



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Natural Resources

RULE TYPE: Legislative

TITLE-SERIES: 58-11

RULE NAME: Hunting, Fishing and Other Outfitters and
Guides

CITE AUTHORITY: §§20-1-7(30) and 20-2-23

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

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
BUREAU OF COMMERCE
DIVISION OF NATURAL RESOURCES

SERIES 11
HUNTING, FISHING AND OTHER OUTFITTERS AND GUIDES

§58-11-1. General.

1.1. Scope. -- The purpose of these regulations is to provide for the regulation of commercial outfitter and guide services and to assure safe operations.

1.2. Authority. -- W. Va. Code §§20-1-7(30) and 20-2-23.

1.3. Filing Date. -- ~~May 7, 2018.~~

1.4. Effective Date. -- ~~May 7, 2018.~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on ~~May 7, 2023~~ August 1, 2028.

1.6. Promulgation history. -- These regulations supersede West Virginia Administration Regulations, Department of Natural Resources, Series XI filed on December 30, 1982 and effective on January 1, 1983.

§58-11-2. Definitions.

2.1. The term "outfitter," as used herein, means and includes 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, 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 others as a service incidental to his principal occupation or business without advertising outfitter or guide services or holding out to the public the offering of such services. The term "guide," as used herein, includes and embraces outfitter services and the term "outfitter" includes and embraces guide services, but the applicant for any license hereunder may in his or her application elect to be designated as an outfitter or guide.

2.2. All other terms shall have the meaning prescribed in W. Va. Code §20-1-2.

§58-11-3. Outfitters License.

3.1. License required. An outfitter must obtain a license from the director prior to the commencement of services in the State.

3.2. Compliance with license. An outfitter issued a license by the director must comply with the terms and conditions of that license.

3.3. License in possession. Each outfitter shall carry a copy of his/her license when conducting outfitter services. If the outfitter is a corporation, partnership, or other legal entity, then such copy will be carried by the representative of the outfitter who is present and designated in-charge during the performance of the outfitter services.

3.4. Bonding and insurance. Before any outfitting services are offered or rendered, each 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 dollars (\$25,000) per occurrence and twenty-five thousand dollars (\$25,000) aggregate for property damage. The licensee shall submit proof of liability insurance coverage and the surety bond to the director not later than February 15th of each year. The issuing insurance company shall furnish immediate written notification of the cancellation of the policy and/or surety bond to the director. The requirement of cancellation shall be printed on the bottom of every policy.

3.5. Application. An 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 such application. Any change in that information must be reported by the licensee to the director within thirty (30) days of such change. The applicant may in his or her application elect to be designated as an outfitter or a guide.

3.6 License Renewal: Outfitter and Guide licenses issued under this rule expire on December 31st of the year of issue. A licensee may seek to renew his/her license by submitting an updated application to the Division no later than one month prior to the date upon which his permit or license expires. A one-month extension may be granted by Division personnel in order to facilitate the review and processing of a licensee's renewal application.

3.7. First aid. Each outfitter, or representative of the outfitter actually conducting the service, shall have a current standard first aid training certificate issued by the American Red Cross or equivalent.

3.8. Records. 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.

3.9. Non-transferability. A license is nontransferable and is valid only for the calendar year designated therein.

3.10. Posted lands. A license confers no authority to trespass; written permission must be obtained from the landowner, lessee, or tenant of any fenced or posted lands before entering same.

3.11. National forest lands. An outfitters license shall not be valid on National Forest lands within this state unless written permission is obtained from the Supervisor of such National Forest lands. Such permission must be signed and approved by the Division of Natural Resources.

3.12. Bear hunts. In accordance with the provisions of W. Va. Code §20-2-22a, an outfitters license does not permit the holder thereof to organize for commercial purposes or to professionally outfit a bear hunt or to give or receive any consideration whatsoever or any donation in money, goods, or services in connection with a bear hunt.

§58-11-4. Hunting, Fishing and Other Trips.

4.1. Equipment. All vehicles, boats, conveyances, and equipment provided or used by an outfitter shall be maintained in a safe, operable condition.

4.2. All trips to hunt game or wild animals or game or wild birds or both must comply with current West Virginia hunting regulations. The licensee and all guests must have the appropriate hunting licenses and stamps on such trips.

4.3. All fishing trips must comply with current West Virginia fishing regulations. The licensee and all guests must have the appropriate fishing licenses and stamps on such trips.

§58-11-5. Outfitting in Whitewater Zones.

5.1. In accordance with W. Va. Code §20-2-23a(b)(12), there will be a special whitewater study and improvement fee paid by each outfitter or for each customer that is transported in a commercial activity in the study zones on the Cheat, Gauley, New, Shenandoah, and Tygart Valley rivers.

5.2. Whitewater Fee Amount.

5.2.a. The study and improvement fee is thirty-five cents (\$.35) for each customer transported on a commercial activity in study zones on the Cheat, New, Shenandoah, and Tygart Valley rivers.

5.2.b. The study and improvement fee is seventy cents (\$.70) for each customer transported on a commercial activity in study zones on the Gauley River.

5.3. The outfitter shall pay these fees to the Division by the fifteenth (15th) day of the month following the month in which the fee was assessed and deposit them in the Whitewater Study and Improvement Fund.

5.4. The outfitter shall report whitewater user numbers and trip leader reports to the Division by the fifteenth (15th) day of the month following the month in which the services were provided.

§58-11-6. Accident and Property Damage Reports.

6.1. 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 (5) 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.

6.2. 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 five (5) 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.

§58-11-7. Enforcement and Penalties.

7.1. Penalty for license violation. An outfitter who violates the terms and conditions of his/her license shall be subject to the penalties prescribed in W. Va. Code §20-2-23d(d).

7.2. Penalty for failure to obtain a license. An outfitter who does not obtain a license shall be subject to the penalties prescribed in W. Va. Code §20-2-26.

7.3. 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 Section 8 of these regulations. Within sixty (60) 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 W. Va. Code §20-2-26, and give notice to the Attorney General of the State to seek collection of the forfeiture without delay.

7.4. License modification, suspension, and revocation procedures shall be governed by the provisions of W. Va. Code §29A-5-1 *et seq.*, unless otherwise specified in these regulations.

§58-11-8. Appeals.

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