

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

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 24.171.408 outfitter records, )  
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 April 14, 2017, the Board of Outfitters (board) published MAR Notice No. 24-171-37 regarding the public hearing on the proposed amendment of the above-stated rules, at page 428 of the 2017 Montana Administrative Register, Issue No. 7.

2. On May 9, 2017, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Several comments were received by the May 12, 2017, deadline.

3. The board has thoroughly considered the comments received. A summary of the comments and the board responses are as follows:

COMMENT 1: Numerous commenters supported the proposed rule amendments.

RESPONSE 1: The board appreciates all comments made during the rulemaking process.

COMMENT 2: Numerous commenters supported the proposed amendments to ARM 24.171.502 (stating the changes will facilitate licensure while ensuring outfitters are qualified), 24.171.504 (the change is a responsible and practical approach that will streamline the successorship process and provide for the orderly transition of business interest), 24.171.505 (the amendment will clarify what fishing outfitters must report on operations plans), 24.171.520 (the change eliminates redundancies in information collection, maintains a high degree of integrity in the land use reporting system, and provides clear direction to outfitters on how to comply with the rule), and 24.171.2101 (a simple housekeeping amendment).

RESPONSE 2: The board agrees with the commenters' statements as they align with the board's reasons for the amendments.

Comments 3 through 8 apply to ARM 24.171.408:

COMMENT 3: Several commenters oppose the amendments to ARM 24.171.408, expressing dismay that some hunting outfitters resist providing harvest data for public review and the use of game management by Fish, Wildlife and Parks (FWP).

RESPONSE 3: The board understands no state agency has ever used this information to manage wildlife resources and has concluded the amendments are necessary to streamline data collection for licensing and compliance purposes.

COMMENT 4: Several commenters opposed the record keeping and sharing amendments stating that information reporting should be transparent, and the public desires accountability from commercial interests. Referring to the Governor's veto of Senate Bill 264 (2017), the commenters agreed that harvest data, fishing stream and stretch data, and other information should be made available to state and federal agency managers, biologists, and wardens.

RESPONSE 4: These proposed rules were filed concurrently with the 2017 Legislature's consideration of Senate Bill 264. At the same time as the board filed the proposed rule amendments, the Governor vetoed Senate Bill 264. Because the amendments to this rule are in direct contradiction to the Governor's direction in the veto, the rule changes should not have continued. The proposal inadvertently moved forward due to the timing of the filing.

Due to this conflict between the board's proposed amendments to ARM 24.171.408 and the Governor's direction that, pursuant to statutory authority, outfitters continue to report information to the board that is important to the state, hunters, anglers, and the people of Montana, as demonstrated in the veto of Senate Bill 264, the department is not proceeding with the proposed changes to this rule at this time. The department will refer the matter and any potential rule amendments to the board for further research, discussion, and consideration.

COMMENT 5: Numerous commenters opposed the amendments to ARM 24.171.408 that will remove several requirements from outfitter records, including districts hunted, game animals taken by clients, species and sex of each animal, and whether game was taken on public land or private land within the outfitter's operations plan. The commenters asserted that FWP has regularly requested and used this information for years and noted that in just the last year, investigators and wardens requested records from the board approximately 20 times. The commenters provided specific examples of how FWP has used this information which was essential to wardens in making cases.

RESPONSE 5: The board understands that no other state agency requests the information in ARM 24.171.408(2), or uses it in a meaningful way to manage wildlife resources. Moreover, FWP is able to gather this information. As such, the board has determined it should not continue to use licensee fees to gather this information.

COMMENT 6: Numerous commenters expressed concern about ARM 24.171.408(5)(d), which would only provide for release of outfitter records for resource management purposes subject to board approval. The commenters stated that FWP's river recreation programs have requested outfitter information from the board, and have been informed that most information was unavailable and would not be released. The commenters were concerned that, following the amendment, FWP will continue to hear that records would not be provided for management needs. The commenters suggested that, if the board proceeds with the amendment, the board establish very specific sideboards to define when the board has reasonable cause to deny a public records request.

RESPONSE 6: The board understands the commenters' concerns about how and when the board may share information with other agencies for resource management purposes. However, the board must consider board costs to provide this information. The proposed amendment strikes a balance between requests for information from other agencies, and the board's duty to consider costs. Any request to the board will be taken seriously and handled expeditiously. The board will continue to work on its records management system to attempt to further streamline information sharing.

COMMENT 7: One commenter supported amending ARM 24.171.408 to remove the requirement to report species and sex of game taken and hunting district. The commenter also supported clarifying when and where land use data must be maintained and the conditions under which an agency may obtain a licensee's records.

RESPONSE 7: The board appreciates all comments received during the rulemaking process.

COMMENT 8: Numerous commenters supported the amendments to ARM 24.171.408, stating the changes will help reduce the board's operation costs by eliminating data collection that is outside of the scope of the board's core licensing function, and will tighten up conditions under which an agency can obtain outfitter records.

RESPONSE 8: The board agrees with the commenters' statements as they align with the board's reasons for the amendments.

Comments 9 through 11 apply to ARM 24.171.412:

COMMENT 9: Numerous commenters opposed the amendment to ARM 24.171.412 to require hands-on first aid training every four years. The commenters noted the difficulty of access to hands-on first aid training in rural locations and believed that current online first aid classes are as good as or better than in-person training. Many stated that requiring a hands-on course every four years is an unnecessary burden that is not based on any documentation that online services are deficient. The commenters asserted there is no evidence that online course training affects a

guide's ability to address first aid issues in the field any differently than in-person training.

RESPONSE 9: The board does not agree that requiring licensees to attend hands-on training every four years is overly burdensome, and some members remain concerned that online first aid training may not be as effective without periodic hands-on refresher courses. However, the board generally agrees that, after an initial hands-on course, periodic recertification through online courses is adequate for the protection of the public health, safety, and welfare. Therefore, the board is further amending ARM 24.171.412 to remove the requirement that licensees complete a hands-on course every four years.

COMMENT 10: Several commenters supported the changes to ARM 24.171.412 that will require hands-on first aid training every fourth year.

RESPONSE 10: See RESPONSE 9.

COMMENT 11: Several commenters supported the amendments to ARM 24.171.412 because the wide variety of board-approved first aid courses enable outfitters to seek local hands-on training well in advance of the four-year deadline.

RESPONSE 11: See RESPONSE 9.

Comments 12 and 13 apply to ARM 24.171.413:

COMMENT 12: Several commenters opposed any change to ARM 24.171.413 since the board has received no complaints from personnel responsible for ensuring compliance with the current rule.

RESPONSE 12: The board agrees the current watercraft identification system is working. However, the board is amending the rule exactly as proposed to help facilitate the department's standardized processes.

COMMENT 13: Numerous commenters supported the proposed amendments to ARM 24.171.413, believing the changes will increase efficiencies and streamline processes.

RESPONSE 13: The board agrees with the commenters' statements as they align with the board's reasons for the amendments.

4. The board has amended ARM 24.171.413, 24.171.502, 24.171.504, 24.171.505, 24.171.520, and 24.171.2101 exactly as proposed.

5. The board is not amending ARM 24.171.408.

6. The board has amended ARM 24.171.412 with the following changes, stricken matter interlined, new matter underlined:

24.171.412 SAFETY AND FIRST AID PROVISIONS (1) and (2) remain as proposed.

(3) For purposes of initial licensure, only 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) through (8) remain as proposed.

BOARD OF OUTFITTERS  
JOHN WAY, PRESIDING OFFICER

/s/ DARCEE L. MOE

Darcee L. Moe  
Rule Reviewer

/s/ GALEN HOLLENBAUGH

Galen Hollenbaugh, Acting Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 2, 2017.