

Chapter 14: COMMERCIAL WHITEWATER RAFTING

14.01 Scope of Rules

These rules shall be applicable only to commercial whitewater rafting, dory or bateau trips as described in 12 MRSA, Chapter 929, Subpart 5. Nothing in these rules shall in any way restrict or regulate the use of Maine's inland waters by groups or individuals which are not associated with a commercial whitewater trip.

14.02 Definitions

When used in these rules, unless otherwise specifically provided, the following words and terms shall have the following meanings:

- A. **Allocation.** "Allocation" means the privilege of taking a specified number of passengers per day on whitewater trips on a particular river (as set forth in 12 MRSA, §12913, paragraphs 2-A and 3).
- B-1. **Allocation review period.** "Allocation review period" means the five year period the Department reviews to determine whether an outfitter has made use of the allocations they have held.
- B-2. **Commercial.** "Commercial" means for financial compensation or other remuneration.
- B-3. **Commercial passenger.** A commercial passenger means any person paying a licensed whitewater outfitter a fee for a whitewater trip, excluding persons paying an outfitter a fee for providing whitewater guide training as described in 14.03.
- B-4. **Multiple trip.** A multiple trip means any whitewater trip, other than the first trip of the calendar day, over the same section of a rapidly flowing river by the same commercial passenger.
- C. **Rapidly flowing river.** "Rapidly flowing river" means the following stretches of river: the Kennebec River between Harris Station and The Forks; the West Branch of the Penobscot River between McKay Station and Pockwockamus Falls; the Dead River from its confluence with Spencer Stream to its confluence with the Kennebec River at a flow level of 2400 cfs or higher; the Rapid River from the outlet of Lower Richardson Lake to 3/4 miles upstream from Umbagog Lake at a flow level of 1200 cfs or higher, and the Magalloway River from Aziscohos Lake to the first Route 16 bridge west of Aziscohos Lake at a flow level of 800 cfs or higher. The South Branch of the Penobscot River from Canada Falls Dam to the bridge on the Northern Road just prior to Pittston Farm at a flow level of 500 CFS or higher.
- D. **Trip leader.** "Trip leader" means a person who is licensed as a whitewater guide and has been designated by the whitewater outfitter to supervise activities on a whitewater trip.

- E. **Trip vehicle.** “Trip vehicle” means a motor vehicle which transports equipment necessary to a whitewater trip and which accompanies the trip to the extent allowed by existing road systems.
- F. **Whitewater craft.** “Whitewater craft” means any raft, dory, bateau or similar watercraft that is used to transport passengers along rapidly flowing rivers or streams but does not include canoes or kayaks.
- G. **Whitewater guide.** “Whitewater guide” means a person who has met the criteria established by the Department of Inland Fisheries and Wildlife to qualify as a whitewater guide and who holds a current whitewater guide’s license.
- H. **Whitewater outfitter.** “Whitewater outfitter” means a person (or corporation) who conducts commercial whitewater rafting, dory, or bateau trips on rapidly flowing rivers or streams and who holds a current license, issued by the Department of Inland Fisheries and Wildlife, to engage in commercial whitewater activities.
- I. **Whitewater trip.** “Whitewater trip” means any commercial effort to transport passengers by means of a whitewater craft on rapidly flowing rivers or streams.

14.03 Whitewater Personnel Requirements

A. Prerequisites for Applicant to be Examined for a Whitewater Guide’s License

1. *[Repealed]*
2. Each whitewater guide applicant and licensed whitewater guide must be currently certified in American Red Cross National Safety Council Standard First Aid or equivalent. Proof of current certification is required.
3. Each whitewater guide applicant and licensed whitewater guide must be certified in American Red Cross, American Heart Association or National Safety Council C.P.R.
4. Each whitewater guide applicant must enroll in and successfully complete a whitewater guide training course consisting of the following:

For a Level One License (allows the holder to guide whitewater trips on any Maine river except that portion of the Penobscot River between McKay Station and the Big Eddy and that portion of the South Branch of the Penobscot River from Canada Falls Dam to the bridge on the Northern Road just prior to Pittston Farm at a flow level of 500 cfs or higher):

- a. A minimum of 7 days of instruction in river etiquette, whitewater safety, general local geography, and characteristics of whitewater rivers, and
- b. Guide training, to occur on at least two of the following rivers: Kennebec River, Dead River, Penobscot River, Magalloway River, or the Rapid River, and

- c. Five of the seven days of guide training must be on river training on the Kennebec River between Harris Dam, Indian Stream Twp., and The Forks, or on the Penobscot River between McKay Station and Nevers Corner.
- d. Guide training shall include at least twenty training runs of the rivers identified in 4(b); from Spencer Stream to the Gravel Pit access point on the Dead River; from the Gravel Pit to the take-out on the Dead River; from Harris Dam to Carry Brook access point on the Kennebec River; from McKay Station to the Big Eddy on the Penobscot River (three runs of Big Ambejackmockamus Falls on the Penobscot River is equivalent to one training run, and two runs from Abol Pines to Nevers Corner on the Penobscot River is equivalent to one training run).
- e. A minimum of five guided training runs on the Kennebec River from Harris Dam to Carry Brook, and/or The West Branch of the Penobscot River between McKay Station and Nevers Corner. A guided training run must be conducted on every section of the Kennebec and Penobscot Rivers for which a guide is licensed to guide, prior to the guide actually guiding a commercial trip on the given river section of those rivers.
- f. When used in this context, guided training run means the applicant conducts a simulated whitewater trip utilizing other guide applicants or guides as passengers. Training runs conducted as part of a guide training course must be made in whitewater craft used to carry passengers as part of a whitewater trip. (Craft capable of carrying only 1 person may not be used.)
- g. Each whitewater guide applicant, while participating in guide training, must comply with current whitewater guide PFD Type requirements.
- h. The minimum number of watercraft on any guide training run shall be two.
- i. The minimum number of licensed whitewater guides on any guide training run shall be two.
- j. Safety Equipment Requirements listed in Chapter 14.04 shall apply to all guide training runs.

For a Level Two License (allows the holder to guide whitewater trips on any Maine river where a whitewater guide license is required):

- a. Must possess a Level One License, and
- b. The applicant must have made ten training runs on the Penobscot River; two of the ten training runs must include the major rapids between the Big Eddy and Never's Corner; and
- c. The applicant must have made five guided training runs in the Penobscot Gorge between McKay Station and the Big Eddy, and

- d. The applicant must have made at least 6 commercial whitewater trips, as a paid guide.

Applicants must provide the Department of Inland Fisheries and Wildlife with a form, signed by the applicant's trainer, stating that the applicant has taken and successfully completed the above outlined training; and signed by the outfitter, attesting that the candidate is qualified to be a licensed whitewater guide in the state of Maine. Upon receipt of this documentation, a written test will be administered. Applicants failing the written test must wait 30 days before reapplying.

B. Guides

1. Each craft involved in a whitewater trip shall carry a minimum of one licensed whitewater guide and each guide, while guiding a whitewater trip, shall keep his/her current guide's license and current first-aid/CPR credentials or true copies at the base of operations for the outfitter by whom they are employed for that day.
2. The minimum number of licensed whitewater guides on any whitewater trip shall be two. Each guide, while guiding a whitewater trip, must whenever reasonably possible, have continuous visual contact with at least one other guide from that whitewater trip.
3. Each whitewater guide shall carry on his/her person a knife having a 3" blade and a whistle, both of which are in good and serviceable condition and readily accessible at all times.
4. Each whitewater guide shall wear a securely fastened, non-inflatable, Coast Guard approved personal flotation device that is the appropriate size and in good and serviceable condition with a design buoyancy of at least 16 lbs., of one of the following classifications: Type III or Type V intended use for whitewater paddling or river rescue.
5. Life jackets worn by guides shall contrast in color with those worn by other passengers to such a degree that guides are easily recognized as such by all trip participants. The color contrast between solid red and solid orange is not significant and the two colors do not provide a legal contrast.
6. Whitewater guides shall ensure that each passenger participating on a whitewater trip wears a securely fastened serviceable U.S. Coast Guard approved Type V personal flotation device for whitewater rafting.

C. Trip leader

1. One licensed whitewater guide who has been designated by the outfitter as a "trip leader" shall supervise each whitewater trip.
2. Each trip leader shall be currently certified in American Red Cross Emergency Response or equivalent. Proof of current certification is required.

14.04 Safety Equipment Requirements

A. First Aid

1. One major medical first aid kit shall be carried, securely attached to one of the craft, on each whitewater trip.
2. One additional major medical first aid kit shall be carried on all whitewater trips involving more than 5 watercraft.
3. Major medical first aid kits must be in serviceable condition and include the following items:

<ul style="list-style-type: none"> • Inflatable, ladder or padded board splints • Emergency space blanket or equivalent • Ace bandages • Hot packs • Band-aids 3/4" – up • Sanitary napkin pad • Knife • Sun screen • Sting swabs • Tweezers • Gauze compresses at least 2x2 or larger • 5 pair of exam gloves 	<ul style="list-style-type: none"> • Finger splint • 4 triangular bandages • Quick cold packs • Roller gauze 2" - up • Butterfly band-aids • Safety pins • Adhesive tape • Matches or equivalent • Scissors • 2 CPR pocket shields • Antiseptic solutions for cleaning • Accident report form & writing utensil
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4. A serviceable backboard shall be carried in the trip vehicle on each whitewater trip.

B. Additional items and provisions

1. The following items shall be carried on all whitewater trips:
 - a. At least one throw line, not less than 50 feet long, securely attached to each whitewater craft; and
 - b. Unless a whitewater craft is self-bailing, at least one bail bucket in each whitewater craft. Bail buckets, when not in use, shall be safely secured against loss.
2. All rafts used in connection with whitewater trips shall be equipped with:
 - a. An inside safety line, at least 1/2 inch in diameter or webbing of the equivalent strength or handhold lines 1/2 inch in diameter, 15 inches in length securely attached around the inside of the raft. Handholds shall be positioned so that one shall be readily accessible to each passenger.
 - b. An outside safety line, at least 1/2 inch in diameter, securely attached around the outside of the raft; and
 - c. A carabiner.

3. Each whitewater craft used by a licensed outfitter for a whitewater trip shall be plainly marked with a number, as assigned by the Department, followed by a company fleet number issued only to that craft. Lettering must be at least 6 inches high and easily readable from the river bank.
4. Outfitters shall ensure that each passenger participating in a whitewater trip is provided a serviceable U.S. Coast Guard approved Type V personal flotation device for whitewater rafting.

14.05 Whitewater Craft Specifications

A. Minimum number per trip

The minimum number of watercraft on any whitewater trip shall be two, one of which may be a kayak.

B. Size and Capacity

1. Any watercraft carrying passengers on a whitewater trip shall be at least 13 feet in length.
2. The maximum number of passengers allowed in a whitewater craft, not including the guide, shall be as follows:
 - a. Craft at least 13 feet but under 15 feet in length - 7 passengers.
 - b. Craft at least 15 feet but under 20 feet in length - 10 passengers.
 - c. Craft 20 feet and over in length - 12 passengers.

14.06 Additional Requirements and Restrictions

A. Liability Insurance

A person who applies for a Commercial Whitewater Outfitter License shall file proof with the Department of current general liability insurance protection in the amount of at least five hundred thousand dollars covering the operation of whitewater trips and current automobile liability insurance protection in the amount of at least five hundred thousand dollars covering the operation of motor vehicles carrying passengers.

B. Age Restriction

All persons 12 years of age or under must be accompanied during any whitewater trip, by a parent or guardian or by an adult, at least 18 years of age, approved in writing by a parent or guardian.

C. Record Keeping

1. Each whitewater outfitter shall keep current and accurate records of all whitewater trips conducted at that outfitter's base of operation.
2. The records shall be maintained in a legible manner and shall include the following information for each trip:
 - a. Trip date(s);
 - b. Waters involved;
 - c. Names of licensed guides who accompanied the trip; and
 - d. Names and addresses of all passengers who participated in the trip.
 - e. True copies of guide licenses and credentials (first aid, CPR) for all guides .
 - f. Daily numbers of commercial passengers that participate in multiple trips.
3. Such records shall be retained by the outfitter for a period of two years and shall be made available to any law enforcement officer upon request.

D. Safety Practice Runs

In the interest of safety, the Department of Inland Fisheries and Wildlife may require that whitewater outfitters and guides conduct practice runs on dangerous sections of river or stream prior to carrying passengers.

E. License fee, nonrenewal, suspension or revocation

The annual fee for a commercial whitewater outfitters license is \$350. A commercial whitewater outfitter's license is subject to nonrenewal, suspension or revocation if an outfitter has failed to pay the outfitter license fee, the quarterly allocation fee, the use fees from prior periods, or if knowingly failed to file a safety report.

F. Safety Reports

Each commercial whitewater outfitter shall submit safety reports on forms provided by the commissioner for any accident occurring in connection with a commercial whitewater trip or whitewater guide training that results in the death of a person, a person losing consciousness or receiving professional medical treatment, a person becoming disabled for more than 24 hours, a person's disappearance from a watercraft under circumstances indicating death or injury or damage to the watercraft or other property of more than \$1,000.00.

14.07 Allocation System

A. Goals

This regulation establishes a schedule for reviewing outfitters who hold allocations; sets forth the criteria for maintaining allocations; and establishes the process for awarding allocations that have been forfeited or returned to the Department.

B. Review of Allocations

At any time, the Department may review an outfitter's allocation for the purposes of determining whether the outfitter continues to maintain the conditions of its license, continues using its allocations productively, and continues to maintain a quality of service consistent with the public interest.

Beginning January 1, 2019, the Department will review outfitters who hold allocations according to the criteria described in (1) below. The review will be based upon the performance in meeting past allocations for each year of the preceding five-year period, except when allocations are returned to the Department, which is addressed in (C) below.

Information on the use of allocations over the preceding five-year period must be submitted by October 1 of the last year of the preceding allocation review period.

Allocation review criteria will be based on the industry average use for the five-year period in the review. The review will be based on the outfitter's best four out of five calendar year average for allocated days for the allocated river. If the industry average is 70% or greater, the review criteria percentage to maintain 100% allocations will be 70%. If the industry average falls below 70% use for the review, the criteria for the review will be the actual industry average.

If an outfitter has had allocations for less than five years, the following criteria will apply;

- An outfitter has had allocations for less than 2 years, the outfitter is exempt from the review.
- An outfitter has had allocations for 2 years, the outfitter would use the average of the best 1 year.
- An outfitter has had allocations for 3 years, the outfitter would use the average of the best 2 years.
- An outfitter has had allocations for 4 years, the outfitter would use the average of the best 3 years.
- An outfitter has had allocations for 5 years, the outfitter would use the average of the best 4 years.

1. The Department shall evaluate information submitted by outfitters according to the following criteria based on holding allocations for at least 5 years:
 - a. An outfitter that averages at least 70% of their previous allocation during the best 4 years of the five-year review period shall retain 100% of that allocation;

- b. An outfitter that averages at least 60% of their previous allocation during the best 4 years of the five-year review period shall retain 90% of that allocation;
- c. An outfitter that averages at least 50% of their previous allocation during the best 4 years of the five-year review period shall retain 80% of that allocation;
- d. An outfitter that averages at least 40% of their previous allocation during the best 4 years of the five-year review period shall retain 70% of that allocation;
- e. An outfitter averaging below 40% shall have their allocations reduced to the amount used, or the statutory minimum, except in situations where the commissioner has determined that extenuating circumstances resulted in the loss of the ability to meet minimum standards.
- f. The commissioner may suspend taking administrative action on an outfitter based on low industry use during any five-year review of allocations determined by the Department.

Example: The average industry use during the five-year review period for allocated days on the Penobscot River Saturdays was 70% for the review period. Under Chapter 14.07 (B) (1) (a), the percentage requirement is 49% fulfillment to maintain 100% of that allocation (70% of 70% is 49%).

C. **Reissuing of Allocations**

Upon application and payment of all license and allocation fees, allocations which are returned to the Department as a result of the sale of a business or part thereof are transferred to the new purchaser, and will be reviewed at the end of the current five-year review period.

D. **Public auction of allocations**

Whenever allocations are forfeited or when new allocations become available, these allocations will be sold through a public auction process to a whitewater outfitter who is eligible by law to obtain the additional allocation and pays the appropriate fees.

E. **Suspension of Allocations.** The Department may temporarily suspend an outfitter's allocation within the following guidelines:

1. If an inspection of an outfitter's equipment by a warden of the Department reveals a hazard that places the health or safety of a member of the public in immediate jeopardy of serious injury, the warden may order a halt to the trip until such time as the equipment is brought into compliance with applicable regulations.
2. An outfitter has failed to pay the outfitter license fee, the quarterly allocation fees, or the use fees from prior periods.

3. An outfitter is convicted of filing a false accident report or of knowingly failing to file an accident report.
4. An outfitter is convicted of a violation of false swearing of information submitted to the Department regarding use of allocations.
5. Notwithstanding the allocation review period described above, allocations may be revoked, suspended or reduced pursuant to 12 MRSA Section 12913, Subsection 4.

F. **Additional Allocated Days** (*repealed effective August 25, 2014*)

14.08 Commercial Outfitter Order of Launch

- A. The department shall maintain and update as necessary an “Commercial Outfitter launch schedule” to protect public health and safety for the Kennebec River and West Branch of the Penobscot River, to be made readily available to the public on the Department’s website or through the Whitewater Boating Office in Augusta.

Commercial trips started at other than designated launch sites shall yield to trips started at designated sites. The order of launch for trips starting at Nesowadnehunk will apply when the second part of the trip is started in the afternoon at McKay Station.

The launch order on the Kennebec River assumes a water release at Harris Station beginning by 10:00 a.m. Any release other than 10:00 a.m. will result in the launch times being rescheduled from the time the release actually occurs. This rule in no way obligates Brookfield Renewable to release water if system conditions dictate otherwise.

- B. The Commissioner will designate a launch director for certain days who will have authority to supervise the order of launch and authorize changes in the order of launch when a company is absent, unable to launch in the appointed order, or fails to launch in a timely manner or the launch is delayed or disrupted by timing and level of releases, accidents, or other related factors. The launch director may establish a starting location where trips must wait fully prepared for their launch.
- C. The order of launch shall apply on allocated days, and at all other times when two or more outfitters contest the order in which to launch. Nothing in the launch order is intended to prohibit outfitters with later launch positions from utilizing an earlier position not used on a particular day. The filling of a vacant launch position shall be based upon the existing order of launch, allowing the next available company in the launch order to utilize the vacant position.
- D. No company may be at the launch site on the Kennebec River with passengers more than 25 minutes before their assigned launch time.
- E. Companies must be completely away from the launch site and vicinity of Harris Dam on the Kennebec River by the start of the next launch time.
- F. Companies assigned to a launch time may exchange positions by mutual consent but any company missing their launch time must wait until the next unused launch position.

- G. It shall be unlawful for any commercial outfitter, guide, or designated trip leader to fail to follow the instructions on launching provided by the launch director.
- H. It shall be unlawful to make multiple runs of a rapid or rapids which interferes with or postpones the order of launch.
- I. Non-commercial trips have priority and may launch before any commercial trip which has not begun to launch.
- J. Licensed Commercial Whitewater Outfitters renting commercial rafts to non-commercial users must cover up the outfitter's assigned raft display number and fleet number issued by the department.

STATUTORY AUTHORITY: Title 12 M.R.S. Sections 7035, 7366, 7367, 7369.

EFFECTIVE DATE:

May 11, 1982

AMENDED:

August 10, 1983 - Sec. 7 (added)
August 10, 1983 - Sec. 8 (added)
September 4, 1983 - Section 8
September 18, 1983 - Sec. 8
January 1, 1984 - Sec. 8
May 16, 1984 - Sec. 3(B)(5) (EMERGENCY)
June 26, 1984 - Sec. 3(B)(2) & 4(B)(2a)
September 18, 1984 - Sec. 3(B)(5)
May 11, 1985 - Sec. 3, 4 & 7
June 18, 1985 - Sec. 1, 2, 3, 7 & 8
September 21, 1985 - Sec. 2(G)
January 11, 1989 - Sec. 7(B)(C)(D)(G) & (I)
August 13, 1989 - Sec. 2(D) and (A) & (B)
March 4, 1990 - Sec. 8
May 30, 1990
July 4, 1990 - Sec. 7(D)(5)
September 20, 1990 -
June 16, 1991 - Sec. 8
March 4, 1992
May 25, 1992 - Sec. 8
June 16, 1993 - Sec. 8
April 6, 1994 - Sec. 6, 7(C)(D)(E)(I), & 8
October 24, 1994 - Sec. 3
February 11, 1995 - Sec. 8 (A)
March 22, 1995 - Sec. 7 (D)(7)
June 23, 1996 - 3 & 7

EFFECTIVE DATE (ELECTRONIC CONVERSION):

April 4, 1996

AMENDED:

May 28, 1997 - Sec. 7 (D) (7), 8 (A) (1, 2, 3)
May 25, 1998 - Sec. 6 (E), 7 (D) (7), 8 (A) (1, 2, 3)

CORRECTION:

June 29, 1998 - inserted unrepealed 2nd paragraph of 14.07(D)(5).

REPEALED AND REPLACED:

July 28, 1999

AMENDED:

July 15, 2000
July 8, 2001 - Sec. 7(F), 8(A)
July 6, 2002 - Sec. 3(A)(1, 4), Sec. 4(3), Sec. 7(F), Sec. 8(A)(1, 2, 3)
August 14, 2004 - Sec. 7(F), 9(A)(1, 2, 3), filing 2004-338
June 12, 2005 – filing 2005-198
April 28, 2007 – Section 14.08(A), filing 2007-149
April 16, 2008 – filing 2008-168
March 23, 2009 – filing 2009-120
April 13, 2010 – filing 2010-126
May 17, 2011 – filing 2011-155
August 25, 2014 – Section 14.03(4)(C) amended, Section 14.07(F) repealed, filing 2014-200
April 2, 2019 – filing 2019-058