

CHAPTER 929**WHITEWATER RAFTING****§12901. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]

1. Affiliated group.

[PL 2013, c. 245, §1 (RP).]

2. Affiliated outfitter.

[PL 2013, c. 245, §2 (RP).]

3. Allocation. "Allocation" means the privilege of taking a specified number of passengers per day on whitewater trips on a particular river, as specified annually.

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

4. Commercial. "Commercial" means for financial compensation or other remuneration.

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

5. Commercial whitewater outfitter; outfitter. "Commercial whitewater outfitter" or "outfitter" means a person who collects dues or fees or receives any form of compensation for arranging or providing whitewater rafting trips or for operating a whitewater rafting organization. A commercial whitewater outfitter license does not authorize the holder to guide whitewater rafting trips unless that person also holds a valid whitewater guide's license.

[PL 2003, c. 614, §9 (AFF); PL 2003, c. 655, Pt. B, §321 (AMD); PL 2003, c. 655, Pt. B, §422 (AFF).]

6. Demonstrated use. "Demonstrated use" means for a given outfitter for a given river the average number of passengers carried on the 10 Saturdays or Sundays with greatest use during the year.

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

7. Financial interest. "Financial interest" means any voting or nonvoting security, partnership interest whether limited or general, trust interest, joint venture interest or any other beneficial interest in any form of business association.

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

8. Person. "Person" means an individual, corporation, business trust, estate, trust, partnership or association, 2 or more persons having a joint or common interest, or any other legal or commercial entity.

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

9. Rapidly flowing river. "Rapidly flowing river" means a river or stretch of a river with rapids classified as class IV or higher by the department according to the International River Classification System or a river or stretch of a river designated by the department by rule on the basis of public safety, including, but not limited to, the Kennebec River between Harris Station and West Forks and the West Branch Penobscot River between McKay Station and Pockwockamus Falls.

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

10. Whitewater craft. "Whitewater craft" means any raft, dory, bateau or similar watercraft that is used to transport passengers along rapidly flowing rivers but does not include canoes or kayaks.

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

11. Whitewater guide. "Whitewater guide" means a person who receives any remuneration from a commercial whitewater outfitter for accompanying, assisting or instructing clients of that commercial whitewater outfitter on the river on whitewater trips and who holds a current whitewater guide's license. [PL 2003, c. 614, §9 (AFF); PL 2003, c. 655, Pt. B, §322 (AMD); PL 2003, c. 655, Pt. B, §422 (AFF).]

12. Whitewater trip. "Whitewater trip" means a commercial effort to transport passengers by means of a whitewater craft on rapidly flowing rivers, except commercial efforts by guides licensed under section 12853 to transport clients by means of a whitewater craft on rapidly flowing rivers while principally engaged in fishing. [PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (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, §§B320-322 (AMD). PL 2003, c. 655, §B422 (AFF). PL 2013, c. 245, §§1, 2 (AMD).

§12902. Legislative findings

The Legislature finds that the recreational use of watercraft on rapidly flowing rivers in this State has become an increasingly popular sport. Many members of the public rely on commercial whitewater outfitters to provide safe and enjoyable trips on these rivers. This sport may pose significant risks to the users of these rivers if outfitters are not skilled and knowledgeable in the navigation of those rivers and are not properly regulated. [PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]

The Legislature further finds that increased use of the State's rapidly flowing rivers has increased the environmental, physical and social burdens on that resource. [PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]

The Legislature further finds that it is in the public interest for the State, as trustee of the public waters, to regulate commercial whitewater rafting, pursuant to: the State's authority to protect the health, safety and welfare of its citizens; the State's authority to protect its natural resources or rapidly flowing rivers; and the State's authority over the care, supervision and protection of navigation. [PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]

The Legislature further finds that, in exercising this authority, it is in the public interest for the State to adopt measures to ensure the competence of commercial whitewater outfitters; to adopt recreational use limits; and to allocate the privilege of commercial use where necessary to meet the objectives and goals of this chapter. [PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]

The Legislature further finds that it is in the public interest to allow 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).]

SECTION HISTORY

PL 2003, c. 414, §A2 (NEW). PL 2003, c. 414, §D7 (AFF). PL 2003, c. 614, §9 (AFF).

§12903. River management objectives

The following objectives are established for management of rapidly flowing rivers for the benefit of the people of the State: [PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]

1. Safety and health requirements. To ensure that safety and health requirements are met by all river users; [PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]

2. Minimize environmental impact. To minimize environmental impact on the rivers and the river corridors, including access roads;

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

3. Recreational use. To allow a reasonable level of recreational use;
[PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]

4. Quality wilderness experience. To maintain a quality wilderness experience on the rivers;
[PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]

5. Multiple uses. To minimize conflicts between different uses of the rivers in order to allow for multiple use;
[PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]

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

7. River use and impact. To monitor river use and its impact;
[PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]

8. Communication. To encourage open communication with all river users, both groups and individuals, on river management matters; and
[PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]

9. System of allocating river use. To provide a system of allocating river use that is simple and fair and that meets the specific goals of section 12913.
[PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]

SECTION HISTORY

PL 2003, c. 414, §A2 (NEW). PL 2003, c. 414, §D7 (AFF). PL 2003, c. 614, §9 (AFF).

§12904. Exceptions

This chapter does not apply to the operation of canoes or kayaks. This chapter does not apply to guides, youth camp trip leaders or educational trip leaders licensed under chapter 927 or motorboat operators licensed under chapter 935, unless those persons are in the business of conducting commercial whitewater trips. [PL 2021, c. 162, §10 (AMD).]

SECTION HISTORY

PL 2003, c. 414, §A2 (NEW). PL 2003, c. 414, §D7 (AFF). PL 2003, c. 614, §9 (AFF). PL 2009, c. 211, Pt. B, §13 (AMD). PL 2011, c. 253, §35 (AMD). PL 2021, c. 162, §10 (AMD).

§12905. General penalty

(REPEALED)

SECTION HISTORY

PL 2003, c. 414, §A2 (NEW). PL 2003, c. 414, §D7 (AFF). PL 2003, c. 614, §9 (AFF). PL 2003, c. 655, §B323 (RP). PL 2003, c. 655, §B422 (AFF).

§12906. Rule violations; whitewater rafting

The following penalties apply to violations of rules regulating commercial whitewater rafting. [PL 2003, c. 614, §9 (AFF); PL 2003, c. 655, Pt. B, §324 (RPR); PL 2003, c. 655, Pt. B, §422 (AFF).]

1. Civil. Notwithstanding section 10650, a person who violates a rule regulating commercial whitewater rafting 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, §324 (NEW); PL 2003, c. 655, Pt. B, §422 (AFF).]

2. Criminal. A person who violates a rule regulating commercial whitewater rafting 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, §324 (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, §B324 (RPR). PL 2003, c. 655, §B422 (AFF).

§12907. Commercial whitewater outfitters; license and requirements

1. Requirement. Every commercial whitewater outfitter must have a commercial whitewater outfitter's license. An outfitter may not operate a commercial whitewater trip without a license. A person who violates this subsection commits a Class E crime.

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

2. Issuance; term. The commissioner may issue a commercial whitewater outfitter's license to conduct commercial whitewater trips. A license is issued for the calendar year.

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

2-A. Number of licenses. A commercial whitewater outfitter is allowed to possess up to 3 commercial whitewater outfitter's licenses on allocated rivers.

[PL 2013, c. 245, §3 (NEW).]

3. Insurance requirements. An outfitter shall carry liability insurance, in the minimum amounts established by the department by rule, covering the operation of whitewater trips and motor vehicles carrying passengers. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

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, §325 (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, §325 (NEW); PL 2003, c. 655, Pt. B, §422 (AFF).]

[PL 2003, c. 614, §9 (AFF); PL 2003, c. 655, Pt. B, §325 (AMD); PL 2003, c. 655, Pt. B, §422 (AFF).]

4. Fee. The annual basic fee for a commercial whitewater outfitter's license must be set by the department and adjusted biennially by rule to reflect the actual cost of administering the license program. The fee for reissuance of a license is equal to the annual basic fee for a license.

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

5. Nonrenewal, suspension or revocation. A commercial whitewater outfitter's license is subject to nonrenewal, suspension or revocation for good cause shown, including, but not limited to, unsafe practices, falsifications of reports or serious or continued violation of this chapter, subject to Title 5, chapter 375.

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

6. Sale of business; license. The following provisions govern the sale of an outfitter's business and treatment of the outfitter's license.

A. When a licensed outfitter's business is sold, the outfitter shall return the outfitter's commercial whitewater outfitter's license to the department.

(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, §326 (NEW); PL 2003, c. 655, Pt. B, §422 (AFF).]
- B. On application, the license must be reissued to the purchaser, as long as the purchaser meets the licensing requirements of the department and pays the license fee. [PL 2003, c. 655, Pt. B, §326 (NEW); PL 2003, c. 655, Pt. B, §422 (AFF).]
- C. A person may not profit on the return and reissuance of the license itself, but nothing in this chapter may be construed to prohibit profit on the sale of any of the assets of a business.
- (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, §326 (NEW); PL 2003, c. 655, Pt. B, §422 (AFF).]
- D. The license is not an asset and is not transferable as part of a sale or transaction. [PL 2003, c. 655, Pt. B, §326 (NEW); PL 2003, c. 655, Pt. B, §422 (AFF).]
- E. The department may require an affidavit from the purchaser to aid in enforcement of this subsection. [PL 2003, c. 655, Pt. B, §326 (NEW); PL 2003, c. 655, Pt. B, §422 (AFF).]
[PL 2003, c. 614, §9 (AFF); PL 2003, c. 655, Pt. B, §326 (RPR); PL 2003, c. 655, Pt. B, §422 (AFF).]

7. Sale of business; allocations. The following provisions govern the sale of an outfitter's business and the treatment of allocations.

- A. When a licensed outfitter's business is sold, the selling outfitter shall return to the department the selling outfitter's allocations or portions of the allocations subject to the sale.
- (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, §326 (NEW); PL 2003, c. 655, Pt. B, §422 (AFF).]
- B. An outfitter who purchases the business of another outfitter whose commercial whitewater outfitter's license has been returned to the department as provided in subsection 6 has 60 days from the date of sale to submit an affidavit applying for the selling outfitter's allocation, ensuring that the level and quality of services of the selling outfitter will be maintained. On application to the department, allocations may be reissued to the purchaser, as long as the purchaser meets the licensing and allocation requirements of the department and pays the license and allocation fees. [PL 2003, c. 655, Pt. B, §326 (NEW); PL 2003, c. 655, Pt. B, §422 (AFF).]
- C. The allocations are not assets of a business. Allocations or portions of the allocations may be transferred, pursuant to this chapter, from a selling outfitter to one or more purchasers only if the selling outfitter's allocations or portions of the allocations subject to the sale are returned to the department. [PL 2003, c. 655, Pt. B, §326 (NEW); PL 2003, c. 655, Pt. B, §422 (AFF).]
- D. An outfitter may not receive more than the maximum allocations allowed under section 12913, subsection 3. [PL 2003, c. 655, Pt. B, §326 (NEW); PL 2003, c. 655, Pt. B, §422 (AFF).]
- E. When allocations are forfeited or when new allocations become available as a result of increases in the commercial use limits on an allocated river, the department shall sell those allocations at public auction to qualified recipients. Net proceeds from the sale of allocations must be paid to the

Whitewater Rafting Fund established under section 10259. [PL 2003, c. 655, Pt. B, §326 (NEW); PL 2003, c. 655, Pt. B, §422 (AFF).]
[PL 2003, c. 614, §9 (AFF); PL 2003, c. 655, Pt. B, §326 (RPR); PL 2003, c. 655, Pt. B, §422 (AFF).]

8. Affiliated outfitters.

[PL 2013, c. 245, §4 (RP).]

9. Limitation. This chapter does not revoke any right of passage or access created by statute, contract or operation of law or as creating any such right for any outfitter or any associates or customers of any outfitter upon the project or project works of any licensee of the Federal Energy Regulatory Commission, as the terms "project" and "project works" are defined in United States Code, Title 16, Section 796 (11) and (12), respectively.

[PL 2003, c. 614, §9 (AFF); PL 2003, c. 655, Pt. B, §327 (AMD); 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, §§B325-327 (AMD). PL 2003, c. 655, §B422 (AFF). PL 2013, c. 245, §§3, 4 (AMD).

§12908. Noncommercial organization that collects dues or fees

Notwithstanding section 12901, subsection 5, an organization that collects dues or fees may conduct rafting trips on rapidly flowing rivers without obtaining a commercial whitewater outfitter's license if the commissioner determines under this section that the organization is a noncommercial organization. [PL 2003, c. 614, §9 (AFF); PL 2003, c. 655, Pt. B, §328 (AMD); PL 2003, c. 655, Pt. B, §422 (AFF).]

1. Tax-exempt nonprofit corporation formed before March 1, 1996. An organization is a "noncommercial organization" if the commissioner determines that the organization is a nonprofit corporation incorporated before March 1, 1996, including any council, troop or other organized local group affiliated with the corporation, that collects dues or fees from its members and for which conducting whitewater rafting is incidental to the purpose of the corporation. The organization wishing to conduct a rafting trip on a rapidly flowing river without a commercial whitewater outfitter's license under this subsection shall file a written request with the commissioner at least 15 days before conducting that trip. The request must include the name of the organization conducting the trip and the time, location and number of persons participating in the trip. The commissioner may request any additional information from the organization necessary to make a determination under this subsection.

A. Notwithstanding any other provision of this section, a council, troop or other organized local group affiliated with the corporation may not conduct more than 2 whitewater rafting trips in any one calendar year without obtaining a commercial whitewater outfitter's license.

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

[PL 2003, c. 614, §9 (AFF); PL 2003, c. 655, Pt. B, §328 (AMD); PL 2003, c. 655, Pt. B, §422 (AFF).]

2. Noncommercial whitewater rafting club. An organization is a "noncommercial organization" if the commissioner determines that the organization is a qualifying noncommercial whitewater rafting club. A "qualifying noncommercial whitewater rafting club" is a group that collects dues or fees from

its members and that the commissioner determines to be organized solely to provide noncommercial whitewater rafting opportunities to its members. To be considered under this subsection, a club must provide to the commissioner the following information before January 1st of each year:

A. A list that includes the name, legal residence and home telephone number of each dues-paying member of the club. That list must identify a member as the president of the club and must identify any other officers or board members of the club. A commercial whitewater outfitter or a licensed whitewater guide is ineligible to be an officer or a board member of the club. The commissioner may not accept more than one amended membership list from a club between April 1st and November 1st; [PL 2003, c. 614, §9 (AFF); PL 2003, c. 655, Pt. B, §328 (AMD); PL 2003, c. 655, Pt. B, §422 (AFF).]

B. A statement signed by all board members, if any, and all officers of the club swearing that:

(1) The sole purpose of the club is to provide noncommercial whitewater rafting opportunities to its members;

(2) No member of the club, including officers and board members, receives any form of compensation from the club at any time, either while a member of the club or afterwards;

(3) The club will use its own rafting equipment, and all fees or dues collected from club members are used only to provide insurance and to purchase and maintain rafting equipment for use solely by the club; and

(4) The club will not employ or otherwise compensate any person for any service relating to rafting or accept any gifts of products or services from any commercial whitewater outfitter or licensed whitewater guide; and [PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]

C. Any other information the commissioner determines necessary. If the club is an incorporated entity, the commissioner shall require the club to submit a copy of the club's articles of incorporation. The commissioner may not consider any incorporated entity other than a tax-exempt, nonprofit corporation as a noncommercial whitewater rafting club. [PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]

[PL 2003, c. 614, §9 (AFF); PL 2003, c. 655, Pt. B, §328 (AMD); PL 2003, c. 655, Pt. B, §422 (AFF).]

3. Limits placed by commissioner. When authorizing a noncommercial organization under this section to conduct whitewater rafting trips without a commercial license, the commissioner shall, when the commissioner determines necessary, place limits on that organization's whitewater rafting activities, including limits on the time and location of rafting activities, the number of persons that may participate in those rafting activities and the safety equipment required for rafting trips.

A. A person who violates limits imposed under 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, §328 (NEW); PL 2003, c. 655, Pt. B, §422 (AFF).]

B. A person who violates limits imposed under 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, §328 (NEW); PL 2003, c. 655, Pt. B, §422 (AFF).]

[PL 2003, c. 655, Pt. B, §328 (NEW); PL 2003, c. 655, Pt. B, §422 (AFF).]

4. Rejection of request. The commissioner may reject a request under this section if the commissioner determines that granting the request would conflict with the river management objectives set forth in section 12903.

[PL 2003, c. 655, Pt. B, §328 (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, §B328 (AMD). PL 2003, c. 655, §B422 (AFF).

§12909. Whitewater guide license

1. Eligibility. A person may not act as a whitewater guide unless that person is 18 years of age or older and has procured a license from the commissioner pursuant to this section.

A. A person who violates this subsection commits a Class E crime for which a minimum fine of \$50 and an amount equal to twice the applicable license fee must be imposed. [PL 2003, c. 655, Pt. B, §329 (NEW); PL 2003, c. 655, Pt. B, §422 (AFF).]
[PL 2003, c. 614, §9 (AFF); PL 2003, c. 655, Pt. B, §329 (AMD); PL 2003, c. 655, Pt. B, §422 (AFF).]

2. Rules. The commissioner shall by rule establish the requirements for a whitewater guide's license.
[PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]

3. Examination. All initial applicants for a whitewater guide's license are required to pass an examination developed and administered by the commissioner.
[PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]

4. Fee. The fee for an examination is \$100 and is not refundable. An applicant may retake the examination once without paying an additional examination fee. A whitewater guide's license is a 3-year license. The fee for a whitewater guide's license is \$89.
[PL 2005, c. 12, Pt. III, §32 (AMD).]

5. Renewal. A whitewater guide whose license is not suspended or revoked may renew that license upon the payment of the license fee. An examination is required for any person who has not held a valid whitewater guide's license within the previous 3 years.
[PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]

6. Nonrenewal, suspension or revocation. A whitewater guide's license is subject to nonrenewal, suspension or revocation for good cause shown, including, but not limited to, unsafe practices, falsification of reports or serious or continued violation of this chapter, subject to Title 5, chapter 375.
[PL 2003, c. 655, Pt. B, §330 (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, §§B329,330 (AMD). PL 2003, c. 655, §B422 (AFF). PL 2005, c. 12, §III32 (AMD).

§12910. Safety; order of launch; safety committee

1. Whitewater trip safety restrictions. The commissioner shall by rule establish safety restrictions for whitewater trips. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. A person who violates safety restrictions established pursuant to this subsection commits a Class E crime.
[PL 2003, c. 614, §9 (AFF); PL 2003, c. 655, Pt. B, §331 (AMD); PL 2003, c. 655, Pt. B, §422 (AFF).]

2. Order of launch. Launch order of commercial whitewater outfitters on a particular river or portion of river may be determined and enforced by the department to protect public health and safety. The department shall provide for the outfitters to choose, in the order of their first documented dates of continuous commercial operation on the particular river or portion of river, their preferred launch positions. To facilitate that determination, each outfitter shall submit a sworn affidavit to the department stating the date the outfitter first began continuous commercial operation.

A. A commercial whitewater outfitter shall comply with any order of launch established by the department under this subsection. [PL 2003, c. 655, Pt. B, §332 (NEW); PL 2003, c. 655, Pt. B, §422 (AFF).]

B. The following penalties apply to violations of this subsection.

(1) 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.

(2) 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, §332 (NEW); PL 2003, c. 655, Pt. B, §422 (AFF).]

[PL 2003, c. 614, §9 (AFF); PL 2003, c. 655, Pt. B, §332 (AMD); PL 2003, c. 655, Pt. B, §422 (AFF).]

3. Whitewater Safety Committee.

[PL 2007, c. 651, §15 (RP).]

4. Safety reports.

[PL 2007, c. 651, §16 (RP).]

5. Penalties.

[PL 2007, c. 651, §17 (RP).]

SECTION HISTORY

PL 2003, c. 414, §A2 (NEW). PL 2003, c. 414, §D7 (AFF). PL 2003, c. 614, §9 (AFF). PL 2003, c. 655, §§B331-334 (AMD). PL 2003, c. 655, §B422 (AFF). PL 2007, c. 651, §§15-17 (AMD).

§12911. Recreational use limits

1. Findings and goals. Increased use has resulted in increased environmental impact on the Kennebec River and the West Branch Penobscot River, as well as on their valleys, nearby roads and the social structure of the areas. Recreational use limits are necessary to allow for rafting use and other competing uses, such as fishing, camping and canoeing, while minimizing detrimental impacts and maintaining the opportunity for a quality wilderness experience for rafters and for other users.

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

2. Kennebec River. The recreational use limit on the Kennebec River between Harris Station and West Forks is 1,000 commercial passengers per day. Noncommercial recreational use is not limited.

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

3. West Branch Penobscot River. The recreational use limit of the West Branch Penobscot River between McKay Station and Pockwockamus Falls is 560 commercial passengers per day. Noncommercial recreational use is not limited.

A. In order to allow free time for other uses, a person may not conduct a whitewater trip on the West Branch Penobscot River between McKay Station and Pockwockamus Falls between 5:00 p.m. and 8:30 a.m. [PL 2003, c. 655, Pt. B, §335 (NEW); PL 2003, c. 655, Pt. B, §422 (AFF).]

B. The following penalties apply to violations of paragraph A.

(1) A person who violates paragraph A 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 paragraph A 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, §335 (NEW); PL 2003, c. 655, Pt. B, §422 (AFF).]
[PL 2003, c. 614, §9 (AFF); PL 2003, c. 655, Pt. B, §335 (RPR); 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, §B335 (AMD). PL 2003, c. 655, §B422 (AFF).

§12912. Rapidly flowing rivers

1. User fee. This subsection applies to the payment of user fees by outfitters carrying passengers on rapidly flowing rivers.

A. Each outfitter shall:

- (1) Pay a user fee of \$2 per passenger, excluding guides, carried by the outfitter on any whitewater trip; and
- (2) Pay this fee by the 30th day of the month following the month in which the passengers were carried. [PL 2009, c. 213, Pt. OO, §12 (AMD).]

B. The following penalties apply to violations of paragraph A.

- (1) A person who violates paragraph A 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 paragraph A 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, §336 (NEW); PL 2003, c. 655, Pt. B, §422 (AFF).]
[PL 2009, c. 213, Pt. OO, §12 (AMD).]

2. Reporting. This subsection applies to the submission of monthly reports by outfitters carrying passengers on rapidly flowing rivers.

A. Each outfitter shall:

- (1) Report monthly to the department the number of passengers carried each day on each rapidly flowing river;
- (2) Ensure this report is accurate; and
- (3) Submit the report by the 30th day of the month following the month in which the passengers were carried. [PL 2003, c. 655, Pt. B, §336 (NEW); PL 2003, c. 655, Pt. B, §422 (AFF).]

B. The following penalties apply to violations of paragraph A.

- (1) A person who violates paragraph A 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 paragraph A 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, §336 (NEW); PL 2003, c. 655, Pt. B, §422 (AFF).]
[PL 2003, c. 614, §9 (AFF); PL 2003, c. 655, Pt. B, §336 (RPR); PL 2003, c. 655, Pt. B, §422 (AFF).]

3. Passenger limitation. This subsection applies to the carrying of passengers under this section.

A. Except as provided in this subsection, an outfitter may not carry:

- (1) On any unallocated rapidly flowing river more than 120 passengers per day; or

(2) On any allocated rapidly flowing river more than 120 passengers per day except on allocated days when a licensed outfitter may carry only up to the number of allocations the outfitter has been allocated. On allocated days, that limit may be exceeded only as provided in section 12913, subsection 2, paragraph A, subparagraph (4). On unallocated days, an outfitter may occasionally carry up to 4 additional passengers to accommodate problems in booking. Abuse of the privilege to carry 4 additional passengers results in its loss for a period to be determined by the commissioner. [RR 2021, c. 2, Pt. A, §24 (COR).]

B. The following penalties apply to violations of paragraph A.

(1) A person who violates paragraph A 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 paragraph A 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, §336 (NEW); PL 2003, c. 655, Pt. B, §422 (AFF).]

[RR 2021, c. 2, Pt. A, §24 (COR).]

SECTION HISTORY

PL 2003, c. 414, §A2 (NEW). PL 2003, c. 414, §D7 (AFF). PL 2003, c. 614, §9 (AFF). PL 2003, c. 655, §B336 (RPR). PL 2003, c. 655, §B422 (AFF). PL 2009, c. 213, Pt. OO, §12 (AMD). PL 2013, c. 245, §5 (AMD). RR 2021, c. 2, Pt. A, §24 (COR).

§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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