

§12913. Allocation system

1. Goals. The goals of the allocation system are:

A. To encourage a wide diversity of whitewater trip experiences and services; [PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]

B. To provide a fair distribution of river use among existing and future users; [PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]

C. To maximize competition within the recreational use limits; [PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]

D. To allow for reasonable business stability for outfitters by allowing stable, well-qualified outfitters who are providing excellent service and meeting the conditions of their allocations to continue to do so, subject to periodic review; [PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]

E. To encourage efficient use of the allocation system; [PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]

F. To be flexible enough to adapt to changes in river use or river conditions; [PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]

G. To prevent evasion of the system; and [PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]

H. To provide opportunity for public access. [PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]

[PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]

2. Allocation required. This subsection governs commercial whitewater trips on rivers subject to allocation requirements.

A. Except as provided in this paragraph, a person may not operate a commercial whitewater trip on the Kennebec River between Harris Station and West Forks or on the West Branch Penobscot River between McKay Station and Pockwockamus Falls without an allocation or in excess of an allocation on any day for which allocations are established under this subsection or by the department by rule.

(1) Allocations are not established and are not required for other rivers or for other stretches of the Kennebec River or the West Branch Penobscot River.

(2) Allocations are required for Saturdays on the Kennebec River between Harris Station and West Forks for the period of July 1st to August 31st. Allocations are required for Saturdays on the West Branch Penobscot River between McKay Station and Pockwockamus Falls for the period of July 1st to August 31st. The commissioner may adopt rules establishing allocations for Sundays for the period of July 1st to August 31st. If the department determines that the recreational use limit will be reached on other days, the department shall provide by rule for allocations. Rules adopted under this subparagraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

(3-A) Under extenuating circumstances as determined by the commissioner, the commissioner may allow the emergency transfer of a commercial whitewater rafting trip from a rapidly flowing river to another rapidly flowing river as long as sufficient water is available in the river to which the commercial whitewater rafting trip is to be transferred. Notwithstanding subsection 3, the commissioner may allow the recreational use limits to be exceeded pursuant to this subparagraph. Under no circumstances is a transfer of a whitewater rafting trip allowed to the West Branch Penobscot River. The department shall report annually to the joint standing

committee of the Legislature having jurisdiction over inland fisheries and wildlife matters regarding the implementation of this subparagraph. A transfer authorized under this subparagraph is not restricted to an outfitter holding an allocation.

(4) An outfitter may occasionally exceed the allocation by 2 passengers on a trip of up to 40 passengers, or 4 passengers on a trip of more than 40 passengers, to accommodate problems in booking, as long as the average of the number of passengers carried on an outfitter's 10 best allocated days for each river and for each allocated day of the week does not exceed the outfitter's allocation for that river and day. Abuse by an outfitter of the privilege to carry additional passengers results in the loss of the privilege for a period to be determined by the commissioner.

(6) The following penalties apply to violations of this paragraph.

(a) A person who violates this paragraph commits a civil violation for which a fine of not less than \$100 nor more than \$500 may be adjudged.

(b) A person who violates this paragraph after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime. [PL 2013, c. 245, §6 (AMD).]

B. [PL 2013, c. 245, §6 (RP).]

C. [PL 2013, c. 245, §6 (RP).]

[PL 2013, c. 245, §6 (AMD).]

3. Allocations, maximum, minimum. The department may allocate the privilege to conduct whitewater trips to licensed outfitters. The maximum allocation for an outfitter is 120 passengers per river per day. The minimum allocation to be awarded is 10 passengers per day on the Kennebec River and 16 passengers per day on the West Branch Penobscot River. The department is not authorized to issue a total number of allocations for an allocated day that exceeds the recreational use limits established in section 12911. The department may declare a day to be an allocated day when the department determines that the regular and persistent use of the river on that day from year to year may exceed the recreational use limits for that day.

[PL 2003, c. 614, §9 (AFF); PL 2003, c. 655, Pt. B, §338 (AMD); PL 2003, c. 655, Pt. B, §422 (AFF).]

4. Conditions for holding allocations. Allocations are a privilege extended by the State for the use of a limited public resource. The department may suspend, revoke or reduce the number of allocations when it is advisable to do so for better management of the resource or for protection of public safety and welfare. An outfitter's allocations are subject to forfeiture or suspension by the department if the outfitter fails to maintain the conditions of its license, fails to continue using its allocations productively or fails to maintain a quality of service consistent with the public interest.

[PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]

5. Allocation criteria; reports. The department may adopt rules specifying a schedule for reviewing outfitters who hold allocations and setting forth the criteria for awarding allocations. If the department determines that additional allocated days are required, the allocation of trips on any such additional day must be distributed among existing licensed outfitters, upon payment of the appropriate allocation fee, in accordance with their percentage of total use averaged over the rafting season on that rapidly flowing river on that particular day, up to the limit on allocations established in subsection 3. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

A. An outfitter shall submit on a schedule determined by the department periodic public reports to the department documenting river use for both allocated and unallocated days. The following penalties apply to violations of this paragraph.

(1) A person who violates this paragraph commits a civil violation for which a fine of not less than \$100 nor more than \$500 may be adjudged.

(2) A person who violates this paragraph after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime. [PL 2003, c. 655, Pt. B, §339 (NEW); PL 2003, c. 655, Pt. B, §422 (AFF).]

[PL 2003, c. 614, §9 (AFF); PL 2003, c. 655, Pt. B, §339 (AMD); PL 2003, c. 655, Pt. B, §422 (AFF).]

6. Allocation fee. When allocations are required, an outfitter shall pay the department an annual allocation fee of \$252 per unit of 20 passengers or less. Additional passengers over each increment of 20 constitute a new unit. The annual allocation fee may be paid in quarterly payments, beginning 30 days after the allocation is awarded. The maximum allocation fee an outfitter may pay is \$2,627 annually.

[PL 2005, c. 12, Pt. III, §33 (AMD).]

7. Exceptions.

[PL 2003, c. 614, §9 (AFF); PL 2003, c. 655, Pt. B, §340 (RP); PL 2003, c. 655, Pt. B, §422 (AFF).]

8. Noncommercial whitewater rafting trips; prior registration required.

[PL 2003, c. 614, §9 (AFF); PL 2003, c. 655, Pt. B, §340 (RP); PL 2003, c. 655, Pt. B, §422 (AFF).]

9. Noncommercial whitewater rafting trips; prior registration required. A person without a commercial whitewater outfitter's license using a whitewater craft on any stretch of river for which a specific allocation is required, including days for which an allocation is not required, shall file, prior to launching the craft, a noncommercial trip registration form with the department. The form must state that the person's use of whitewater craft on this river stretch does not constitute a commercial whitewater trip as defined in section 12901 and must be signed by all persons using the craft.

A commercial whitewater outfitter may not use a whitewater craft on any stretch of river for which a specific allocation is required, including days for which an allocation is not required, to carry any person, other than a commercial passenger or commercial whitewater guide, unless the outfitter files a noncommercial passenger registration form with the department before launching the craft. The form must list the persons who are not commercial whitewater guides or commercial passengers, state that the persons listed are not commercial whitewater guides or commercial passengers and be signed by each person listed.

A. A person who violates this subsection commits a civil violation for which a fine of not less than \$100 nor more than \$500 may be adjudged. [PL 2003, c. 655, Pt. B, §341 (NEW); PL 2003, c. 655, Pt. B, §422 (AFF).]

B. A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime. [PL 2003, c. 655, Pt. B, §341 (NEW); PL 2003, c. 655, Pt. B, §422 (AFF).]

[PL 2003, c. 655, Pt. B, §341 (NEW); PL 2003, c. 655, Pt. B, §422 (AFF).]

SECTION HISTORY

PL 2003, c. 414, §A2 (NEW). PL 2003, c. 414, §D7 (AFF). PL 2003, c. 614, §9 (AFF). PL 2003, c. 655, §§B337-341 (AMD). PL 2003, c. 655, §B422 (AFF). PL 2005, c. 12, §III33 (AMD). PL 2009, c. 340, §17 (AMD). PL 2011, c. 68, §1 (AMD). PL 2013, c. 245, §6 (AMD).

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