

**Response to Comments**  
**323 CMR 6.00**  
**Commercial Uses on the Deerfield River**

- I. Summary of Proposed Amendments:** Commercial Whitewater Use Regulation, 323 CMR 6.00, establishes rules of conduct and operation of commercial activities on the Deerfield River and is being updated to cover commercial tubing operators in addition to commercial whitewater operators, improve public safety provisions and establish a consistent code of conduct for customers of commercial operators.
- II. Public Comment Period and Hearing:** A public comment period was opened on July 14, 2021, and written comments were accepted through August 9, 2021. A public hearing was held on August 5, 2021, via live video and/or telephone access through Zoom Webinar. The following persons attended the public hearing:

Bruce Lessels, Zoar Outdoor Adventure Resort  
Brian Pytko, Zoar Outdoor Adventure Resort  
Janet Cowie, Zoar Outdoor Adventure Resort  
Helen Carcio, Great Outdoors Tubing Company  
Frank Mooney, Crab Apple Whitewater  
Marie Hyytinen, Crab Apple Whitewater  
Sarah Reynolds, Town of Charlemont  
Patrick Banks  
Katie Banks  
Mary Ellen Banks  
Phil Banks  
Atticus Rudof

The following persons submitted written comments:

Helen and Chris Carcio, Great Outdoors Tubing Company  
Sarah Reynolds, Town of Charlemont-Town Administrator  
Frank Mooney, Crab Apple Whitewater  
Janet Cowie, Zoar Outdoor Adventure Resort  
Brian Pytko, Zoar Outdoor Adventure Resort  
Gabe Porter-Henry, Berkshire East Mountain Resort

**III. Response to Public Comments / Revisions to Regulations:**

**323 CMR 6.02: Definitions**

Comment: Request to consider inclusion of inflatable Fun-Yaks within the whitewater craft definition.

Response: *Expanding the scope of the whitewater craft definition was not part of the agency's review, as this notice of proposed rulemaking focused on new oversight of commercial tubing operations. The agency may consider this request in future rule-making processes.*

### **323 CMR 6.03: Whitewater Craft: General**

Comment: Suggest that the title of this section be changed from “Whitewater Craft” to “Commercial Whitewater Outfitters”, since it spells out the requirements of the outfitter and will align with the next section entitled “Commercial Tube Providers” which spells out the requirements related to these providers.

Response: *The agency has revised the regulations to align with this suggestion.*

### **323 CMR 6.03 (2): Whitewater Craft: Guide**

Comment: Request to remove portion that allows for passengers with significant past experience to recreate without being accompanied by a guide, as is included below. Request to clarify what it means to be without a guide but under the supervision of a Commercial Whitewater Outfitter.

“Passengers with significant past experience on Whitewater Craft expeditions on the Fife Brook and Monroe sections on Whitewater Craft such as kayaks, canoes, and stand up paddle boards are not required to be accompanied by a guide, provided that such experience passengers wear helmets and personal flotation devices, and are under the supervision of a Commercial Whitewater Outfitter permitted in accordance with 323 CMR 6.05”

Response: *The agency has revised this portion of the regulations to clarify that passengers who have previously acted or currently act as guides on Whitewater Craft expeditions on the relevant sections of the river are not required to be accompanied by a guide. Additional language was added to clarify that instruction is still required for said passengers. These revisions intend to provide flexibility to operators to allow for experienced passengers to recreate under the supervision of the operators, at the discretion of the operators, while maintaining safety protocols. To the extent that further guidance is needed, Commercial Whitewater Outfitters are encouraged to contact the agency for guidance.*

### **323 CMR 6.03 (3): Whitewater Craft: Equipment**

Comment: Request each whitewater craft contain one throw bag, as was included in the original regulations.

Response: *The agency has revised the regulations to align with this suggestion. However, the presence of throw bags in whitewater craft without guides raises additional safety concern. Accordingly, the agency is also revising the regulations to require safety protocol training for operators.*

### **323 CMR 6.03 (5): Whitewater Craft: Age Restriction**

Comment: Is there an age restriction for individuals using sit on tops and Fun-Yaks provided by rafting companies?

Response: *Sit-on-tops and Fun-Yaks are not within the scope of this regulation, so age restrictions will not apply to these vessels. Commercial Whitewater Outfitters have a separate set of age restrictions than Commercial Tube Providers.*

Comment: Request to ensure that the age restrictions don't incidentally apply to youth instruction efforts, including paddle classes and after-school kayak camp.

Response: *The agency has revised the regulations to align with this suggestion.*

### **323 CMR 6.04 (2): Commercial Tube Providers: Equipment**

Comment: Multiple comments expressed concern over the safety of double tubes, given that weight tends to be unbalanced and given frequency of capsize events.

Response: *The regulations have been revised to align with these suggestions and now prohibit the use of double tubes by Commercial Tube Providers.*

Comment: Multiple comments expressed concern over the safety of single-chambered tubes given the increased likelihood of the tubes popping. However, comments recommend that single-chambered tubes currently in use by commercial providers be grandfathered into use for a limited period of time (proposed: 2024).

Response: *The regulations have been revised to align with these suggestions. Upon the effective date of the regulations, providers may not purchase new single-chamber tube for commercial use and must only purchase double or multi-chambered tubes for commercial use. Single chamber tubes that were purchased before promulgation of the regulations may continue to be used until December 31, 2023.*

### **323 CMR 6.04 (4): Commercial Tube Providers: Age Restriction**

Comment: Several comments expressed concern that the proposed age limits are too low. Tubes often capsize, and individuals have to make independent decisions about the current, rocks, trees, rapids, etc. during their float, including in emergency situations. The proposed age minimums ranged from no younger than eight to no younger than ten.

Response: *The regulations have been revised such that passengers must be a minimum of 10 years of age to be alone on a commercial tube.*

### **323 CMR 6.04 (5): Commercial Tube Providers: Instruction**

Comment: Multiple comments requested that passenger instruction for tubes be required, as is required for whitewater rafting. This is important because individuals are often on the river for the first time and should be made aware of the existence of river features and river hazard avoidance.

Response: *The agency has revised the regulations to require passenger instruction for tubes, prior to any excursion. In addition, the agency added language that requires safety procedures and a code of conduct be posted visibly at Commercial Tube Provider facilities as well as Commercial Whitewater Outfitter facilities in 323 CMR 6.03(6).*

### **323 CMR 6.05: Permits**

Comment: Multiple comments reinforce the importance of maintaining quota practices for Commercial Whitewater Outfitters. Historically, the whitewater craft quota is effective between the Vermont border to just upstream of the Zoar Gap Picnic Area, but is not in effect downstream of the Zoar Gap. Request that the regulations articulate the difference between the two sections of the river, to ensure that Commercial Whitewater Outfitters do not become subject to the Commercial Tube Providers quotas downstream of the Zoar Gap.

Response: *The agency confirms that quotas for the Commercial Whitewater Outfitters apply only on the section of the river that runs from the Vermont Border to the Zoar Gap Bridge. The quotas for Commercial Whitewater Outfitters do not apply south of the Zoar Gap Bridge.*

Comment: Multiple comments requested that quotas be increased to 400 passengers, to give each company 200 passengers. Confirm how the commercial rafting companies and Fun-Yak/sit-on-top numbers impact this.

Response: *The agency has revised the regulations such that the total daily passenger quota totals 400, such that each Commercial Tube Provider be allowed 200. This Commercial Tube Provider quota is separate from Commercial Whitewater Outfitter quotas. Commercial Whitewater Outfitters have a total quota of 480 passengers within their regulated portion of the river. Fun-Yaks and sit-on-tops are not within the scope of these regulations.*

Other Revisions: The proposed regulation contained transition provisions relating to the new permitting requirement for Commercial Tube Providers. The dates associated with those transition provisions have been updated to account for the passage of time.

### **323 CMR 6.07: Prohibitions**

Comment: There is text that intends to prohibit passengers from carrying glass bottles or containers. However, as drafted, the text prohibits glass from being on any vessel operated by a Commercial Whitewater Outfitter. Recommend amending the text as drafted below:

Original: “any glass bottles or containers to be onboard a Whitewater Craft operated by a Commercial Whitewater Outfitter during an excursion or carried by a Passenger while on a Tube Provided by a Commercial Tube Provider.”

Proposed: “any glass bottles or containers to be onboard or carried by a passenger of a Whitewater Craft operated by a Commercial Whitewater Outfitter...”

Response: *The agency has revised the regulations to align with this suggestion.*

### **Other Questions from Commenters**

This section addresses questions posed by various commentors on components of the regulations.

Comment: Are rafting companies allowed to re-buy their rafts at the end of a trip?

Response: *Companies are allowed to re-buy rafts at the end of a trip, but any tubes returned or resold are also covered under these regulations.*

Comment: What portions of the river are specific for the tubes and inflatable kayaks (Fun-Yaks) and sit on top vessels and family float trips?

Response: *The regulated portion of the Deerfield River for commercial whitewater is from the Vermont border to the Zoar Gap Bridge. The regulated portion of the Deerfield River for commercial tubing is downriver from the Zoar Gap Bridge to the confluence of Mill Brook in Charlemont. Inflatable kayaks, sit-on-tops and family float trips are not part of these regulations.*

Comment: Should the regulations articulate a purpose of general river use, rather than limit use to whitewater?

Response: *The regulations are intended for commercial operators on the river. The draft retitled the regulations “Commercial Uses on the Deerfield River” to address this.*

Comment: Can personal floatation devices be required for all river users, regardless of the mechanism by which individuals are using the river? This could be supplemented by river signage that communicates the requirement.

Response: *Personal floatation devices are required to be worn by passengers in commercial rafts and tubes. Canoes, kayaks, stand up paddle boards already have a PFD requirement. These regulations do not extend to those using the river recreationally.*

Comment: Where is Mill Brook and Deerfield portage?

Response: *Mill Brook is located near the Charlemont Fire Station where it flows into the Deerfield River. The Deerfield Portage operates on the Lower Deerfield River which is not the regulated section.*

Comment: Can tubes be tied together?

Response: *The regulations do not allow for commercial tubes to be tied together.*

Comment: Request that customers who demo kayaks, canoes, and stand-up paddleboards not be included in any quota calculations. If these passengers are included in the quotas, it may negatively impact both the rafting business but also retail sales, since rafting passenger seats are sold in advance and demos are often walk-in customers after all the commercial quota seats have been reserved for the day.

Response: *The agency confirms that retail demos are not included in quotas. The regulations only apply to “daily” trips on the regulated portions of the river.*

Comment: Why is the equipment evaluation different for Commercial Tube Providers and Commercial Whitewater Outfitters? Equipment evaluation should be the same for both entities, including tubes, rescue equipment, first aid kits, rental clothing, etc.

Response: *The equipment evaluation of Commercial Tube Providers and Commercial Whitewater Outfitters is not identical because different gear is required for each activity. Personal floatation devices are required for both activities. It is not required that tubes carry rescue equipment and first aid kits on board the tubes.*