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Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

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|---------------------------------|---|
| Agency/Board/Commission: | Department of Environment and Conservation |
| Division: | State Parks |
| Contact Person: | Will Kerby |
| Address: | William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 2nd Floor Nashville, Tennessee 37243 |
| Phone: | (615) 532-0497 |
| Email: | will.kerby@tn.gov |

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

| | |
|---------------------|--|
| ADA Contact: | ADA Coordinator |
| Address: | William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 22nd Floor Nashville, Tennessee 37243 |
| Phone: | 1-866-253-5827 (toll free) or 615-532-0200 Hearing impaired callers may use the TN Relay Service 1-800-848-0298 |
| Email: | Jennifer.Katzenmiller@tn.gov |

Hearing Location(s) (for additional locations, copy and paste table)

| | | | |
|---------------|--|---|----------------------------------|
| Address 1: | Conference Rooms A, B, and C | | |
| Address 2: | William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Ave. | | |
| City: | Nashville, TN | | |
| Zip: | 37243 | | |
| Hearing Date: | 01/04/21 | | |
| Hearing Time: | 10:00 A.M. | <input checked="" type="checkbox"/> CST/CDT | <input type="checkbox"/> EST/EDT |

The Department of Environment and Conservation is committed to the Tennessee Pledge and reopening responsibly. All individuals planning to attend this hearing are asked to follow the current recommended guidelines for social distancing, hygiene, and wearing protective equipment when appropriate.

Alternate Hearing Option (An electronic participation option is also available. If the In-Person Hearing is Prohibited or Otherwise Inappropriate the Hearing will be Electronic-Only)

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| Method 1: | You may also join electronically. Join by going to this link: https://tngov.webex.com/tngov/j.php?MTID=m26f936581a4c2b911ff8e866ca21e118 Meeting number (access code): 178 730 9023 Meeting password: pJwqDKqY685 |
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| Method 2: | Join by phone 1-415-655-0003 Access code: 178 730 9023 Global call-in numbers are available online at: Link for Global Call-in Numbers |
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Additional Hearing Information:

If it is hard for you to read, speak, or understand English, TDEC may be able to provide translation or interpretation services free of charge. Please contact Cheryl Gracy at (615) 532-0041 for more information.

This rulemaking addresses permits issued by the Commissioner to commercial outfitters providing guided rafting trips on the Ocoee River. The rules establish a permitting process, require commercial outfitters to collect and pay a recreation fee as required by the Ocoee River Recreation and Economic Development Act, and detail reports commercial outfitters must provide to the Department documenting their rafting activity on the Ocoee River. This rulemaking also outlines additional requirements commercial outfitters must follow in order to maintain the safety of rafting customers and park visitors, as well as safety requirements for noncommercial boaters.

An initial set of draft rules has been prepared for public review and comment. The “DRAFT” rules may be accessed for review using at <https://www.tn.gov/environment/ppo-public-participation/ppo-public-participation/ppo-general.html>.

Oral or written comments are invited at the hearing. In addition, written comments may be submitted prior to or after the public hearing to: Tennessee Department of Environment and Conservation, Office of General Counsel Attention: Will Kerby; William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 2nd Floor, Nashville, Tennessee 37243; telephone (615) 532-0131 or fax (615) 532-0145. However, such written comments must be received by 4:30 PM CST, January 4, 2021, in order to assure consideration. For further information, please contact Will Kerby at the above address or telephone number or by e-mail at will.kerby@tn.gov.

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

| Chapter Number | Chapter Title |
|-----------------------|---|
| 0400-02-10 | Requirements for Conducting Rafting Services – Ocoee River |
| Rule Number | Rule Title |
| 0400-02-10-.01 | Definitions |
| 0400-02-10-.02 | Authorization Requirement and Applications |
| 0400-02-10-.03 | Terms and Conditions |
| 0400-02-10-.04 | Actual Use Reports |
| 0400-02-10-.05 | Recreation Fee and Income Reports |
| 0400-02-10-.06 | Grounds for Revocation, Suspension, Modification, or Refusal to Issue |
| 0400-02-10-.07 | Reports and Payments |
| 0400-02-10-.08 | Raft Requirements for Commercial Outfitters |
| 0400-02-10-.09 | Personal Safety Equipment and Devices |
| 0400-02-10-.10 | Transportation |
| 0400-02-10-.11 | Guides and Guides-in-Training |
| 0400-02-10-.12 | Safety Procedures |
| 0400-02-10-.13 | Cooperation with Parks |
| 0400-02-10-.14 | Notification of Accidents or Casualties |
| 0400-02-10-.15 | Scheduling and Carrying Capacity |
| 0400-02-10-.16 | Noncommercial Organized Groups and Private Boaters |

Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

Chapter 0400-02-10
Requirements for Conducting Rafting Services – Ocoee River

Amendments

The table of contents for Chapter 0400-02-10 Requirements for Conducting Rafting Services – Ocoee River is amended by deleting it in its entirety and substituting instead the following:

Table of Contents

0400-02-10-.01 Definitions
0400-02-10-.02 Authorization Requirement and Applications
0400-02-10-.03 Terms and Conditions
0400-02-10-.04 Actual Use Reports
0400-02-10-.05 Recreation Fee and Income Reports
0400-02-10-.06 Grounds for Revocation, Suspension, Modification, or Refusal to Issue
0400-02-10-.07 Reports and Payments
0400-02-10-.08 Raft Requirements for Commercial Outfitters
0400-02-10-.09 Personal Safety Equipment and Devices
0400-02-10-.10 Transportation
0400-02-10-.11 Guides and Guides-in-Training
0400-02-10-.12 Safety Procedures
0400-02-10-.13 Cooperation with Parks
0400-02-10-.14 Notification of Accidents or Casualties
0400-02-10-.15 Scheduling and Carrying Capacity
0400-02-10-.16 Noncommercial Organized Groups and Private Boaters

Authority: T.C.A. §§ 11-1-101, 11-1-108, 11-8-107, 4-5-201 et seq.

Current Rule 0400-02-10-.01 Purpose is amended by deleting it in its entirety.

Authority: T.C.A. §§ 11-1-101, 11-1-108, 11-8-107, 4-5-201 et seq.

Chapter 0400-02-10
Requirements for Conducting Rafting Services – Ocoee River

New Rules

Chapter 0400-02-10 Requirements for Conducting Rafting Services – Ocoee River is amended by adding new rules 0400-02-10-.01 through 0400-02-10-.07 and renumbering current rules 0400-02-10-.02 through 0400-02-10-.14 accordingly. The new rules 0400-02-10-.01 through 0400-02-10-.07 shall read as follows:

0400-02-10-.01 Definitions.

When used in this chapter, the following terms have the meanings given below:

“Commercial outfitter” means any individual or organization who holds a permit from the Commissioner to provide commercial whitewater outfitter services within the Ocoee River management zone.

"Commercial whitewater outfitter services" means guided tours in rafts offered to the general public, or any subset of the general public, within the Ocoee River management zone that are provided by an individual or organization other than the Department. Commercial whitewater outfitter services does not include guided tours conducted in canoes or kayaks.

“Commissioner” means the Commissioner of Environment and Conservation or the Commissioner’s

authorized representative.

“Department” means the Department of Environment and Conservation.

“Gross revenue” means the entire amount of the actual sales price paid by the customer for all commercial whitewater outfitter services authorized by a permit, whether for cash or other consideration, and whether paid directly to the commercial outfitter or a third party on the commercial outfitter’s behalf; all deposits received for commercial whitewater outfitter services not refunded to purchasers; and any money retained after a guest cancels or does not fulfill commercial whitewater outfitter services and is not granted a refund.

“Guide-in-training” means a person employed by a commercial outfitter who is designated by the commercial outfitter as a guide-in-training based on the person’s limited knowledge and experience guiding whitewater rafting trips.

“Ocoee River management zone” or “management zone” has the same meaning as that term is defined in T.C.A. § 11-8-102(6).

“Park” means Hiwassee/Ocoee Rivers State Park.

“Permit” means an authorization issued by the Commissioner to a commercial outfitter to engage in commercial whitewater outfitter services.

“River” means the portion of the Ocoee River that is within the Ocoee River management zone.

Authority: T.C.A. §§ 11-1-101, 11-1-108, 11-8-107, and 4-5-201 et seq.

0400-02-10-.02 Authorization Requirement and Applications.

- (1) No person shall provide commercial whitewater outfitter services on the river without holding a current, valid permit from the Commissioner authorizing such commercial whitewater outfitter services.
- (2) Any person who wishes to apply for a permit to engage in commercial whitewater outfitter services on the river shall file an application with the Commissioner that includes:
 - (a) The name of the applicant;
 - (b) The contact information, including phone number and email address for the applicant;
 - (c) A description of the proposed commercial whitewater outfitter services in which the person wishes to engage, including but not limited to:
 1. Customer charges and fees; and
 2. How the applicant will advertise its business;
 - (d) If applicable, the corporate form of the applicant;
 - (e) Proof of general liability insurance covering the commercial whitewater outfitter services in an amount sufficient to the Department with the State of Tennessee, the United States of America, and the Tennessee Valley Authority named as additional insureds;
 - (f) Proof of operation plans and emergency operation plans;
 - (g) Proof that the applicant is qualified to provide commercial whitewater outfitter services, including but not limited to:
 1. Training and certifications as required by Rule 0400-02-10-.11 for all staff that will participate in the commercial whitewater outfitter services; and
 2. A detailed explanation of the applicant’s and applicant’s employees’ experience providing

commercial whitewater outfitter services or other similar services;

- (h) A statement of the expected number of customers to be served in a given rafting season, broken down by sections of the river, if applicable;
- (i) A statement of the applicant's financial viability, including but not limited to:
 - 1. Whether the applicant has filed or had filed against it any bankruptcy or insolvency proceedings, or undergone the appointment of a receiver, trustee, or assignee for the benefit of creditors; and
 - 2. A current bank reference indicating the applicant's business relationship with the financial institution is in good standing;
- (j) The potential impact the applicant's commercial whitewater outfitter services will have on the management zone and the park overall, including but not limited to:
 - 1. Facilities utilized within the management zone;
 - 2. Temporary storage within the management zone; and
 - 3. Temporary improvements within the management zone.
- (k) If the person to whom the permit is to be issued is an individual, general partnership, or other business entity where individuals hold the right to all or part of the permit:
 - 1. The names and contact information of each such individual or general partner; and
 - 2. For each such individual or general partner, an attestation and documentation complying with the requirements of the Eligibility Verification for Entitlements Act, compiled in T.C.A. §§ 4-58-101 to -110;
- (l) If the person to whom the permit is to be issued is a business entity other than those subject to subparagraph (k) of this paragraph, proof that the entity:
 - 1. Holds a registration as a domestic or foreign business entity, as appropriate, in good standing with the Tennessee Secretary of State; and
 - 2. Has obtained all permits and licenses, including business licenses, and paid all charges, fees, or taxes required by the State of Tennessee or its political subdivisions for the provision of commercial whitewater outfitter services;
- (m) A list of any conviction or entry of a plea of guilty by the applicant or, if the applicant is an entity, any person that owns part or all of the applicant entity for any felony or of a misdemeanor directly reflecting on such person's fitness to conduct commercial whitewater outfitter services;
- (n) If any person or entity with an ownership interest in the applicant also has an ownership interest in another commercial outfitter(s):
 - 1. The identity of all persons or entities having an ownership interest in the applicant and how the persons or entities share ownership of the applicant and the other commercial outfitter(s);
 - 2. The employer identification number for the applicant and the other commercial outfitter(s); and
 - 3. An explanation of how the operations of the applicant and the other commercial outfitter(s) are shared or separated, including but not limited to:
 - (i) Location of headquarters and outposts for the applicant and the other commercial outfitter(s);

- (ii) Any managers or employees (other than owners) shared between the applicant and the other commercial outfitter(s); and
 - (iii) Any resources shared between the applicant and the other commercial outfitter(s), including but not limited to boats, life jackets, and buses or other transport vehicles; and
 - (o) Any other documentation or information reasonably requested by the Commissioner regarding commercial whitewater outfitter services.
- (3) The Commissioner may issue a permit to the applicant upon determining that, in the Commissioner's discretion, the applicant's application:
- (a) Is complete and responsive; and
 - (b) Demonstrates that the applicant's proposed commercial whitewater outfitter services:
 1. Constitute an appropriate use of the park and the Ocoee River management zone;
 2. Will have a minimal impact on park resources and values;
 3. Will provide a safe and professional experience for park guests; and
 4. Are consistent with the park purpose, management plans, policies, and all laws and rules.
- (4) The Commissioner may deny an application for failure to meet all requirements listed in paragraph (3) of this rule, or for any reason listed in Rule 0400-02-10-.06. The decision of the Commissioner to deny an application is only subject to review pursuant to a petition for common law writ of certiorari.
- (5) All permits issued pursuant to paragraph (3) of this rule shall be effective for a set number of years not to exceed 10 years, except as set out in subparagraph (6)(c) of this rule. The Commissioner may renew a permit prior to expiration for one additional term not to exceed five years. If a commercial outfitter's permit is not renewed prior to the permit's expiration, the commercial outfitter shall file a new, initial permit application if the commercial outfitter wishes to continue providing commercial whitewater outfitter services on the river.
- (6) (a) The Commissioner may establish a limited timeframe during which applicants must submit an application for a permit in order to encourage efficiency in the Department's administration of applications. The Commissioner shall make the application timeframe public by posting it on the Department's website. All permits issued during the limited application timeframe shall have the same expiration date. The Commissioner may not issue permits outside the limited application timeframe except in accordance with subparagraph (c) of this paragraph.
- (b) 1. When issuing permits during a limited timeframe established under subparagraph (a) of this paragraph, the Commissioner may limit the number of permits issued for commercial whitewater outfitter services if the Commissioner determines, in the Commissioner's sole discretion, that doing so is in the best interest of the park and the management zone. If the Commissioner limits the number of permits to be issued, the Commissioner shall establish a system for determining which applicants will receive a permit from among the pool of complete, valid applications received during the limited application timeframe. The Commissioner's method shall utilize a scoring system that ranks applicants based on the information provided in their applications, and may not discriminate against applicants who have not previously provided commercial whitewater outfitter services. However, the Commissioner may take an applicant's prior experience providing commercial whitewater outfitter services into account when scoring applications.
2. When the Commissioner has decided to choose applicants to receive a permit pursuant to part 1 of this subparagraph, the Commissioner shall post notice of the Commissioner's intent to do so, the number of permits to be issued, and the methodology that will be used to determine the recipients of a permit on the Department's webpage.

- (c) 1. Notwithstanding subparagraph (a) of this paragraph, the Commissioner may issue a permit to a person who files a completed permit application outside of the limited timeframe if the Commissioner determines that issuance of the permit otherwise meets all requirements for the issuance of a permit pursuant to paragraph (3) of this rule, is in the best interest of the park and the management zone, and the applicant demonstrates that application during the limited timeframe was impractical. A permit issued pursuant to this subparagraph shall have the same expiration as the permits issued during the most recent limited-application timeframe.
2. (i) If the Commissioner decides, pursuant to part 1 of this subparagraph, to issue a permit outside of the limited timeframe established by the Commissioner pursuant to part (b)1 of this paragraph, the Commissioner may establish a limited timeframe during which applicants must submit an application for a permit. The Commissioner shall make the application timeframe public by posting it on the Department's website.
- (ii) When issuing permits during a limited timeframe established under subpart (i) of this part, the Commissioner may limit the number of permits issued for commercial whitewater outfitter services if the Commissioner determines, in the Commissioner's sole discretion, that doing so is in the best interest of the park and the management zone. If the Commissioner limits the number of permits to be issued, the Commissioner shall establish a system for determining which applicants will receive a permit from among the pool of complete, valid applications received during the limited application timeframe. The Commissioner's method shall utilize a scoring system that ranks applicants based on the information provided in their applications, and may not discriminate against applicants who have not previously provided commercial whitewater outfitter services. However, the Commissioner may take an applicant's prior experience providing commercial whitewater outfitter services into account when scoring applications.
- (iii) When the Commissioner has decided to choose applicants to receive a permit pursuant to subpart (ii) of this part, the Commissioner shall post notice of the Commissioner's intent to do so, the number of permits to be issued, and the methodology that will be used to determine the recipients of a permit on the Department's webpage.

Authority: T.C.A. §§ 11-1-101, 11-1-108, 11-8-107, and 4-5-201 et seq.

0400-02-10-.03 Terms and Conditions.

- (1) The Commissioner, in issuing a permit under Rule 0400-02-10-.02, may place such terms and conditions on the permit as are necessary to uphold the safety and welfare of the visitors and protection of the park resources. These requirements may include but are not limited to insurance requirements, limitations on the frequency of the commercial whitewater outfitter services, or any other reasonably required terms and conditions.
- (2) Commercial outfitters shall require that the commercial outfitter's employees, agents, contractors, subcontractors, and their employees comply with all terms and conditions contained in the commercial outfitter's permit to the extent any terms or conditions apply to or affect such individuals or entities.
- (3) All permits, as a term and condition of issuance, shall require that commercial outfitters indemnify and hold the Department harmless from any and all liability for personal injuries, property damage, or loss of life suffered or sustained by commercial outfitters, their members, agents, employees, licensees, invitees, or guests resulting from, or in any way connected with, the use of the park or the river.

Authority: T.C.A. §§ 11-1-101, 11-1-108, 11-8-107, and 4-5-201 et seq.

0400-02-10-.04 Actual Use Reports.

- (1) No later than the twentieth day following the end of any calendar month during which a commercial outfitter provides commercial whitewater outfitter services within the management zone, the commercial outfitter shall submit a monthly report to the Department listing the actual number of rafting customers served during the calendar month for each section of the river.
- (2) No later than December 1st of each calendar year of the permit term, each commercial outfitter shall submit to the Department a report listing the actual number of rafting customers served per month of the season for each section of the river.
- (3) Any commercial outfitter shall allow the Commissioner, at no expense to the commercial outfitter, to inspect the commercial outfitter's records at any time for the purpose of verifying the reports submitted pursuant to this rule.

Authority: T.C.A. §§ 11-1-101, 11-1-108, 11-8-107, and 4-5-201 et seq.

0400-02-10-.05 Recreation Fee and Income Reports.

- (1) All commercial outfitters shall pay the recreation fee outlined in T.C.A. § 11-8-107.
- (2) Every commercial outfitter that provides commercial whitewater outfitter services within the management zone shall select one of the payment methods described in subparagraphs (a) or (b) of this paragraph to pay the recreation fee required under paragraph (1) of this rule and submit to the Department:
 - (a) No later than the twentieth day following the end of any calendar month, payment equal to 10% of its monthly gross revenue generated from commercial whitewater outfitter services in the management zone during the calendar month; or
 - (b) No later than December 1st of each calendar year, payment equal to 10% of its annual gross revenue generated from commercial whitewater rafting services in the management zone during the previous rafting season.
- (3) Every commercial outfitter that provides commercial whitewater outfitter services within the management zone shall select one of the reporting methods described in subparagraphs (a) or (b) of this paragraph and submit to the Department:
 - (a) No later than the twentieth day following the end of the any calendar month, a statement of income listing its monthly gross revenue generated from commercial whitewater outfitter services in the management zone during the calendar month for each section of the river. Such statements shall be accompanied by supporting documentation as reasonably requested by the Commissioner; or
 - (b) No later than December 1st of each calendar year, a statement of income listing its annual gross revenue generated from commercial whitewater outfitter services in the management zone during the previous rafting season for each section of the river. Such statement shall be accompanied by supporting documentation as reasonably requested by the Commissioner.
- (4) Every commercial outfitter shall select only one payment method under paragraph (3) of this rule and one reporting method under paragraph (4) of this rule per rafting season and may not change payment or reporting methods during a rafting season. Further, a commercial outfitter's frequency of reporting must match the commercial outfitter's frequency of payment (i.e., monthly statements of income must be accompanied by monthly payments or an annual statement of income must be accompanied by an annual payment).
- (5) No later than April 15th following the close of each calendar year during which a commercial outfitter provides commercial whitewater outfitter services within the management zone, each commercial outfitter shall submit to the Department a statement of income reporting its annual gross revenue generated by the commercial outfitter's commercial whitewater outfitter services occurring within the management zone during the previous calendar year. The annual statement shall include gross revenue, as well as the value of donated goods and services, the value of documented gratuities, the value and description of items excluded from gross revenue, and all adjustments, such as taxes deducted, and shall be broken down by permitted activities and section of the river.

- (6) In case of a discrepancy between the total of the recreation fees paid under paragraph (3) of this rule and the actual recreation fee owed based on a commercial outfitter's actual annual gross revenue, as shown in the report due under paragraph (6) of this rule:
- (a) If the commercial outfitter underestimated the recreation fee and owes the Department, the commercial outfitter shall pay the Department the difference in full within 60 days of sending in the final annual gross revenue report pursuant to paragraph (6) of this rule; or
 - (b) If the commercial outfitter overestimated the recreation fee and is owed a refund by the Department, the Department shall pay the commercial outfitter the difference in full within 60 days of receiving the final annual gross revenue report and a written request from the commercial outfitter stating the exact amount of the refund requested, and upon verification and agreement to that amount by the Department.
- (7) Any commercial outfitter shall allow the Commissioner, at no expense to the commercial outfitter, to inspect all bank or other financial records at any time to ascertain or audit the amount of the recreation fee due under this rule.

Authority: T.C.A. §§ 11-1-101, 11-1-108, 11-8-107, and 4-5-201 et seq.

0400-02-10-.06 Grounds for Revocation, Suspension, Modification, or Refusal to Issue or Renew.

- (1) The Commissioner may revoke, suspend, modify, or refuse to issue or renew a permit for one or more of the following reasons:
- (a) Failure to abide by any term or condition of a permit;
 - (b) Providing any false, misleading, or deceptive information to the Commissioner regarding any matter, including but not limited to the amount of recreation fees owed;
 - (c) Engaging in any false, fraudulent, or dishonest practices in the course of business, whether such practices are engaged in the course of commercial whitewater outfitter services or otherwise;
 - (d) Failure to comply with any request for information from the Commissioner regarding the commercial whitewater outfitter services authorized under this chapter, including but not limited to the use and income reports due under Rules 0400-02-10-.04 and 0400-02-10-.05;
 - (e) Conducting any commercial whitewater outfitter services for which the person does not hold a permit;
 - (f) Engaging in any behavior that does not have a minimal impact on park resources and values and is not otherwise approved within a permit;
 - (g) Engaging in any behavior that is not consistent with the park purpose, management plans, policies, and all laws and regulations;
 - (h) Failure to timely pay all recreation fees owed under this chapter;
 - (i) Providing commercial whitewater outfitter services in a manner that:
 1. Is contrary to the purposes for which the natural, historic, recreational, and special use areas exist in a state park; or unreasonably impairs the atmosphere of peace and tranquility maintained in natural, historic, hospitality, recreational, or commemorative areas in a state park;
 2. Unreasonably interferes with interpretive, visitor service, or other program activities, or with the administrative activities of a state park;
 3. Substantially impairs the operation of public use facilities or services of state park concessioners or contractors;

4. Presents a clear and present danger to public health and safety; or
 5. Results in significant conflict with other existing uses of a state park;
- (j) Unless, in the Commissioner's sole discretion, an applicant or a commercial outfitter sufficiently demonstrates that the applicant or the commercial outfitter, as appropriate, and any commercial outfitter with which the applicant or commercial outfitter has a shared ownership interest are legitimate, independent, standalone entities, failure to demonstrate that:
1. In the case of an applicant, no person or entity with an ownership interest in the applicant has an ownership interest in another commercial outfitter; or
 2. In the case of a commercial outfitter, no person or entity with an ownership interest in the commercial outfitter has an ownership interest in another commercial outfitter.

The Commissioner may request additional information from the applicant or any commercial outfitter as needed to fulfill the intent of this subparagraph; or

- (k) Conviction of or entry of a plea of guilty by any person holding a permit of any felony or of a misdemeanor directly reflecting on such person's fitness to conduct commercial whitewater outfitter services.
- (2) A modification ordered under paragraph (1) of this rule may make any change to the permit that could have been made at the issuance of the permit, including but not limited to adding terms and conditions authorized by this chapter.
 - (3) Any action by a person who owns part or all of a business entity that holds a permit, including conviction of a crime, shall be imputed to the business entity holding the permit.
 - (4) Any hearing to revoke, suspend, or modify a permit under this rule shall be conducted pursuant to the Uniform Administrative Procedures Act, (T.C.A. §§ 4-5-101 through 4-5-108, and 4-5-301 through 4-5-325).

Authority: T.C.A. §§ 11-1-101, 11-1-108, 11-8-107, and 4-5-101 et seq.

0400-02-10-.07 Reports and Payments.

- (1) Any report or payment due under this chapter shall be sent on the form and in the manner determined by the Commissioner. The submission of online reports or payments is expressly allowed and encouraged, as available.
- (2) Payments shall be considered to have been paid on the date such payments are received by the Department.
- (3) For payments received more than 15 days after the date on which a payment is due, a late fee of 10% of the amount past due shall be added to the outstanding balance. If a commercial outfitter's account is not paid in full within 30 days of the date on which a payment is due and becomes delinquent, the commercial outfitter shall also pay all administrative costs, including but not limited to all legal fees and costs associated with any collection efforts, incurred by the Department.
- (4) The revocation, suspension, modification of, or refusal to issue or renew, a permit shall not cancel any outstanding fees or payments owed the Department by the applicant or former commercial outfitter. The terms of paragraph (3) of this rule shall apply to fees or payments owed the Department regardless of whether a commercial outfitter's permit is active, or whether an applicant's application was approved.

Authority: T.C.A. §§ 11-1-101, 11-1-108, 11-8-107, and 4-5-201 et seq.

Chapter 0400-02-10
Requirements for Conducting Rafting Services – Ocoee River

Amendments

Current Rule 0400-02-10-.02 Raft, Inflatable Boats, Kayaks and Canoe Requirements for Commercial Operators is amended by deleting it in its entirety and substituting instead the following:

0400-02-10-.08 Raft Requirements for Commercial Outfitters.

- (1) Commercial outfitters shall ensure, in providing commercial whitewater outfitter services, that each raft used in commercial whitewater outfitter services on the river:
 - (a) Contains at least three separate inflatable compartments;
 - (b) Is constructed of a tough, rubberized fabric, or its equal, capable of withstanding repeated daily abrasion and abuse on a class III/IV river. Single thickness non-reinforced vinyl or other poorly or cheaply constructed rafts are prohibited on the river;
 - (c) Is at least 11 feet long and five feet wide and capable of carrying at least four persons;
 - (d) Has flotation such that the raft has positive buoyancy in still water when filled with water and occupied by the maximum number of persons for which the raft is designed;
 - (e) Meets or exceeds the safety recommendations of the 2005 revision of the safety code of the American White Water Organization;
 - (f) Is maintained in a reasonable operating condition for its intended use and is inspected after each trip for damage such as punctures, tears, excessive abrasions, and wear which materially affect the structural integrity of the raft. If a commercial outfitter or a commercial outfitter's employee, agent, contractor, or subcontractor finds damage to a raft, the commercial outfitter must repair the raft before it can be used for commercial whitewater outfitter services on the river; and
 - (g) Has a distinct and identifiable mark no less than three inches in height on both sides of its hull identifying the commercial whitewater outfitter to which the raft belongs.
- (2) Commercial outfitters shall not use tubes or tube-like rafts for commercial whitewater outfitter services on the river.

Authority: T.C.A. §§ 11-1-101, 11-1-108, 11-8-107, and 4-5-201 et seq.

Current Rule 0400-02-10-.03 Personal Safety Equipment and Devices is amended by deleting it in its entirety and substituting instead the following:

0400-02-10-.09 Personal Safety Equipment and Devices.

- (1) Commercial outfitters shall ensure that each customer wears a Type V U.S. Coast Guard-approved personal flotation device (PFD) of appropriate size, while on or in the river.
- (2) Commercial outfitters shall inspect each PFD prior to each use. A commercial outfitter shall remove PFDs from service immediately and repair or dispose of if:
 - (a) The PFD becomes waterlogged;
 - (b) The PFD is damaged such that it can no longer be worn or attached to the user as originally intended by the manufacturer; or
 - (c) The PFD is of such age or worn condition that the PFD, or any component of the PFD, can no longer be reasonably expected to withstand the ordinary forces expected to be encountered in the normal course of customer usage on the river.

- (3) Commercial outfitters shall require all passengers and guides to wear an appropriate helmet while on or in the river.
- (4) All equipment including but not limited to rafts, PFDs, and paddles, shall be subject to inspection by any authorized representative of the Department at any reasonable time, including but not limited to times when the equipment is in use. Equipment deemed to be unsafe by the Department must be immediately repaired or removed from service.
- (5) Each raft must have at least one buoyant heaving line, at least three-eighths of an inch in diameter and at least 50 feet in length, on board during each trip.
- (6) Commercial outfitters shall provide one waterproof first aid kit for each trip comprised of eight rafts or fewer, and at least two first aid kits for each trip comprised of more than eight rafts. Each kit shall contain at least the following items:
 - (a) Semi-rigid or rigid splints;
 - (b) Emergency space blanket, shock blanket, or equivalent;
 - (c) Triangular bandages;
 - (d) Ace bandages;
 - (e) Quick cold packs;
 - (f) Gauze compresses at least two inches by two inches;
 - (g) Roller gauze at least two inches wide;
 - (h) Bandages at least three-quarters of an inch wide;
 - (i) Butterfly bandages;
 - (j) Safety pins;
 - (k) Sting swaps;
 - (l) Adhesive tape;
 - (m) Antiseptic solution or moist sterile towelettes;
 - (n) Scissors;
 - (o) Tweezers;
 - (p) Knife;
 - (q) Sunscreen;
 - (r) Trauma dressing;
 - (s) Eye patches;
 - (t) Tie strips;
 - (u) Pads for splints;
 - (v) Gloves;
 - (w) Biohazard bag; and

- (x) CPR mask.

Authority: T.C.A. §§ 11-1-101, 11-1-108, 11-8-107, and 4-5-201 et seq.

Current Rule 0400-02-10-.04 Transportation is amended by deleting it in its entirety and substituting instead the following:

0400-02-10-.10 Transportation.

- (1) Commercial outfitters shall restrict all parking of vehicles to areas approved by the Department.
- (2) Commercial outfitters shall comply with state and federal laws regarding travel on public roads, including but not limited to the transportation of passengers and commercial vehicles. Commercial outfitters shall maintain a copy of employees' commercial driver licenses if any employees are required under state law to maintain a commercial driver license.

Authority: T.C.A. §§ 11-1-101, 11-1-108, 11-8-107, and 4-5-201 et seq.

Current Rule 0400-02-10-.05 Guides and Guide Trainees is amended by deleting it in its entirety and substituting instead the following:

0400-02-10-.11 Guides and Guides-in-Training.

- (1) All guides and guides-in-training shall be at least 18 years of age.
- (2) All guides and guides-in-training shall have completed the following courses, or the equivalent as approved by the Department, and possess current, valid certificates:
 - (a) CPR course; and
 - (b) Basic first aid course.
- (3) A minimum of one guide per trip shall have completed the American Red Cross advanced first aid course, or a Department-approved equivalent course, and possess current, valid certificates.
- (4) Trip leaders must have at least one season's experience as a guide on the river or a river of similar difficulty.
- (5) The following shall be provided to the park manager upon request and filed in the commercial outfitter's place of business and continually updated throughout the season:
 - (a) Copies of certifications required in paragraphs (2) and (3) of this rule;
 - (b) A photocopy of each guide and guide-in-training's driver's license; and
 - (c) A guide-in-training list.
- (6) There shall be one guide or guide-in-training per raft. No more than 25% of the rafts on a commercial trip shall have guides-in-training controlling the rafts for the entire trip.
- (7) All guides and guides-in-training shall be instructed by the commercial outfitter in safety and emergency techniques, including but not limited to handling throwlines and other means of river rescue, and equipment-management techniques.
- (8) Commercial outfitters shall ensure all guides and guides-in-training are knowledgeable with all applicable state rules and federal regulations. A copy of such rules and regulations shall be given to each guide or guide-in-training.
- (9) Each commercial outfitter shall instruct all guides and guides-in-training as to the availability of the nearest emergency-aid services such as ambulance, fire, police, state park personnel, doctors, and

hospitals.

Authority: T.C.A. §§ 11-1-101, 11-1-108, 11-8-107, and 4-5-201 et seq.

Current Rule 0400-02-10-.06 Safety Procedures is amended by deleting it in its entirety and substituting instead the following:

0400-02-10-.12 Safety Procedures.

- (1) Prior to every trip, commercial outfitters shall conduct a whitewater safety seminar for all passengers to include at least the following topics:
 - (a) Description of the river and rapids;
 - (b) Equipment;
 - (c) Paddling safety;
 - (d) Swimming in whitewater; and
 - (e) Danger of strainers.
- (2) Passengers on trips shall be at least 12 years of age.
- (3) Each raft shall not have more than seven customers, in addition to one guide or guide-in-training.
- (4) No commercial outfitter may use more than 12 rafts or carry more than 100 customers per time slot without prior approval from the park manager or the ranking park ranger on duty.

Authority: T.C.A. §§ 11-1-101, 11-1-108, 11-8-107, and 4-5-201 to -231

Current Rule 0400-02-10-.07 Obedience of Laws, Rules and Regulations, License Requirements and Conditions is amended by deleting in its entirety.

Authority: T.C.A. §§ 11-1-101, 11-1-108, 11-8-107, and 4-5-201 et seq.

Current Rule 0400-02-10-.08 Termination is amended by deleting in its entirety.

Authority: T.C.A. §§ 11-1-101, 11-1-108, 11-8-107, and 4-5-201 et seq.

Current Rule 0400-02-10-.09 Cooperation with Parks is amended by deleting it in its entirety and substituting instead the following:

0400-02-10-.13 Cooperation with Parks.

- (1) Commercial outfitters shall not cause any environmental damage to the river and shall ensure prompt cleanup of litter generated by employees or guests.
- (2) Commercial outfitters shall not allow any glass containers, aluminum cans, or styrofoam containers of any kind on the river.
- (3) Commercial outfitters shall, in cooperation with the park, instruct guides so that they may properly inform passengers of park facilities, U.S. Forest Service property, local history, and natural features along their route of travel on the river.

Authority: T.C.A. §§ 11-1-101, 11-1-108, 11-8-107, and 4-5-201 et seq.

Current Rule 0400-02-10-.10 Notification of Accidents or Casualties is amended by deleting it in its entirety and substituting instead the following:

0400-02-10-.14 Notification of Accidents or Casualties.

Commercial outfitters shall report to the park manager, by use an accident form provided by the park, any and all accidents or casualties resulting in loss of life, personal injury requiring a physician's attention, or property damage in excess of \$200. Notification must be hand delivered or emailed within 48 hours of said incident.

Authority: T.C.A. §§ 11-1-101, 11-1-108, 11-8-107, and 4-5-201 et seq.

Current Rule 0400-02-10-.11 Scheduling and Carrying Capacity is amended by deleting it in its entirety and substituting instead the following:

0400-02-10-.15 Scheduling and Carrying Capacity.

- (1) Each commercial outfitter may submit to the Department, at or before the annual preseason public meeting on or about the first Tuesday of March each year, a proposed schedule assigning the times that the commercial outfitter requests to schedule daily rafting trips for the forthcoming season. The proposed schedule shall be based on the recreational water release days and times as determined by TVA and the Department. Multiple commercial outfitters may jointly submit a single proposed schedule including all commercial outfitters agreeing to that schedule and any association of commercial outfitters may submit a proposed schedule for all commercial outfitters permitted by the Department for the upcoming year. A proposed schedule shall be utilized by the commercial outfitter(s) submitting it until a final schedule is approved by the Department. The Department shall review the submitted proposed schedules and may:
 - (a) Approve all or some of the proposed schedules as presented;
 - (b) Revise all or some of the proposed schedules; or
 - (c) Reject all or some of the proposed schedules and assign schedule times, as necessary.
- (2) If the Department chooses to assign schedule times pursuant to subparagraph (1)(c) of this rule, the Department must do so to:
 - (a) Optimize recreational opportunities;
 - (b) Protect the river and park resources; and
 - (c) Ensure public safety.
- (3) If any commercial outfitter does not submit a proposed schedule, the Department shall schedule the daily trips for that commercial outfitter.
- (4) The Department shall approve a final schedule by April 15 of each year. Commercial outfitters shall adhere to the final daily trip schedule.
- (5) The daily commercial carrying capacity for the middle portion of the river (the area of the river between Rogers Branch put-in and Caney Creek take-out) shall be 4,250 commercial customers for those day(s) for which the commercial usage during the last season exceeded 4,250 customers. Days which were capped for the last season shall be capped for each subsequent season unless the commercial usage on the cap day during any following season falls below 4,050 customers, in which case that day will no longer be a cap day beginning with the season after commercial usage fell below 4,050 customers.
- (6) The Department shall announce the cap days for the upcoming season at the annual post-season public meeting on or about the second Tuesday of October of each year.
- (7) Each commercial outfitter or an association of commercial outfitters, utilizing a methodology acceptable to the Department, may submit to the Department a proposed allocation of the commercial use for the cap days for the upcoming season. Any proposed allocation shall be based on a maximum of 4,250 commercial customers.
- (8) The proposed allocation for cap days shall be presented by the commercial outfitters to the Department, and open for discussion, at the annual pre-season public meeting on or about the first Tuesday of March.

- (9) The Department shall review each proposed allocation and may:
 - (a) Approve all or some of the proposed allocations as presented;
 - (b) Revise all or some of the proposed allocations; or
 - (c) Reject all or some of the proposed allocation and allocate the commercial carrying capacity for cap days among the commercial outfitters, as necessary.
- (10) If the Department chooses to allocate the commercial carrying capacity for cap days pursuant to subparagraph (9)(c) of this rule, the Department must do so to:
 - (a) Optimize recreational opportunities;
 - (b) Protect the river and park resources; and
 - (c) Ensure public safety.
- (11) If no commercial outfitter or association of commercial outfitters submits a proposed allocation, the Department shall allocate the commercial carrying capacity for cap days. The Department may utilize any method the Department deems appropriate.
- (12) Each commercial outfitter is allowed 15% of its allocation as overage to allow for no-shows and cancellations.
- (13) The final commercial cap day(s) allocation shall be announced by the Department on or before April 15 of each year. Commercial outfitters shall adhere to the final allocation, subject to paragraph (14) of this rule.
- (14) In order to exceed their allocation on a given cap day, a commercial outfitter must:
 - (a) Find another commercial outfitter with unused time slots on the same cap day who is willing to donate to or exchange their time slots with the requesting commercial outfitter; and
 - (b) Inform the Department of the donation or exchange on a form provided by the Department. The form must be sent into the park office prior to the trip(s) causing the commercial outfitter to exceed their allotted cap.
- (15) The Department may, in its discretion, limit commercial use of the river on an emergency basis.

Authority: T.C.A. §§ 11-1-101, 11-1-108, 11-8-107, 11-13-110, and 4-5-201 et seq.

Current Rule 0400-02-10-.12 Penalties is amended by deleting it in its entirety.

Authority: T.C.A. §§ 11-1-101, 11-1-108, 11-8-107, and 4-5-201 et seq.

Current Rule 0400-02-10-.13 Organized Groups and Private Boaters is amended by deleting it in its entirety and substituting instead the following:

0400-02-10-.16 Noncommercial Organized Groups and Private Boaters.

- (1) While on the river, all noncommercial boaters, whether organized groups or private individual boaters, shall:
 - (a) Wear a personal flotation device of appropriate size that is:
 - 1. U.S. Coast Guard-approved;
 - 2. Made of nonabsorbent flotation materials equally distributed front and back;
 - 3. A jacket or vest worn about the upper torso;

4. Buoyant enough to float a six kilogram legalized lead weight; and
 5. Designed to keep a conscious person face up in the water; and
- (b) Comply with all applicable regulations of the Tennessee Wildlife Resources Agency governing vessels upon the waters of Tennessee.
- (2) Noncommercial boaters shall not carry any glass containers, aluminum drink cans or styrofoam containers of any kind on the river.
 - (3) All noncommercial organized groups shall have with them at all times club rosters and identifications, as applicable. These groups shall provide this information upon request.
 - (4) Noncommercial boaters shall not take any inflatable crafts on the river unless such inflatable craft is constructed of a tough, rubberized fabric, or its equal, capable of withstanding repeated abrasion and abuse on a class III/IV river. Single thickness non-reinforced vinyl or other poorly or cheaply constructed inflatable crafts are prohibited on the river.
 - (5) This rule is not intended to supersede the authority of the Tennessee Wildlife Resources Agency to promulgate and enforce regulations governing noncommercial vessels upon the waters of Tennessee. To the extent of any conflict between this rule and the regulations of the Tennessee Wildlife Resources Agency governing noncommercial vessels upon the waters of Tennessee, the regulations of the Tennessee Wildlife Resources Agency shall take priority.

Authority: T.C.A. §§ 11-1-101, 11-1-108, and 4-5-201 et seq.

Current Rule 0400-02-10-.14 Pets in the Ocoee River Recreation Area is amended by deleting it in its entirety.

Authority: T.C.A. §§ 11-1-101, 11-1-108, and 4-5-201 et seq.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: November 10, 2020

Signature: *Will Kerby*

Name of Officer: Will Kerby

Title of Officer: Associate Counsel

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Filed with the Department of State on: _____

Tre Hargett
Secretary of State