

BEFORE THE BOARD OF OUTFITTERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.171.408 outfitter records,) PROPOSED AMENDMENT
24.171.412 safety and first aid)
provisions, 24.171.413 watercraft)
identification, 24.171.502 outfitter)
qualifications, 24.171.504)
successorship, 24.171.505 fishing)
outfitter operations plan, 24.171.520)
operations plans and amendments,)
and 24.171.2101 renewals)

TO: All Concerned Persons

1. On May 9, 2017, at 10:00 a.m., a public hearing will be held in the Large Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Outfitters (board) no later than 5:00 p.m., on May 2, 2017, to advise us of the nature of the accommodation that you need. Please contact Steve Gallus, Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2370; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdout@mt.gov (board's e-mail).

3. The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

24.171.408 OUTFITTER RECORDS (1) remains the same.

(2) Outfitter records shall be maintained on forms prescribed by the department and shall contain information as required by the board. The information required, in addition to information for operations plans under ARM 24.171.520 and employment records relative to outfitter assistants under ARM 24.171.410, shall include:

- (a) through (c) remain the same.
- (d) ~~big game animals taken by clients, specifying the species and sex of each big game animal and stating for each big game animal whether it was taken on public or private land within the outfitter's operations plan;~~
- (e) ~~(d)~~ districts hunted and water bodies, including section of a river or stream, fished by clients;
- (f) and (g) remain the same but are renumbered (e) and (f).

(3) Outfitters shall maintain private land use records and make the records available at all times at the outfitter's main base camp or business office. Private land use records shall include contact information for the owner or agent of each private property where the outfitter is authorized to operate, including, but not limited to, the owner's or agent's phone number and address.

(3) remains the same but is renumbered (4).

(4) (5) In general, the board shall maintain outfitter records, including, but not limited to the operations plans, shall be maintained as confidential information and shall not be released release the records to any person or organization without written permission of the outfitter, except:

(a) to enforcement or investigative personnel authorized or appointed by the board;

(b) upon subpoena or order of a court, or;

(c) upon written request of a state or federal agency for law enforcement purposes; or

(d) upon written request of a state or federal agency for river recreation, or resource management purposes and subject to board approval.

(6) A specific outfitter's number of NCHU is confidential information, but whether an outfitter has NCHU of a particular category is public information.

(7) Also, while total Total acreage of private lands where any outfitter is authorized to operate is a matter of public record, but where a particular outfitter is authorized to operate is a confidential matter between the landowner and the outfitter.

(8) The Department of Fish, Wildlife and Parks or the Private Land/Public Wildlife Council may use board data to create a map depicting all private land where any outfitter is authorized to operate.

(9) All inquiries for outfitter records shall be reviewed and considered in relation to this rule and the competing interests between the public's right to know and the rights of privacy involved in the particular records requested.

AUTH: 37-1-131, 37-47-201, MCA

IMP: 37-1-131, 37-47-201, 37-47-301, MCA

REASON: The board determined it is reasonably necessary to amend (2) and remove an unnecessary reporting requirement that the board's statutes no longer require. Based on a review of the department's records, the board does not use this information for any purpose, and no other agency has requested the information from the board. The board is adding new (3) to clarify an outfitter's duty to maintain records by aligning with amendments recently made to ARM 24.171.520 regarding operations plans, as well as changes proposed elsewhere in this notice. The board is amending (5) to conform to amendments the board previously made to (1) and clarify the circumstances under which it may share records with other state or federal agencies. The board is formatting and renumbering the remainder of the rule for clarity and ease of use for the reader.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.171.412 SAFETY AND FIRST AID PROVISIONS (1) remains the same.

(2) Basic first aid certification must be obtained through a provider and course approved by the board. department based upon the following minimum criteria:

(a) The provider must require written and practical tests and participants are to receive completion certificates.

(b) The provider program must include, at a minimum, universal precautions for self-protection and training specific to the following types of injuries:

- (i) shock;
- (ii) bleeding;
- (iii) poisoning;
- (iv) burns;
- (v) temperature extremes;
- (vi) musculoskeletal injuries;
- (vii) bites and stings;
- (viii) medical emergencies; and
- (ix) injuries associated with confined spaces.

(c) Instruction in the principles and first aid intervention of injuries must cover the following sites:

- (i) head and neck;
- (ii) eye;
- (iii) nose;
- (iv) mouth and teeth;
- (v) chest;
- (vi) abdomen;
- (vii) arm;
- (viii) leg;
- (ix) hand;
- (x) finger; and
- (xi) foot.

(3) For purposes of initial licensure, the board will only accept basic first aid certification that involves the direct, hands-on application of first aid materials and techniques is acceptable. Online courses are acceptable for a period of three years after the hands-on course, but licensees must take a hands-on course every four years.

(4) A list of approved providers and courses shall be maintained on the board web site.

(5) An applicant may also meet basic first aid certification if the applicant provides proof of a certification, license, or other credential that is equivalent to or greater than basic first aid certification, approved on a case-by-case basis by the board. The board may also maintain on its web site a list of certifications, licenses, and other credentials that will be routinely accepted as equivalent to or greater than basic first aid.

(3) through (5) remain the same but are renumbered (6) through (8).

AUTH: 37-47-201, MCA

IMP: 37-47-201, MCA

REASON: In the past, the board has committed considerable time and resources in determining acceptable first aid courses on a case-by-case basis. The board is amending this rule to clearly delineate the minimum standards for first aid training and transition to department staff the approval of these courses. Specifying these standards will ensure rigor and consistency in the determination of acceptable basic first aid certification and free the board from an administrative task more appropriately handled by the department.

24.171.413 WATERCRAFT IDENTIFICATION (1) remains the same.

(2) The tags shall display the outfitter or guide license number for identification purposes. ~~Licensees must add license numbers to the tags and maintain the tags in a readable fashion.~~

(3) An unlicensed outfitter assistant shall display board-issued watercraft identification tags on each watercraft to be occupied by the outfitter assistant, ~~showing the license number of the employing outfitter.~~

(4) through (6) remain the same.

AUTH: 37-1-131, 37-47-201, MCA

IMP: 37-1-134, 37-47-201, 37-47-301, 37-47-302, 37-47-303, ~~37-47-304, 37-47-325, 37-47-405~~, MCA

REASON: While making changes to the computerized reporting system, the board decided to gain efficiencies and streamline processes by automating the printing of watercraft identification decals. The board is amending this rule because the system will generate registration numbers for outfitter assistants and watercraft identification decals with individualized identifiers rendering some past practices unnecessary.

Implementation citations are being amended to delete reference to a statute no longer relevant to the rule, and accurately reflect all statutes implemented through the rule.

24.171.502 OUTFITTER QUALIFICATIONS (1) An applicant for an outfitter license shall have the qualifications to provide all services and use all equipment necessary to provide the functions of an outfitter that the license will authorize the applicant to provide. In addition, the applicant shall have:

(a) for a fishing outfitter applicant ~~applying on or after January 1, 2016:~~

(i) remains the same.

(ii) a minimum of three years and 120 days of verified experience as a licensed outfitter, ~~a licensed guide, or equivalent experience~~ in another state guiding clients and using methods for pursuing fish, ~~subject to approval by the board,~~ reduced by no more than 50 experience days for any waiver or combination of waivers. All experience in this subsection is subject to board approval; or

(b) for all other applicants:

(i) remains the same.

(ii) 100 days of verified experience as a licensed outfitter, a licensed guide, or equivalent experience in another state guiding clients in pursuing the types of game and using the methods for which licensure is sought by the applicant, ~~subject to~~

~~approval by the board as a licensed outfitter, a licensed guide, or equivalent experience as determined by the board.~~ All experience in this subsection is subject to board approval.

(2) through (4) remain the same.

AUTH: 37-1-131, 37-47-201, MCA

IMP: 37-1-131, 37-47-201, 37-47-302, 37-47-304, 37-47-307, 37-47-308,
MCA

REASON: The board determined it is reasonably necessary to amend this rule to delete the unnecessary past application date, and improve the overall organization and readability. Additionally, in a previous rulemaking, the board amended (1)(a)(ii) to clarify that out-of-state outfitter, guide, or equivalent experience is acceptable for outfitter applicants. The board made this change to facilitate licensure while ensuring licensed outfitters are qualified, since the practice of outfitting remains essentially the same from state to state. At that time, the board inadvertently failed to extend that change to (1)(b)(ii), and is correcting this language now.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.171.504 SUCCESSORSHIP (1) and (2) remain the same.

(3) The family of an outfitter designates a proposed successor by submitting ~~the fee required for a successor under ARM 24.171.401~~; an application completed by the proposed successor on a form provided by the department; a sworn statement by the proposed successor explaining how the proposed successor has been involved with the outfitting industry, in general, and how the successor has been involved with the outfitting business for which the successorship is sought, in particular; and a sworn statement by someone on behalf of the family of the deceased or incapacitated outfitter, affirming the person's authority and how the authority was obtained to designate a successor on behalf of the family, and that the person so acting is at least 18 years of age. A successorship application must specify whether the successor will operate the business or will only seek to sell it.

(4) ~~An application for the purpose of selling the business shall require the name; phone number; e-mail address, if available; social security or foreign ID number; date of birth; and sex of the proposed successor; as well as the mailing address where the successor will accept formal service of board documents.~~ When a successorship is approved for the purpose of selling the business, the outfitter license is placed on inactive status and may be renewed only on inactive status and only until the successorship terminates or until the business sells, whichever occurs earlier. No clients may be contracted with or served under authority of an inactive license. All requests for successorship for the sole purpose of selling the business shall be routinely approved by staff upon the board's receipt of all the required information.

(5) through (7) remain the same.

(8) A successor shall report to the board each year at its December board meeting or at the next regularly scheduled meeting following the renewal period if no meeting is held in December. To report, the successor shall either personally

appear for the meeting or shall submit a written report to the board no less than 15 days before the meeting. The report shall inform the board of the progress made toward licensure of an outfitter for the business, or of the progress made toward sale of the business.

(9) remains the same.

(10) A successorship terminates the earlier of the date that is ~~two~~ five years from the date that the successorship was approved under this rule, or the date that the successorship is revoked or voluntarily surrendered, or the date that the successor becomes a licensed outfitter.

(11) remains the same.

AUTH: 37-1-131, 37-47-201, MCA

IMP: 37-1-131, 37-47-310, MCA

REASON: The board is amending (3) to strike an erroneous rule reference. In (4), the board is striking the specific information formerly required for successorships for the purpose of selling an outfitter business. In updating the board's computerized reporting and record system, staff determined that this information is already collected and maintained pursuant to other board rules.

The board is amending (8) to require successor reporting at the next meeting following the renewal period. Board staff concluded that this amendment will take advantage of the updated computerized reporting system by automating and streamlining this reporting process, which will be most effective with a single reporting period that immediately follows the annual renewal.

The board is amending (10) to allow successors more time to complete the process of licensure, transfer of the business, or liquidation of the business assets. The board concluded this amendment is reasonably necessary to align with recent changes the board made to ARM 24.171.502(1)(a), regarding experience requirements for fishing outfitter applicants.

24.171.505 FISHING OUTFITTER OPERATIONS PLAN (1) A fishing outfitter may include in a proposed or an existing operations plan, a general reference to "all surface waters governed by the Montana Stream Access Law, 23-2-302, MCA, and accessible by public access points not requiring a permit restricting commercial use issued by a state or federal agency(ies)." Alternatively, the outfitter may include in a proposed or existing operations plan specific surface waters governed by the Montana Stream Access Law and accessible by public access points not requiring a permit issued by a state or federal agency, by including detailed descriptions of those specific waters as provided in 37-47-304(2)(c)(ii), MCA.

(2) remains the same.

AUTH: 37-1-131, 37-47-201, MCA

IMP: 37-1-131, 37-47-201, 37-47-304, MCA

REASON: Outfitters are required to file an operations plan with the board annually and list any and all permits and licenses where authorized to operate within the

operation plan. The board is amending this rule to clarify the distinction between state or federal permits that do or do not restrict commercial use while retaining the efficiency of listing by general reference to all surface waters governed by the Montana Stream Access Law and accessible by public access points. The amendment will clarify for outfitters that they may operate on surface waters governed by the Montana Stream Access Law but are required to list restricted commercial use permits within their operation plan.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.171.520 OPERATIONS PLANS AND AMENDMENTS (1) An operations plan is prepared by the outfitter and submitted to the board and consists of the following:

- (a) and (b) remain the same.
- (c) for hunting outfitters a summarization of the locations and boundaries of the outfitter's operation, which is where the outfitter is authorized to operate, provided in the following terms:
 - (i) the name of each public land agency ~~or owner of private property~~;
 - ~~(ii) contact information for the owner or the agent of each private property where the outfitter is authorized to operate, including, but not limited to, the owner's or agent's phone number and address all information necessary to fulfill statutory requirements for reporting of private land acreage;~~
 - (iii) through (5) remain the same.

AUTH: 37-1-131, 37-47-201, MCA

IMP: 37-1-131, 37-47-201, 37-47-304, MCA

REASON: The board is amending this rule in conjunction with a proposed amendment to ARM 24.171.408. The current rule prevents the department from developing a form that will allow outfitters to submit land use summaries with multiple parcels on a single form. By removing the outfitter's responsibility to submit contact information for the owner or agent of a property, and instead, requiring the outfitter to maintain those records at the outfitter's base camp or place of business under ARM 24.171.408, the amendment will facilitate the implementation of the new form. Additionally, this amendment will help ensure the board maintains the information necessary for reporting private land acreage, and that landowner contact information will remain available for law enforcement purposes. Moreover, once an outfitter submits the legal description or geocode of a property, the department can automatically generate the name of the owner of private property. The board is removing the outfitter's duty to submit that information with the outfitter's operations plan to eliminate redundancy and simplify recordkeeping.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.171.2101 RENEWALS (1) remains the same.

(2) License renewal applications for outfitters shall be made on forms provided by the department and shall be accompanied by:

(a) through (d) remain the same.
(e) ~~any amendments to an operations plan an attestation that all lands information required as part of the outfitter's operations plan on file with the board is current and accurate as required by ARM 24.171.520.~~

(3) remains the same.

(4) Outfitters who provide services during the late hunt seasons may submit amended client logs ~~and statistical use level sheets~~ reflecting services from December 1st through December 31st separately as long as they are received by the board no later than January 31st of the following year.

(5) remains the same.

AUTH: 37-1-131, 37-47-201, MCA

IMP: 37-1-104, 37-1-141, 37-47-201, 37-47-302, 37-47-304, 37-47-306, 37-47-307, MCA

REASON: The board is amending this rule for consistency with amendments the board recently made to ARM 24.171.520. The board is striking language from (4) as the board no longer requires this information.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdout@mt.gov, and must be received no later than 5:00 p.m., May 12, 2017.

5. An electronic copy of this notice of public hearing is available at www.outfitter.mt.gov (department and board's web site). The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to

dlibsout@mt.gov; or made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.171.408, 24.171.412, 24.171.413, 24.171.502, 24.171.504, 24.171.505, 24.171.520, and 24.171.2101 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2370; facsimile (406) 841-2305; or to dlibsout@mt.gov.

9. Steve Gallus, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF OUTFITTERS
JOHN WAY, PRESIDING OFFICER

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ PAM BUCY
Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 3, 2017.