



Outfitter and Guide Initial License Application



NOTE: If you intend to conduct business/activities in whitewater zones, pay close attention to sections 5 & 6 of this application.

Section 1.0 Applicant Information

Company Name	
Owner Name	
Company Address	
Mailing Address (if differs from above)	
Contact Person	
Telephone	
Fax	
E-Mail	
Website	

Section 2.0 List of Owners, Partners, or Corporate Officers if this is a Partnership, Corporation, or other Legal Entity

Name	Title

Section 3.0 List of Credit References (Provide a minimum of three (3) references)

Section 4.0 Names & Addresses of Personal References (Provide a minimum of three (3) references) (Resident real property owners of the county in which the applicant resides and their telephone #)

Name	Address and Phone Number

Section 5.0 Detailed description of services offered, areas served and any other pertinent information regarding your business. *'@ghU`k\ jHk UHf'ncbYg'nci `W ffYbhmi gYcf'd`Ub`tc`i gY"*

Section 6.0 Property possessed and used in the Outfitter & Guide service.

Quantity	Item

Section 6.0 -- continued

Quantity	Item

Section 7.0 Licensing / Certification Requirements

- * If an Outfitter & Guide intends to use any National Forest area within the State of West Virginia, the licensee shall obtain a permit from the National Forest Service and provide a copy of said permit to the Division of Natural Resources.
- * If an Outfitter & Guide intends to use motorized boats to guide trips, any boat guide born after December 31, 1986 must obtain a Boater Education Certificate, available through any DNR district office. This does not apply if you hold a Federal Commercial Boater Operator's License. The Outfitter & Guide must provide a copy of said certificate or license to the DNR.
- * If an Outfitter & Guide intends to rent motorboats, the licensee or his/her agent shall provide a boating safety orientation for all persons that rent any vessel, including personal watercraft, unless that renter holds a Boater Education Certificate. "Individuals providing instruction shall apply for certification on an annual basis. Instructors shall: 1) Be at least 18 years of age, 2) Have successfully completed a basic National Association of State Boating Law Administrator's approved boating safety course, and 3) Have successfully completed an instructor training workshop on Boating Safety Orientation conducted by the Division" (58CSR25.13.2). The Outfitter & Guide must provide a copy of said certifications to the DNR.
- * If an Outfitter & Guide intends to do business on designated whitewater zones they are required to report users, trips and make payment to the WVDNR for each user on those zones. The schedule fee for the Gauley River is \$0.70 per user and all other rivers, having whitewater zones, is \$0.35 per user. These fees apply only in designated whitewater zones.

Section 8.0 Certification

(I) (We) certify that (I) (We) are financially responsible citizens of the United States.

(I) (We) possess the material and equipment as listed, to provide for the services and convenience as advertised, and that such material and equipment shall be safe and free from infection and conditions inimical to the health and well-being of our customers.

(I) (We) certify that all personnel employed or used in the guide services will meet all qualifications established by rules.

(I) (We) certify that (I) (We) are not more than six months in arrears in any child support obligations as outlined in the WV Code, §48-1-5A and that (I) (we) am/are up-to-date on our Worker's Compensation and Unemployment Compensation payments with the State.

(I) (We) further agree to abide by the laws of the State of West Virginia, as prescribed under 20-2-23, 20-2-23d, 20-2-24, 20-2-25, 20-2-26, 20-7-12b and 20-7-16 of the State Code and Title 58 of West Virginia Legislative Rule promulgated pursuant thereto.

(I) (We) further agree to abide by Title 58 of West Virginia Legislative Rule, as prescribed under §58-11-3 (3.4) that details the necessary bond and liability insurance required to operate as a general outfitter and guide.

(I) (We) further agree to abide by Title 58 of West Virginia Legislative Rule, as prescribed under §58-11-3 (3.7) that details the necessary First Aid and CPR certifications for Trip Guides and Trip Leaders.

(I) (We) understand that although DNR will not unilaterally distribute, disseminate or otherwise release information the applicant does not wish to be made public, applicant acknowledges and understands that DNR is a public agency of the State government and may be obligated to release some or all of the information related to this application pursuant to West Virginia Supreme Court case precedent, the West Virginia Freedom of Information Act, West Virginia Code §§ 29B-1-1 et seq., or other applicable law and lawful judicial process.

Signature of Applicant(s)

STATE OF

COUNTY OF

Taken, subscribed and sworn to before the undersigned in the county aforesaid this _____ day of _____.

My Commission expires: _____

NOTARY SIGNATURE:

FOR DEPARTMENT USE ONLY

<input type="checkbox"/> Approved	_____	_____	_____
	Signature	Title	Date
<input type="checkbox"/> Denied	_____	_____	_____
	Signature	Title	Date

INSURANCE & BOND INFORMATION

LIABILITY INSURANCE

Insurance Company: _____

Agent: _____

Address: _____

Telephone Number: _____

Certificate Expiration Date: _____

Please enclose a current copy of your Certificate of Liability Insurance with your application.

SURETY BOND

Surety Bond Company: _____

Agent: _____

Address: _____

Telephone Number: _____

Surety Bond Number: _____

Bond Effective Date: _____

Type of Bond: ___ One-Year ___ Three-Year ___ Continuous

Please complete the provided Outfitter & Guide Bond with your chosen bonding company. Send the bond in with your application for approval from the Attorney General's Office. The bond must be completed on the provided form, include a Power of Attorney, be notarized, and have a raised and embossed seal. Please see instruction sheet included with bond form for further instructions.

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 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.

OUTFITTERS AND GUIDES BOND

BOND # _____

KNOW ALL MEN BY THESE PRESENTS:

That we, _____ of _____, West Virginia, as principal, and _____, a corporation, as surety, are held and firmly bound unto the STATE OF WEST VIRGINIA, in the just and full sum of One Thousand dollars (\$1,000.00), to the payment whereof well and truly to be made we bind ourselves, our executors, administrators, successors and assigns jointly and severally, firmly by these presents.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT, WHEREAS, the above bound principal, pursuant to the provisions of Chapter 20, Article 2, Sections 23 through 26, of the Code of West Virginia, 1931, as amended, has been duly licensed by the director of the Division of Natural Resources as an outfitter and guide, with all the duties thereunto pertaining.

NOW, THEREFORE, if the said principal shall faithfully and reliably discharge his or her services under the pursuant to said license, then this obligation shall be considered void; otherwise to remain in full force and effect.

IN WITNESS WHEREOF the said principal has hereunto set his hand and affixed his seal, and the surety has caused its corporate name to be signed hereto and has caused its corporate seal to be hereto affixed by its duly authorized official or agent, this the _____ day of _____, 20 ____.

Principal (Seal)

By _____
President/Vice-President/Owner/General Partner

Surety (Seal)

By _____
Attorney in Fact

ACKNOWLEDGMENTS

Acknowledgment by Principal if individual or Partnership

STATE OF _____,
COUNTY OF _____, to wit:

I, _____, a Notary Public in and for the county and state aforesaid, do hereby certify that _____, whose name is signed to the foregoing writing, has this day acknowledged the same before me in my said county.

Given under my hand this _____ day of _____, 20 _____.

(Notary Seal)

(Notary Public)

My commission expires on the _____ day of _____, 20 _____.

Acknowledgment by Principal if Corporation

STATE OF _____,
COUNTY OF _____, to wit:

I, _____, a Notary Public in and for the county and state aforesaid, do hereby certify that _____, who as, _____ signed the foregoing writing, for _____, a corporation, has this day, in my said county, before me, acknowledged the said writing to be the act and deed of the said corporation.

Given under my hand this _____ day of _____, 20 _____.

(Notary Seal)

(Notary Public)

My commission expires on the _____ day of _____, 20 _____.

Acknowledgment by Surety

STATE OF _____,
COUNTY OF _____, to wit:

I, _____, a Notary Public in and for the county and state aforesaid, do hereby certify that _____, who as, _____ signed the foregoing writing, for _____, a corporation, has this day, in my said county, before me, acknowledged the said writing to be the act and deed of the said corporation.

Given under my hand this _____ day of _____, 20 _____.

(Notary Seal)

(Notary Public)

My commission expires on the _____ day of _____, 20 _____.

Attorney General

**Sufficiency in Form and Manner
of Execution Approved**

By _____
(Assistant Attorney General)

This _____ day of _____ 20 _____

ACKNOWLEDGMENT PREPARATION INSTRUCTIONS

1. IF PRINCIPAL IS AN INDIVIDUAL OR PARTNERSHIP, HAVE NOTARY COMPLETE THE SECTION TITLED "Acknowledgment by Principal if Individual or Partnership".
2. IF PRINCIPAL IS A CORPORATION, HAVE NOTARY COMPLETE THE SECTION TITLED "Acknowledgment by Principal if Corporation".
3. SURETY MUST HAVE NOTARY COMPLETE THE SECTION TITLED "Acknowledgment by Surety".

ACKNOWLEDGMENT BY PRINCIPAL IF INDIVIDUAL OR PARTNERSHIP

1. Enter name of State.
2. Enter name of County.
3. Enter name of Notary Public witnessing transactions.
4. Enter name of Principal covered by bond if individual or partnership. (Must be Owner of Sole Proprietorship or General Partner of Partnership).
5. Notary enters date bond was witnessed. Must be the same as or later than signature date.
6. Affix Notary Seal.
7. Notary affixes his/her signature.
8. Notary enters commission expiration date.

ACKNOWLEDGMENT BY PRINCIPAL IF CORPORATION

1. Enter name of State.
2. Enter name of County.
3. Enter name of Notary Public witnessing transactions.
4. Enter name of Corporate Officer signing bond.
5. Enter Title of Corporate Officer signing bond. (Must be President or Vice President of Corporation; Manager or Managing Member of Limited Liability Company).
6. Enter name of Company or Corporation.
7. Notary enters date bond was witnessed. Must be the same as or later than signature date.
8. Affix Notary Seal.
9. Notary affixes his/her signature.
10. Notary enters commission expiration date.

ACKNOWLEDGMENT BY SURETY

1. Enter name of State.
2. Enter name of County.
3. Enter name of Notary Public witnessing transactions.
4. Enter name of person having power of attorney to bind Surety Company.
5. Enter Title of person binding Surety Company.
6. Enter name of Insurance Company (Surety).
7. Notary enters date bond was witnessed. Must be the same as or later than signature date.
8. Affix Notary Seal.
9. Notary affixes his/her signature.
10. Notary enters commission expiration date.

POWER OF ATTORNEY INSTRUCTIONS

Power of attorney for surety must be attached showing that it was in full force and effect on signature date indicated on the face of the bond. A raised corporate seal must also be affixed to the Power of Attorney form.

- a. Name of attorney in fact must be listed.
- b. Power of Attorney may not exceed imposed limitations.
- c. Certificate date, the signature date of bond must be entered.
- d. Signature of authorizing official must be affixed. (Signature may be facsimile).
- e. **Raised seal must be affixed.**

§20-2-23. Outfitters and guides -- Generally; definitions.

(a) Services of outfitters and guides for the benefit and convenience of hunters, fishermen and others in this state are recognized as essential, and such outfitters and guides may be licensed and authorized to serve as provided in this article. The director is hereby authorized to promulgate rules and regulations on services of outfitters and guides as herein authorized and defined.

(b) 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 situate 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 or her 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.

(c) The term "commercial whitewater outfitter," as used herein, 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 in accordance with this article.

The term "commercial whitewater guide," as used herein, 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 this

article.

§20-2-23d. Bond; revocation of license; licensing carrying requirement; criminal penalties.

(a) Immediately upon the issuance of a whitewater outfitter's license and before any whitewater outfitter's services are offered or rendered thereunder, the licensee shall execute a surety bond in the penal sum of \$1,000 payable to the State of West Virginia and conditioned upon the faithful and reliable discharge of his or her services under and pursuant to the license. The bond shall be approved as to form by the Attorney General and as to surety by the director, and when so executed and approved, shall be filed in the office of the director of the Division of Natural Resources. The bond shall be for the life of the license.

(b) The whitewater commission is hereby authorized to revoke and cancel any whitewater outfitter's license for failure of the licensee to give the bond required by this section, for a licensee's violation or disregard of any of the provisions of this chapter, upon a licensee's conviction of a crime, or for any other reason or cause justifying refusal of the whitewater outfitter's license to the licensee upon a new application therefor. The commission shall afford a licensee an opportunity to be heard upon the revocation and cancellation of the license.

(c) No person shall act or serve as a whitewater outfitter, as defined in this article, without procuring and having on his or her person at the time a valid whitewater outfitter's license from the commission authorizing them to do so.

(d) Any person who violates any of the provisions of this section or of section twenty-three-a of this article, or any rule promulgated by the director of the Division of Natural Resources or who misrepresents any material fact in an application, record, report or other document filed or required to be maintained under the provisions of this article, or any rules promulgated hereunder by the director of the Division of Natural Resources, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$500 per violation not to exceed a total penalty of \$7,500 or by imprisonment in the county jail not exceeding six months, or both fined and imprisoned.

§20-2-24. Outfitters and guides -- Qualifications.

Each outfitter and guide licensed under the provisions hereof shall be a financially responsible citizen of the United States of America. He or she shall possess and inventory proper and adequate materials and equipment to provide for hunters, fishermen and others the services and conveniences he or she advertises. All such materials and equipment shall be safe and free of infection and conditions inimical to the health and well-being of hunters, fishermen, their traveling, camping and lodging companions.

The director shall cause all outfitter and guide applicants to be investigated and shall make a determination of their qualifications prior to the issuance or refusal of licenses thereto.

§20-2-25. Same -- License applications; national forest requirements.

Each applicant for an outfitter or guide license shall file with the director a verified application setting forth the applicant's name, his or her address, the property possessed and to be used in the proposed outfitter and guide services, the area within which he or she proposes to serve, his or her citizenship, his or her age and such other data and information as may be prescribed and required by the director on the application forms to be furnished by the department. Each such application, when filed by the applicant, shall be approved and signed by three resident real property owners of the county in which such applicant resides.

Before any outfitter or guide license shall be issued for serving hunters, fishermen or others in any national forest areas within this state, the applicant shall obtain from the supervisor of such national forest area a designation of the camp site or other site from which the outfitter or guide proposes to operate therein and shall likewise obtain from such supervisor any other authority or permit to so operate in such national forest area, together with copies of any rules and regulations of the forest incident to maintenance of camps, sanitary conditions, and prevention of forest fires and water pollution. The applicant shall satisfy the director that he or she has obtained such designation, permit, authority and rules and regulations, as may be required, as a prerequisite to the director's consideration of the applicant's license application.

§20-2-26. Same -- License fee; bond; revocation of license; penalties.

When satisfied as to the applicant's qualifications for an outfitter's or guide's license and upon receipt of a fee of \$10 therefor, the director shall issue such license which shall be for the calendar year therein designated.

Immediately upon the issuance of an outfitter's or guide's license and before any outfitter's or guide's services are offered or rendered thereunder, the licensee shall execute a surety bond in the penal sum of \$1,000 payable to the State of West Virginia and conditioned upon the faithful and reliable discharge of his or her services under and pursuant to such license. Such bond shall be approved as to form by the Attorney General and as to surety by the director, and when so executed and approved, shall be filed in the office of the director. Such bond shall be for the life of the license.

The director is hereby authorized to revoke and cancel any such license for failure of the licensee to give the bond herein required, for licensee's violation or disregard of any of the provisions of this chapter, upon licensee's conviction of crime, or for any other reason or cause justifying refusal of the license to the licensee upon a new application therefor. The director shall afford a licensee an opportunity to be heard upon the revocation and cancellation of the license.

No person shall act or serve as a guide or outfitter, as defined in this article, without procuring and having on his or her person at the time a valid license from the director authorizing him or her so to do. Any person violating this provision shall be guilty of a misdemeanor, and, upon conviction thereof, may be fined not exceeding \$100 or confined in the county jail not exceeding ninety days, or, in the discretion of the court, be both fined and imprisoned within the limits herein prescribed.

§20-7-12b. Boating safety education certificate.

(a) Except as otherwise provided in subsection (c) of this section, beginning on January 1, 2001, no person born on or after December 31, 1986, may operate a motorboat or personal watercraft on any waters of this state without first having obtained a certificate of boating safety education from this or any other state, which certificate was obtained by satisfactorily completing a

course of instruction in boating safety education administered by the United States coast guard auxiliary; the United States power squadron; the West Virginia Division of Natural Resources; any person certified to teach the course administered by West Virginia natural resources boating safety education section personnel; or any person authorized to teach the course prescribed by the national association of state boating law administrators in this or any other state.

(b) Any person who is subject to subdivision (a) of this section shall possess the certificate of boating safety education when operating a motorboat or personal watercraft on the waters of this state and shall show the certificate on demand of any West Virginia natural resources police officers or other law-enforcement officer authorized to enforce the provisions of this chapter.

(c) The following persons are exempt from the requirements of subsection (a) of this section:

(1) A person who is a nonresident of this state and who is visiting the state for sixty days or less in a motorboat or personal watercraft from another state if that person:

(A) Is fifteen years of age or older; and

(B) Has been issued a boating safety education certificate by his or her state of residence in accordance with the criteria recommended by the national association of state boating law administration.

(2) A person who is visiting the state for ninety days or less in a motorboat or personal watercraft from a country other than the United States;

(3) A person who is operating a motorboat or personal watercraft in connection with commercial purposes; and

(4) A person who is operating a motorboat or personal watercraft which was purchased by the person within the previous forty-five-day period and who has not been previously charged with a violation of any provision of this chapter involving the use or registration of a motorboat or personal watercraft.

(d) The division shall issue a certificate of boating safety education to a person who:

(1) Passes any course prescribed in subsection (a) of this section; or

(2) Passes a boating safety equivalency examination administered by persons authorized

to administer a boating safety education course as outlined in subsection (a) of this section. Upon request, the division shall provide, without charge, boating safety education materials to persons who plan to take the boating safety equivalency examination.

(e) No person who owns a motorboat or personal watercraft or who has charge over a motorboat or personal watercraft may authorize or knowingly permit it to be operated in violation of subsection (a) of this section.

(f) The provisions of subsection (a) of this section may only be enforced as a secondary action when the officer detains an operator of a motorboat or personal watercraft upon probable cause of a violation of another provision of this code or rules adopted in accordance with the code. A person may not be taken immediately to a court or detention facility solely for a violation of subsection (a) of this section.

§20-7-16. Boat liveries.

(a) The owner or operator of a boat livery or rental facility shall cause to be kept a record of the name and address of the person or persons hiring any vessel including personal watercrafts which is designed or permitted by him or her to be operated as a motorboat, identification number thereof, and the departure date and time, and the expected time of return. The record shall be preserved for at least six months.

(b) Neither the owner or operator of a boat livery or rental facility, nor his or her agent or employee, shall permit any motorboat, personal watercraft or any vessel designed or permitted by him or her to be operated as a motorboat or personal watercraft to depart from his or her premises unless it shall have been provided, either by owner or renter, with the equipment required pursuant to section thirteen of this article and any rules made pursuant thereto.

(c) The owner or operator of a boat livery or rental facility, or his or her agent or employee, shall provide boating safety orientation for all persons that rent any vessel, including personal watercrafts, unless that person holds a certificate as required by section twelve-b, article seven of this chapter. The owner of a boat livery or rental facility, or his or her agent or employee, shall also provide to the

operator or operators in print, prior to rental, the operational characteristics of personal watercrafts.

(d) The owner or operator of a boat livery or rental facility, or his or her agent or employee, may not lease, hire or rent a personal watercraft to any person under eighteen years of age.

(e) The owner or operator of a boat livery or rental facility, or his or her agent or employee, shall provide to the operator or operators of rental vessels, boats or personal watercrafts, in print, all pertinent boating rules including, but not limited to, those rules that may be peculiar to the area of the rental, such as no-wake zones, restricted areas, channel markers, water hazard markers and swimming zones.

(f) The owner or operator of a boat livery or rental facility shall carry liability insurance of at least \$300,000 and possess the license and surety bond as required by section twenty-three-

(g) d, article two of this chapter.

**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. -- April 26, 2018.

1.4. Effective Date. -- April 26, 2018.

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on April 26, 2023.

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.

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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.

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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.

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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.*

RULES AND REGULATIONS

GOVERNING THE RENTAL/ LEASING OF PERSONAL WATERCRAFT FROM BOAT LIVERY OWNERS AND OPERATORS

Article 7, Section 16, Chapter 20 of the Code of West Virginia, 2001 as amended, the following rules and regulations govern the rental and/or leasing of personal watercraft by boat livery owners and operators.

REQUIREMENTS AND PROHIBITIONS

1. A livery may not lease, hire, or rent a personal watercraft to or for operation by any person under 18 years of age.
2. A livery must carry liability insurance in the amount of \$300,000 dollars and possess the license and surety bond of \$1000 dollars as required by Section 23d Article 2 of Chapter 20.
3. Livery operators must administer boating safety instruction to all operators of rental vessels, not having a valid boating education certificate, prior to rental and issue a temporary boating education certificate upon successful completion of the instruction by the operator.
 - A. Livery Operators or their designees must go through an instructor training conducted by the Law Enforcement Section of the Division of Natural Resources.
 - B. Temporary Certificates and a handbook on PWC Rentals will be provided by the DNR during the instructor training.

ANY PERSON VIOLATING ANY OF THESE RULES AND REGULATIONS SHALL BE PUNISHED IN ACCORDANCE WITH THE PROVISIONS OF CHAPTER 20 OF THE CODE OF WEST VIRGINIA AND SUCH OTHER LAWS AS MAY BE APPLICABLE.

It is the policy of the Division of Natural Resources to provide its facilities, accommodations, services and programs to all persons without regard to sex, race, age, religion, national origin or ancestry, disability or other protected group status. The Division of Natural Resources is an equal opportunity employer.

STATE OF WEST VIRGINIA DIVISION OF NATURAL RESOURCES

**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, 2019.

1.4. Effective Date. -- March 28, 2019.

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on March 28, 2024.

§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 subsection 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 (1) or two (2) 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 (3) 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 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.

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

3.1.3.h. 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.

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

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

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

§58-12-4. Commercial Whitewater Outfitters License.

4.1. A commercial whitewater outfitter 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 one thousand dollars (\$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 three hundred thousand dollars (\$300,000) per occurrence for bodily injury and twenty-five thousand (\$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 (2) 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 (2) 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 (2) 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 thirty-five cents (\$.35) for each customer transported on a commercial activity in study zones on the Cheat, New, Shenandoah and Tygart Valley rivers.

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

5.2.3. 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 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. 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 sixteen thousand five hundred (16,500) cubic feet per second at Thurmond.

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 (1) trip guide for every ten (10) passengers or any portion thereof. There shall be a minimum of two trip guides on each commercial whitewater expedition of more than six (6) watercraft.

9.7. There shall be no less than one (1) trip guide on a commercial whitewater expedition on rivers or sections of rivers, unless otherwise designated in section 9.12. 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 subsection.

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 subsection.

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

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 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 (1) 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 (2) trip guides per trip. When river flows equal or exceed two-thousand-two-hundred (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 (1) trip guide in each watercraft and two (2) 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 (1) trip guide per trip, except as provided in section 14. of this rule.

9.12.3.b. From the confluence of Manns Creek to Teays Landing there shall be a minimum of one (1) 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 (9) students per day per license and the commercial whitewater outfitter must have a ratio of one (1) trip guide per three (3) 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 (2) trip guides per trip on all other trips.

9.12.3.c. From Teays Landing to the Hawks Nest State Park Dam there shall be a minimum of one (1) trip guide per trip, or a commercial watercraft clinic instructor.

9.12.3.d. From the Hawks Nest State Park Dam to its confluence with the Gauley River there shall be a minimum of two (2) 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 (1) 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 there shall be a minimum of two (2) 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 (8) foot, two (2) 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 (6) inches.

10.4. Gauley River. At flows more than 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) compartmentalized watercraft.

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

10.5.1. At least one (1) 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 (1) throw line or throw bag not less than forty (40) feet in length. One (1) professional quality rescue rope which is seventy (70) feet in length shall be carried on each commercial whitewater expedition. The seventy (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 one hundred (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 fifteen (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 two thousand dollars (\$2,000), it shall file a report with the director within fifteen (15) days after the accident. This property damage report shall include the name of the owner of the property; an estimate of the amount of the loss; the time and location of the event causing the damage; and a description of the accident.

§58-12-12. 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 eighteen (18) years old, unless approved in writing by the director; and

12.1.2. Have completed a minimum of fifteen (15) training trips including at least five (5) training trips in the same or similar type of raft used by the commercial whitewater outfitter for commercial whitewater expeditions, two (2) familiarization trips and one (1) 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 ten (10) training tips will be required plus the two (2) familiarization trips and one (1) evaluation trip. One (1) 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 fifteen (15) commercial whitewater expeditions in a raft on a river in which a guide is required in every raft, two (2)

familiarization trips and one (1) evaluation trip. The second familiarization trip may count as the evaluation trip; or

12.1.4. Have completed a minimum of forty (40) commercial whitewater expeditions in a raft on a river in which a commercial whitewater guide is required in every raft, two (2) familiarization trips and one (1) evaluation trip in order to be qualified on the Gauley River between Summersville Lake 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 twenty (20) years old, unless approved in writing by the director; and

12.2.2. Have completed at least six (6) commercial whitewater expeditions as a commercial whitewater guide on the section of river that he or she will act as a trip leader. On the Upper Gauley between Summersville Lake Dam and Mason's Branch a trip leader shall have completed at least twenty

(20) commercial whitewater expeditions as a commercial whitewater guide on the section of river that he or she will act as a trip 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 forty (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 (6) 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 sixteen (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 sixteen (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 eighteen (18) years old, unless approved in writing by the director. However, they may begin training with an outfitter when at least sixteen (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 fifteen (15) outfitter training trips including at least five (5) outfitter training trips in the same or similar type of raft used by the outfitter for trips, two (2) outfitter familiarization trips and one (1) outfitter evaluation trip on the New River section as listed in subsection 13.1.1. of this rule. One (1) 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 fifteen (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 (2) outfitter familiarization trips and one (1) 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 forty (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 (2) outfitter familiarization trips and one (1) 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 subsection 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 subsection 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 (2) 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 thirteen (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 (1) 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 (1) outfitter trip guide for each six (6) customers or any portion thereof on any river section listed under subsection 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 one thousand (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 (9) customers per day per license and the outfitter must have a ratio of one (1) outfitter trip guide per three (3) 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 thirteen (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 (8) foot, two (2) 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 (6) inches.

13.6.3. Gauley River. At flows more than 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) compartmentalized watercraft.

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

13.6.4.a. At least one (1) first aid kit per trip.

13.6.4.b. At the beginning of each trip, each outfitter trip guide shall possess at least one (1) throw line or throw bag not less than forty (40) feet in length.

13.6.4c3. 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 one hundred (100) feet.

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

14.1. 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. of this rule for use only in this section of the New River or additional sections listed under section 14. of this rule. Trip guides are not required to accompany these rentaltrips.

14.1.1. Inner tubes are not permitted at river flows more than five thousand (5,000) cubic feet per second as determined by the U.S. Army Corp of Engineers Hinton gauge.

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

14.2. 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. of this rule for use only in this section of the New River or additional sections listed under section 14. of this rule. Trip guides are not required to accompany these rental trips.

14.2.1. Inner tubes are not permitted at river flows more than five thousand (5,000) cubic feet per second as determined by the U.S. Army Corp of Engineers Hinton gauge.

14.2.2. Renting of any vessel or watercraft is not permitted at river flows more than ten thousand (10,000) cubic feet per second as determined by the U.S. Geological Survey Thurmond gauge.

14.3. 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. of this rule for use only in this section of the New River or additional sections listed under section 14. of this rule. Trip guides are not required to accompany these rental trips.

14.3.1. Inner Tubes are prohibited on this section.

14.3.2. Renting of any vessel or watercraft is prohibited at river flows more than seven thousand (7,000) cubic feet per second as determined by the U.S. Army Corp of Engineers Hinton gauge.

14.4. 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. of this rule for use only in this section of the Shenandoah River or additional sections listed under section 14. of this rule. Trip guides are not required to accompany these rental trips.

14.4.1. Renting of any vessel or watercraft is prohibited at water levels above six (6) feet as determined by the U.S. Geological Survey Millville gauge.

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

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

14.5.2. 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 58CSR25 4.2.6., Boating Rule when using rental equipment.

14.5.3. 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 airchambers.

14.6. Additional rivers and sections of rivers permitting rentals and rentals in general.

14.6.1. 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 thirty (30) days in which to request a hearing subject to the provisions of W. Va. Code §29A-5-1 *et. seq.* Within sixty (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.*

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

**SERIES 25
BOATING RULE**

§58-25-1. General.

1.1. Scope. -- This legislative rule establishes standards to govern the operation of motorboats and other vessels on the waters of this State.

1.2. Authority. -- W. Va. Code §§20-1-7(30), 20-7-13, 20-7-16, 20-7-22, 20-7-22a and 20-7-23.

1.3. Filing Date. -- May 8, 2009.

1.4. Effective Date. -- July 1, 2009.

§58-25-2. Definitions.

2.1. "Coast Guard Approved" means equipment which has been approved by the Commandant of the United States Coast Guard after the equipment has been determined to be in compliance with Coast Guard specifications and regulations relating to the materials, construction, and performance of equipment. The equipment must bear the approval stamp of the United States Coast Guard.

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

2.3. "Fixed System" means a Coast Guard approved fixed fire extinguisher system in a vessel's engine compartment.

2.4. "Government-Owned Reservoir" means a natural or artificial impoundment, lake, pond, or reservoir that is partially or wholly within the territorial limits of West Virginia and is owned or administered by the federal government or by the State or any political subdivision of the State.

2.5. "Motorboat" means any vessel propelled by an electrical, steam, gas, diesel or other fuel propelled or driven motor, whether or not the motor is the principal source of propulsion, but does not include a vessel that has a valid marine document issued by the United States Bureau of Customs or any federal agency that is the successor to the Bureau of Customs.

2.6. "Open Boat" means a vessel on which all engine compartments, fuel tank compartments, and other spaces to which explosive or flammable gases and vapors may flow are open to the atmosphere and arranged so as to prevent the entrapment of the gases and vapors within the vessel.

2.7. "Open to the Atmosphere" means a compartment which has at least fifteen (15) square inches of open area directly exposed to the atmosphere for each cubic foot of net compartment volume.

2.8. "Operate" means to navigate or otherwise use a vessel.

2.9. "Person" includes the plural "persons" and means an individual, partnership, firm, corporation, association, or other legal entity.

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2.10. "Personal Watercraft" or "PWC" means a small Class A vessel which uses an outboard motor or an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel rather than the conventional manner of sitting or standing inside the vessel.

2.11. "Racing Shell" or "Rowing Scull" means a manually propelled vessel, recognized by a national or international racing association for use in competitive racing, in which all occupants except a coxswain row, scull, or paddle and which is designed and equipped solely for competitive racing.

2.12. "Vessel" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on the water.

2.13. "Visible" means visible on a dark night with a clear atmosphere.

2.14. "Waters of this State" means any public waters within the territorial limits of this State.

§58-25-3. Classification of Vessels.

3.1. Motorboats and other vessels are divided into four (4) classes as follows:

3.1.1. Class A includes vessels of less than sixteen (16) feet in length and all personal watercraft as defined in Section 2 of this rule;

3.1.2. Class 1 includes vessels of sixteen (16) feet or over and less than twenty-six (26) feet in length;

3.1.3. Class 2 includes vessels of twenty-six (26) feet or over and less than forty (40) feet in length; and

3.1.4. Class 3 includes vessels of forty (40) feet or over in length.

§58-25-4. Required Equipment.

4.1. Lights.

4.1.1. From sunset to sunrise and during times of low visibility, a vessel shall carry and exhibit the lights prescribed by this Subsection when the vessel is under way. During these times, no other lights which can be mistaken for those prescribed may be exhibited.

4.1.2. Every white light prescribed by this Subsection be of such character as to be visible at a distance of at least two (2) miles. Every colored light prescribed by this Subsection shall be of such character as to be visible at a distance of at least one (1) mile.

4.1.3. Except for personal watercraft and as provided in Subdivision 4.1.4 of this Subsection, motorboats of Class A shall carry, ready at hand, a lantern or electric torch showing a white light which shall be exhibited in sufficient time to avert a collision.

4.1.4. Except for personal watercraft, motorboats of Class A shall be equipped with the lights required for motorboats of Class 1 under Subdivision 4.1.5 of this Subsection whenever operated on one of the bodies of water designated in Division of Natural Resources Special Boating Rule 58 CSR 26.

4.1.5. Motorboats of Class 1 shall be equipped with the following lights:

4.1.5.a. A bright white light aft to show all around the horizon; and

4.1.5.b. A combined lantern in the fore part of the vessel and lower than the white light aft, showing green to starboard and red to port and fixed so as to throw the lights ten (10) points on each side of the vessel (i.e., from directly ahead to two (2) points abaft the beam on either side).

4.1.6. Motorboats of Class 2 or Class 3 shall be equipped with the following lights:

4.1.6.a. A bright white light in the fore part of the vessel as near the stem as practicable, constructed so as to show an unbroken light over an arc of the horizon of twenty (20) points of the compass and fixed so as to throw the light ten (10) points on each side of the vessel (i.e., from directly ahead to two (2) points abaft the beam on either side);

4.1.6.b. A bright white light aft to show all around the horizon and higher than the white light forward; and

4.1.6.c. On the starboard side, a green light constructed so as to show an unbroken light over an arc of the horizon of ten (10) points of the compass and fixed so as to throw the light from directly ahead to 2 points abaft the beam on the starboard side. On the port side, a red light constructed so as to show an unbroken light over an arc of the horizon of ten (10) points of the compass and fixed so as to throw the light from directly ahead to two (2) points abaft the beam on the port side. These side lights shall be fitted with inboard screens of sufficient height to prevent the lights from being seen across the bow.

4.1.7. A vessel propelled by sail and machinery shall exhibit the lights required for a motorboat of the same class propelled by machinery alone.

4.1.8. A vessel propelled by sail alone shall carry, ready at hand, a lantern or electric torch showing a white light which shall be exhibited in sufficient time to avert a collision.

4.1.9. When propelled by sail alone, a vessel shall exhibit the white light aft as prescribed in Subdivision 4.1.5.a of this Subsection and either the combined lantern as prescribed in paragraph 4.1.5.b of this Subsection or the colored side lights as prescribed in Subdivision 4.1.6 of this Subsection.

4.1.10. A vessel propelled manually shall carry, ready at hand, a lantern or electric torch showing a white light which shall be exhibited in sufficient time to avert a collision.

4.1.10.a. Racing shells and rowing sculls are exempt from the provisions of Subdivision 4.1.10 of this Subsection.

4.1.11. Any vessel may carry and exhibit the lights required by 33 U.S.C. §§1051-1094 (Regulations for Preventing Collisions at Sea) in lieu of the lights required by this Subsection.

4.2. Personal Floatation Devices.

4.2.1. Except for personal watercraft, Class A vessels shall carry a Type I, Type II, or Type III personal floatation device for each person on board or being towed.

4.2.2. Motorboats and other vessels of Class 1, Class 2, or Class 3 shall carry a Type I, Type II, or Type III personal floatation device for each person on board or being towed and at least one Type IV

personal floatation device. Canoes and kayaks 16 feet in length and over are exempted from the requirements of this subdivision for carriage of the additional Type IV personal flotation device.

4.2.3. All personal floatation devices prescribed by this Subsection shall be Coast Guard approved and shall be maintained in a good and serviceable condition. Type I, II, and III personal floatation devices shall be kept readily available for use at all times; Type IV personal floatation devices shall be kept immediately available for use at all times.

4.2.4. Racing shells and rowing sculls are exempt from the provisions of Subdivisions 4.2.1 and 4.2.2 of this Subsection.

4.2.5. Any person operating, riding as a passenger, or being towed behind a personal watercraft shall wear a Type I, II, or III personal floatation device approved by the United States Coast Guard.

4.2.6. The operator or owner of any vessel being used for recreational purposes, other than a vessel required to have a certificate of inspection issued by the United States Coast Guard, shall require any child age 12 and under who is aboard the vessel to wear a Type I, II, or III Coast Guard approved Personal Flotation Device while the vessel is underway unless the child is below deck or in an enclosed cabin.

4.3. Fire Extinguishers.

4.3.1. Motorboats with no fixed system.

4.3.1.a. Motorboats of Class A or Class 1 shall carry at least one (1) Type B-I or Type B-II fire extinguishers unless exempted from this requirement under paragraph 4.3.1.d of this Subdivision.

4.3.1.b. Motorboats of Class 2 shall carry either two (2) Type B-I fire extinguishers or one (1) Type B-II fire extinguisher.

4.3.1.c. Motorboats of Class 3 shall carry either three (3) Type B-I fire extinguishers or one (1) Type B-I and one (1) Type B-II fire extinguishers.

4.3.1.d. Motorboats of Class A or Class 1 are not required to carry a fire extinguisher if the following conditions are met:

4.3.1.d.A. The construction of the motorboat is such that flammable or explosive vapors cannot be trapped within;

4.3.1.d.B. The motorboat has no enclosed engine compartments; and

4.3.1.d.C. The motorboat has no permanently-installed fuel tanks.

4.3.2. Motorboats with a fixed system.

4.3.2.a. Motorboats of Class 2 shall carry at least one (1) Type B-I fire extinguisher.

4.3.2.b. Motorboats of Class 3 shall carry either two (2) Type B-I fire extinguishers or one (1) Type B-II fire extinguisher.

4.3.3. All fire extinguishers prescribed by Subsection 4.3 of this rule shall be Coast Guard approved, shall be fully charged, shall be maintained in a good and serviceable condition, and shall be readily available for use at all times.

4.4. Signaling Devices.

4.4.1. Except for personal watercraft, all vessels of Class A or Class 1 shall carry a mouth whistle or a power-operated horn or whistle capable of producing a blast at least two (2) seconds in duration which is audible for a distance of at least one-half (½) mile.

4.4.2. All vessels of Class 2 shall carry a hand-operated or power-operated horn capable of producing a blast of at least two (2) seconds in duration which is audible for a distance of at least one (1) mile.

4.4.3. All vessels of Class 3 shall carry a power-operated horn or whistle capable of producing a blast of at least two (2) seconds in duration which is audible for a distance of at least one (1) mile.

4.4.4. All vessels of Class 2 or Class 3 shall carry a bell which, when struck, produces a clear tone.

4.5. Ventilation Systems.

4.5.1. All motorboats, except open boats, which use gasoline or any other fuel which has a flash point of one hundred ten degrees (110°) Fahrenheit or less shall have at least two (2) ventilator ducts, fitted with cowls or their equivalent, for the efficient removal of explosive or flammable gases from the bilges of every engine and fuel tank compartment.

4.5.1.a. At least one (1) exhaust duct shall be installed that extends from the lower portion of the bilge to the open atmosphere.

4.5.1.b. At least one (1) intake duct shall be installed that extends from the open atmosphere to a point that is either at least midway to the bilge or at least below the level of the carburetor air intake.

4.5.1.c. Cowls shall be located and trimmed for maximum effectiveness in preventing displaced fumes from being recirculated.

4.5.2. The ventilation requirements of Subdivision 4.5.1 of this Subsection do not apply to a fuel tank compartment which:

4.5.2.a. Contains only permanently-installed fuel tanks;

4.5.2.b. Vents to the open atmosphere; and

4.5.2.c. Contains only electrical components which are ignition-protected in accordance with 33 C.F.R. §183.410(a).

4.5.3. All vessels built after July 1, 1980, except open boats, which have a gasoline engine for electrical generation, mechanical power, or propulsion shall have a ventilation system that meets the requirements of Subpart K of 33 C.F.R. Part 183.

4.6. Flame Arrestors.

4.6.1. The carburetors of motorboats of Class A, Class 1, Class 2, or Class 3 which have a gasoline engine, except outboard motors, shall be fitted with a Coast Guard approved device for arresting backfire flames.

§58-25-5. Right-of-Way.

5.1. When two (2) vessels are approaching each other head on or nearly so as to involve a risk of collision with each other, each vessel shall bear to starboard and pass the other vessel on its port side.

5.2. When vessels approach each other obliquely or at right angles, the vessel approaching from the starboard has the right-of-way.

5.3. One vessel may overtake another on either side but shall grant the right-of-way to the overtaken vessel.

5.3.1. Before passing another vessel to starboard, one (1) blast of one (1) second in duration shall be sounded by whistle or horn.

5.3.2. Before passing another vessel to port, two (2) blasts of one (1) second in duration shall be sounded by whistle or horn.

5.4. When a sailboat and motorboat are operating as to involve a risk of collision with each other, the motorboat shall yield the right-of-way to the sailboat in all cases.

5.5. All vessels shall be operated in conformance with the inland navigation rules of the United States Coast Guard.

§58-25-6. Prohibited Operations.

6.1. No person under the age of fifteen (15) may operate or be permitted to operate a motorboat or personal watercraft upon the waters of the State, except persons twelve (12) to fifteen (15) years of age may operate a motorboat or personal watercraft if a person over eighteen (18) years of age is aboard the motorboat or personal watercraft. However, persons twelve (12) to fifteen (15) years of age may operate a motorboat up to a maximum of ten (10) horsepower without having an adult on board.

6.1.1. No person who owns a motorboat or personal watercraft or who has charge over or control of a motorboat or personal watercraft may authorize or knowingly permit a motorboat or personal watercraft to be operated in violation of this rule.

6.2. No person may operate or give permission for the operation of a vessel which is not equipped as required under the provisions of Section 4 of this rule.

6.3. No person may operate a vessel in a reckless or negligent manner so as to endanger the life, limb, or property of any person.

6.4. No person may operate any motorboat or vessel while under the influence of alcohol or a controlled substance or drug, under the combined influence of alcohol and any controlled substance or any other drug, or while having an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight.

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6.5. No person may operate or knowingly permit another person to operate a vessel if that person, by reason of physical or mental disability, is incapable of operating the vessel in a safe manner under all the prevailing circumstances.

6.6. No person may operate or knowingly permit another person to operate a vessel at a rate of speed greater than will permit that person, in the exercise of reasonable care, to bring the vessel to a stop within the assured clear distance ahead. This Subsection does not apply to the operator of a vessel competing in a regatta which is sanctioned under the provisions of W. Va. Code §20-7-20 who is attempting to attain high speeds on a marked race course.

6.7. No person may make a reckless approach to or passage by a dock or ramp, a moored or anchored vessel, or a marked swimming area.

6.8. No person may operate a motorboat at a speed greater than the speed limits established on the waters of a government-owned reservoir under Division of Natural Resources Special Boating Rule 58 CSR 26.

6.9. No person may operate a personal watercraft at any time between the hours of sunset and sunrise.

6.10. No person may operate a personal watercraft unless the lanyard cut off switch, if so equipped by the manufacturer, is attached to the operator's person, clothing, or personal floatation device.

6.11. All persons shall operate a personal watercraft in a reasonable and prudent manner at all times. Maneuvers which unreasonably or unnecessarily endanger life, limb, or property shall constitute reckless operation of the vessel.

6.12. This Subsection does not apply to participants in an approved and permitted regatta, race, marine parade, tournament, or exhibition.

§58-25-7. Restricted Areas.

7.1. No person may anchor a vessel in a position that obstructs a passageway ordinarily used by other vessels.

7.2. No person may anchor or tie a vessel to any type of navigation aid or buoy.

7.3. No person may operate a vessel within twenty (20) feet of a person engaged in fishing without first obtaining permission from that fisherman.

7.4. No person may operate a vessel within twenty (20) feet of the exterior boundary of a water area which is clearly marked by buoys as a swimming area or other restricted area approved by the Director.

7.4.1. Swimming areas shall be marked with yellow and red colored buoys by the owners of the areas.

7.5. No person may operate a motorboat at a speed greater than idling speed on established and marked no-wake zones on a government-owned reservoir.

§58-25-8. Overloading and Overpowering.

8.1. No person may load a vessel with passengers or cargo beyond its safe cargo carrying capacity.

8.1.1. The maximum persons capacity marked on a vessel's maximum capacities plate shall not be exceeded.

8.1.2. The maximum weight capacity marked on a vessel's maximum capacities plate shall not be exceeded.

8.1.3. If a vessel does not have a U.S. Coast Guard Maximum Capacities plate provided by the manufacturer, the owner must demonstrate that his or her vessel conforms to the safe loading requirements of Subpart C of 33 C.F.R. Part 183.

8.2. No person may operate a vessel beyond its safe powering capacity.

8.2.1. The maximum horsepower capacity marked on a vessel's maximum capacities plate shall not be exceeded.

8.2.2. If a vessel does not have a U.S. Coast Guard Maximum Capacities plate provided by the manufacturer, the owner or operator shall demonstrate that his or her vessel conforms to the safe powering requirement of Subpart D of 33 C.F.R. Part 183.

§58-25-9. Water Skis and Surfboards.

9.1. No person may operate or manipulate any vessel, tow rope, or other device by which the direction or location of water skis, surfboard, or similar device may be affected or controlled in such a way as to cause other water skis, surfboard, or similar device, or any person thereon, to collide with or strike against any object or person.

9.2. No person may manipulate any water skis, surfboard, or similar device in a reckless or negligent manner so as to endanger the life, limb, or property of another person.

9.3. No person may manipulate any water skis, surfboard or similar device while under the influence of alcohol or a controlled substance or drug, under the combined influence of alcohol and any controlled substance or any other drug, or while having an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight.

9.4. No person may operate a vessel towing a person on water skis, surfboard, or similar device, nor may any person engage in water skiing, surfboarding, or similar activity at any time between the hours from one (1) hour after sunset to one (1) hour before sunrise.

9.5. No person may operate a vessel towing a person on water skis, surfboard, or similar device unless:

9.5.1. A person at least twelve (12) years of age or older other than the operator is on board the vessel in a position to observe the progress of the person being towed; or

9.5.2. The vessel is equipped with a wide-angle rear view mirror mounted in a manner that permits the operator to observe the progress of the person being towed.

9.6. Subsections 9.4 and 9.5 of this Section do not apply to a performer in a professional exhibition or to a person engaged in an activity authorized under the provisions of W. Va. Code §20-7-20.

9.7. No person may operate a vessel on a government-owned reservoir while towing a person on water skis, surfboard, or similar device nor may any person engage in water skiing surfboarding, or similar activity on the reservoir except in the unlimited speed zone.

9.8. Except as provided in Subdivision 9.8.1 of this Subsection, a person towed by a vessel shall wear a Coast Guard approved Type I, Type II, or Type III personal floatation device.

9.8.1. A person engaged in barefoot waterskiing may elect, at his or her own risk, to wear a non-Coast Guard approved barefoot wetsuit designed specifically for that activity.

§58-25-10. Accident Reports.

10.1. The operator of a vessel involved in a collision, accident, or other casualty -- so far as he or she can do so without serious damage to his or her own vessel, crew, and passengers -- shall render to other persons affected by the collision, accident, or other casualty any assistance that is practicable and necessary in order to save them from or minimize any danger caused by the incident.

10.2. The operator of a vessel involved in a collision, accident, or other casualty shall give his or her name, address, and the identification of his or her vessel in writing to any person who was injured during the incident and to the owner of any property damaged by the incident.

10.3. The operator of any vessel involved in a collision, accident, or other casualty which results in death or personal injury that requires medical treatment beyond first aid, or damage to property in excess of five hundred dollars (\$500) shall file a full description of the incident with the Division of Natural Resources on West Virginia Boating Accident Report Form MB-3.

10.3.1. An accident report in a case involving a loss of life shall be submitted to the Division within forty-eight (48) hours of the incident.

10.3.2. An accident report in a case involving a reportable injury or property damage shall be submitted to the Division within five (5) days of the incident.

10.4. An accident report shall be submitted in person or by mail to the Division of Natural Resources, Motorboat Safety Section, 1900 Kanawha Boulevard, East, Charleston, West Virginia 25305-0668.

§58-25-11. Boating on Government-Owned Reservoirs.

11.1. Special rules to be observed in the operation of motorboats and other vessels upon, over, or through the waters of a particular government-owned reservoir are found in Division of Natural Resources Special Boating Rule 58 CSR 26.

11.2. No motorboat or other vessel may be placed upon or operated upon a government-owned reservoir for a fee or profit, either as a direct charge to a second party or as an incident to other services provided by the second party, except as specifically authorized by lease, license, or concession contract with the government agency which manages the reservoir.

11.3. No motorboat or other vessel containing a sink, toilet, or sanitary system may be launched and operated upon a government owned reservoir unless the sink, toilet, or sanitary system has been removed, sealed, or made to drain into a tank which can be carried or pumped ashore into a receptacle for disposal away from the lands and waters of the reservoir.

11.4. A motor boat or other vessel, when not in actual use at a government-owned reservoir, shall be:

11.4.1. Removed from the reservoir;

11.4.2. Securely moored at an authorized dock or boathouse where supervision by the owner or his or her representative is provided on a twenty-four (24) hour basis; or

11.4.3. Placed in the care of a marina concessionaire, state or local managing agency, or other party authorized to care for floating equipment on a twenty-four (24) hour basis.

11.5. No motorboat or other vessel may be placed upon a government-owned reservoir for use as a dwelling of either permanent or temporary nature.

11.6. A barge, floating facility, motorboat, or other vessel may be moored only in locations designated by the government agency which manages the reservoir. All floating or stationary mooring facilities shall be constructed in accordance with plans approved by the managing government agency.

11.7. Abandonment of personal property on the land or waters of a government-owned reservoir is prohibited.

11.8. Gasoline, oil, and other flammable or combustible liquids may not be stored upon or about a government-owned reservoir or the shores of the reservoir without written permission from the managing government agency.

11.9. Private notices and advertisements may not be posted, distributed, or displayed at a government-owned reservoir except as the managing government agency may consider necessary for the convenience and guidance of the public using the area for recreational purposes.

11.10. No person may engage in or solicit any business at a government-owned reservoir unless the activities are permitted under the terms of a lease, license, or concession contract with the government agency which manages that reservoir.

§58-25-12. Special Requirements for Motorboats Which Carry Passengers for Hire.

12.1. Motorboats which carry passengers for hire shall be provisioned with a Type I personal floatation device for each person carried. They shall also be provisioned with an additional number of Type I personal floatation devices suitable for children equal to at least ten percent (10%) of the maximum number of persons carried, unless the service is such that children are never carried.

12.1.1. All personal floatation devices prescribed by this Subsection shall be Coast Guard approved, shall be maintained in a good and serviceable condition, and shall be readily available for use at all times.

12.2. Motorboats while carrying passengers for hire shall be operated and navigated by a person duly licensed by the United States Coast Guard. This Subsection does not apply to outfitters and guides licensed under W. Va. Code §20-2-23(a).

12.3. Motorboats carrying more than six (6) passengers shall be inspected and certified by the United States Coast Guard.

§58-25-13. Boat Liveries.

13.1. The owner or operator of a boat livery or rental facility, or his or her agent or employee, shall

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provide boating safety orientation for all persons that rent any vessel which is designed or permitted by him or her to be operated as a motorboat, including personal watercrafts, unless that person holds a certificate as required under W. Va. Code §20-7-12b.

13.2. Individuals providing instruction shall apply for certification to the Division and shall renew the certification on an annual basis. Instructors shall: 1) Be at least 18 years of age, 2) Have successfully completed a basic National Association of State Boating Law Administrator's approved boating safety course, and 3) Have successfully completed an instructor training workshop on Boating Safety Orientation conducted by the Division.

13.3. The Boating Safety Orientation shall include the following: 1) Operational characteristics of the vessel; 2) Navigational rules; 3) W. Va. Laws and Rules; and 4) Procedures for maintaining a clean marine environment.

13.4. The boat livery or rental facility shall issue a temporary certificate to renters who successfully complete the orientation. This certificate is only valid for the rental period. The boat livery or rental facility shall keep a copy of the certificate on file for one year and make it available for inspection, during normal business hours, upon request of a Conservation Officer. The Division shall provide the certificates.

13.5. Renters taking the orientation training for personal watercrafts shall complete and sign a PWC Renter Orientation Checklist provided by the Division. The boat livery or rental facility shall keep the original on file for a period of one year and make it available for inspection, during normal business hours, upon request of a Conservation Officer.

§58-25-14. Penalties.

14.1. Any person convicted of a violation of this rule is subject to the penalties provided for in the W. Va. Code §20-7-9.