessel or watercraft is not permitted at river flows more than ~~7,000~~ 10,000 cubic feet per second as determined by the U.S. Army Corp of Engineers ~~Hinton gauge~~ for the Hinton location.

14.3. New River: From Stonecliff to Dungen, commercial whitewater outfitters and outfitters licensed on this section may rent inner tubes, canoes, inflatable kayaks, kayaks, stand-up paddle boards and rafts that meet the requirements of section 10.3 of this rule for use only in this section of the New River. Trip guides are not required to accompany these rental trips.

14.3.1. Inner tubes are not permitted at river flows more than 5,000 cubic feet per second as determined by the U.S. Army Corp of Engineers ~~Hinton gauge~~ location.

14.3.2. Renting of any vessel or watercraft is not permitted at river flows more than 10,000 cubic feet per second as determined by the ~~U.S. Geological Survey~~ U.S. Army Corps of Engineers for the Thurmond gauge location.

14.4. New River: From below Sandstone Falls to Meadow Creek commercial whitewater outfitters and outfitters licensed on this section may rent canoes, inflatable kayaks, kayaks, stand-up paddle boards and rafts that meet the requirements of section 10.3 of this rule for use only in this section of the New River. Trip guides are not required to accompany these rental trips.

14.4.1. Inner Tubes are prohibited on this section

14.4.2. Renting of any vessel or watercraft is prohibited at river flows more than ~~7,000~~ 10,000 cubic feet per second as determined by the U.S. Army Corp of Engineers ~~Hinton gauge~~ for the Hinton location.

14.5. New River: From the railroad bridge at Gauley Bridge to the confluence with the Gauley River commercial whitewater outfitters and outfitters licensed on this section may rent inner tubes, canoes, inflatable kayaks, kayaks, stand up paddle boards and rafts that meet the requirements of section 10.3 of this rule for use only in this section of the New River. Trip guides are not required to accompany these rental trips.

14.5.1. Renting of any vessel or watercraft is prohibited at river flows more than 10,000 cubic feet per second as determined by the U.S. Army Corp of Engineers ~~Thurmond gauge~~ for the Thurmond location.

14.6. New River: From Teays Landing down to the railroad bridge at Hawks Nest State Park commercial whitewater outfitters and outfitters licensed on this section may rent inner tubes, canoes, inflatable kayaks, kayaks, stand up paddle boards and rafts that meet the requirements of section 10.3

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

14.6.1. Renting of any vessel or watercraft is prohibited at river flows more than 10,000 cubic feet per second as determined by the U.S. Army Corps of Engineers for the Thurmond location.

~~14.6.~~ 14.7. Shenandoah River: From the West Virginia border to Millville, commercial whitewater outfitters and outfitters licensed on this section may rent inner tubes, canoes, inflatable kayaks, kayaks, stand-up paddle boards, and rafts that meet the requirements of section 10.3 of this rule for use only in this section of the Shenandoah River. Trip guides are not required to accompany these rental trips.

~~14.6.1.~~ 14.7.1. Renting of any vessel or watercraft is prohibited at water levels above six feet as determined by the U.S. Geological Survey Millville gauge.

~~14.7.~~ 14.8. Additional safety requirements for all rental sections. The following shall apply to all rentals under section 14 of this rule.

~~14.7.1.~~ 14.8.1. Proper instruction on the use of watercraft, safety, and river etiquette is required to be given by the commercial whitewater outfitter or outfitter.

~~14.7.2.~~ 14.8.2. Commercial whitewater outfitters and outfitters licensed to provide rental services under section 14 of this rule shall provide to each participant a vest-type personal flotation device of an appropriate design and fit for each activity and person as defined and approved by the United States Coast Guard pursuant to 33 C.F.R. §175.13 2014 *et seq.* as authorized by 46 U.S.C. §4302, While underway, each participant shall comply with W. Va. Code of State Rules, Title 58 Series 25 3.1.3., Boating Rule when using rental equipment.

~~14.7.3.~~ 14.8.3. Inner tubes shall be a commercial grade tube designed for river float trips in good working order and measuring at least 40 inches in diameter with two air chambers.

~~14.8. Additional rivers and sections of rivers permitting rentals and rentals in general.~~

~~14.8.1.~~ 14.9. Rental of any watercraft or vessel for any purpose is prohibited on any section of all whitewater zones listed in sections 3.1 and 9.12 of this rule except those permitted under this section of this rule.

§58-12-15. Enforcement and Penalties.

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

15.2. Modification, Suspension or Revocation of License. If the director determines 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 commercial whitewater outfitter's or outfitter's lack of reasonable care or diligence, or that the violations are willfully caused by it, the director shall immediately issue an order directing the commercial whitewater outfitter or outfitter to show cause why the license should not be modified, suspended, or revoked and giving 30 days in which to request a hearing subject to the provisions of W. Va. Code §29A-5-1 *et seq.* Within 60 days following the hearing, the director shall issue and furnish to the commercial whitewater outfitter or outfitter a written decision, and the reasons for the decision, concerning the modification, suspension, or revocation of license. For failing to show cause, the director

may modify, suspend, or revoke the license, forfeit the commercial whitewater outfitter's bond posted under W. Va. Code §20-2-23d or outfitter's bond posted under W. Va. Code §20-2-26, and give notice to the Attorney General of the State to seek collection of the forfeiture without delay.

15.3. 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.

58-12-16. Appeals.

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