

323 CMR 6.00: WHITEWATER RAFTING

Section

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6.01: Purpose

323 CMR 6.00 is intended to promote the protection of public safety and welfare by establishing rules of conduct and operation governing commercial whitewater rafting, by promoting voluntary compliance with the rules, and, when necessary, by deterring through penalties noncompliance with the rules. 323 CMR 6.00 governs the use of commercial whitewater rafts on the Deerfield River in Massachusetts. Specifically, there exists portions of the Deerfield River known as the Fife Brook and Monroe sections beginning at the Vermont border and extending just north of Route 2. These sections have seen an increased interest by commercial whitewater rafting companies because of its excellent whitewater potential. In addition, these sections of the Deerfield presently contain the most popular, pristine, and beautiful angling spot in western Massachusetts, with two catch and release areas, and are among the most popular angling areas in the northeast. Use by anglers, coupled with increased rafting, creates conflicts and safety concerns.

Numerous states regulate the operation of whitewater rafting including a limitation on the number of companies and rafts that may utilize a particular river. Such states include Maine, New York, Pennsylvania, Virginia, West Virginia, North Carolina and many of the western states. It is well known that such regulatory efforts are based in part on safety factors.

Based upon these facts the Director has determined that 323 CMR 6.00 regulating whitewater rafting on the Deerfield River is in the interest of public safety.

6.02: Definitions

Commercial whitewater outfitter means a person, corporation, business, company or other legal entity that provides whitewater craft or conducts whitewater craft excursions for compensation.

Director means the Director of the Division of Law Enforcement, 100 Nashua Street, Boston, MA.

Passenger means any person other than an employee of the outfitter making the trip in a whitewater craft. Passengers making more than one acyclic excursion in the same day shall be considered another passenger for purposes of the quota allocated to the outfitter.

Whitewater craft means any inflatable craft used to transport passengers along the Deerfield River.

6.03: Safety Certificate

(1) Requirements. All whitewater craft operated by a commercial whitewater outfitter are required to possess a safety certificate issued by the Director. Safety Certificates may be issued and shall be conditioned according to the criteria found in 323 CMR 6.03(2) through (7).

(2) Guide. Each whitewater craft shall be accompanied by a guide who shall be trained and experienced in the safe operation of such whitewater craft. The guide shall satisfactorily have completed courses in Basic First Aid and Basic Cardio-Pulmonary Resuscitation. The guide shall be present at all times during operation in the whitewater craft along with the passengers. Guides shall wear a personal flotation device distinctive in color than that of the passengers.

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- (3) Equipment. Each whitewater craft shall contain a throw bag. There shall be one first aid kit for every five whitewater crafts on the river. The whitewater craft, throw bag and first aid kit shall each be of a kind and type approved by the Director.
- (4) Passengers. Each passenger in a whitewater craft shall wear a safety helmet and a personal floatation device of a kind and type approved by the Director.
- (5) Instruction. Commercial whitewater outfitters shall provide instruction to each passenger in the operation of whitewater craft and shall advise each passenger of appropriate safety procedures and attendant hazards prior to any excursion.
- (6) Conditions. The Director may further condition a safety certificate in the interest of public safety.
- (7) Limit. The Director may limit the number of safety certificates to that number which is necessary to carry the daily passenger quota.
- (8) Numbering. Each whitewater craft shall be numbered in a manner approved by the Director so as to clearly identify the permittee.

6.04: Permits

- (1) Requirement. Any person, corporation, partnership or other business entity intending to conduct excursions on the Deerfield River is required to have a permit issued by the Director.
- (2) Eligibility. Unless otherwise provided in 323 CMR 6.04(12), only commercial whitewater outfitters who have held a permit from the Division of Law Enforcement to conduct excursions on the Deerfield River in any previous year are eligible to apply for such a permit.
- (3) Application. Applications for a permit shall be on forms supplied by the Director. The application shall be submitted on or before January 1 of each year. The Director shall approve or deny any application on or before February 1 of each year.
- (4) Public Comment. Prior to the approval or denial of any permit application, the Director may, in his discretion, hold a public meeting in a city or town in Berkshire County. Notice of the meeting shall be published in a local newspaper of general circulation. At the meeting, the Director shall receive testimony and comment on pending permit applications.
- (5) Evaluation. The Director shall evaluate a commercial whitewater outfitter's permit application on the basis of the following criteria:
 - (a) length and breadth of experience in the commercial operation of whitewater craft;
 - (b) experience on the Deerfield River;
 - (c) number and type of violations, citations or enforcement warnings issued, if any;
 - (d) safety record;
 - (e) level of safety, rescue and competency training achieved by each guide;
 - (f) quality and condition of equipment, including but not limited to rafts, safety helmets, personal floatation devices, throw bags, first aid kits, paddles and wetsuits;
 - (g) adequacy of insurance; and
 - (h) testimony presented at the public meeting, if any, and any written comments received.
- (6) Quotas. The Director shall condition the permit by allocating daily passenger quotas from a total daily quota of 320 passengers. This quota shall be based on a commercial whitewater outfitter's qualifications, experience, financial security, safety record and insurance status as well as public safety on the Deerfield River. Each daily quota shall be effective from 9:30 A.M. to 4:30 P.M. per day. Unused portions of daily quotas are not cumulative and may not be carried over.
- (7) Signature. An applicant shall sign the permit when issued and such signature shall constitute a statement that the permit holder has read 323 CMR 6.00, the provisions of M.G.L. c. 90B and any conditions and restrictions of the permit and agrees to fully comply therewith.

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(8) Validity. Permits shall remain in full force and effect for the period of time set forth in the permit unless otherwise suspended or revoked pursuant to 323 CMR 6.07.

(9) Transfer. Permits are not the property of the holder. Permits may not be transferred, sold, bartered or exchanged for cash or property, except that a commercial whitewater outfitter that is purchased by another person or business may, subject to the approval of the Director, transfer its permit to the new owner if, in the opinion of the Director the transfer is in the public interest and otherwise consistent with public safety on the Deerfield River. The Director's decision shall be governed by the provisions of 323 CMR 6.04(5).

(10) Bankruptcy or Death. Unless otherwise provided, the executor, in the case of a permit holder's death, or the trustee, in the event of a permit holder's bankruptcy, may, with the approval of the Director, continue to conduct excursions on the Deerfield River pursuant to the permit. The Director's decision shall be governed by the provisions of 323 CMR 6.04(5).

(11) List. The Director shall maintain a list of commercial whitewater outfitters who do not comply with 323 CMR 6.04(2) but had otherwise expressed written interest in applying for a permit as evidenced by the records of the Division of Law Enforcement. Notwithstanding 323 CMR 6.04(2), permits that become available as a result of application or transfer denials, bankruptcy, or death of a permit holder, revocations or an increase in passenger quotas may be issued by the Director to those commercial whitewater outfitters on said list. The Director's decision shall be governed by the provisions of 323 CMR 6.04(5). The establishment of the list shall be subject to public comment and publication in the *Massachusetts Register*.

6.05: Whitewater Advisory Committee

(1) The Director shall appoint a Whitewater Advisory Committee. The Whitewater Advisory Committee shall consist of one member from the Appalachian Mountain Club, one member from Trout Unlimited, one member from the Deerfield River Compact, one member from the Deerfield River Watershed Association, one member from an area chamber of commerce, one representative from the Division of Law Enforcement, one representative from the Division of Fisheries & Wildlife, and as an *ex-officio* member one from each of those commercial whitewater outfitters that hold a permit issued in accordance with 323 CMR 6.04;

(2) The Committee shall advise the Director on the administration of 323 CMR 6.00 except that *ex-officio* members from each commercial whitewater outfitter that holds a permit issued pursuant to 323 CMR 6.04 may not comment or advise the Director on the permit application of any other commercial whitewater outfitter.

6.06: Prohibitions

It is a violation for:

(1) a commercial whitewater outfitter to operate on the Deerfield River without a permit from the Director;

(2) any whitewater craft operated by a commercial whitewater outfitter to operate on the Deerfield River without a safety certificate issued by the Director;

(3) a commercial whitewater outfitter to violate any term or condition of the permit or safety certificate;

(4) a commercial whitewater outfitter to operate on the Deerfield River without adequate liability insurance, provided such insurance is commercially available;

(5) a commercial whitewater outfitter to exceed its established daily passenger quota on the Deerfield River;

(6) a commercial whitewater outfitter to rent or lease single-person rafts, otherwise known as "rubber duckies", or inner tubes for use on the Deerfield River;

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- (7) a commercial whitewater craft excursion to occur on the Deerfield River during any date other than April 15 through October 15, inclusive;
- (8) a commercial whitewater craft excursion to occur on the Deerfield River during any time other than 9:30 A.M. to 4:30 P.M.;
- (9) the consumption of drugs or alcohol to occur during an excursion;
- (10) any glass bottles or containers to be on board a whitewater craft operated by a commercial whitewater outfitter during an excursion;
- (11) a commercial whitewater outfitter to loan, sell, assign or transfer any portion of his allocated daily passenger quota to the use of another.

6.07: Penalties

- (1) For purposes of M.G.L. c. 90B, §14, a violation of 323 CMR 6.00 shall be deemed a violation of M.G.L. c. 90B, §12A.
- (2) Any violation of 323 CMR 6.00 by a commercial whitewater outfitter shall result in the suspension or revocation of the permit issued pursuant to 323 CMR 6.04(1) and the safety certificate issued pursuant to 323 CMR 6.03. Suspensions and revocations are subject to the provisions governing adjudicatory proceedings pursuant to the relevant provisions of M.G.L. c. 30A.

REGULATORY AUTHORITY

323 CMR 6.00: M.G.L. c. 90B, § 11.