

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

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 24.171.410 outfitter assistants )  
and 24.171.2301 unprofessional )  
conduct and misconduct )

TO: All Concerned Persons

1. On March 16, 2018, the Board of Outfitters (board) published MAR Notice No. 24-171-38 regarding the public hearing on the proposed amendment of the above-stated rules, at page 530 of the 2018 Montana Administrative Register, Issue No. 5.

2. On April 12, 2018, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Several comments were received by the April 13, 2018, deadline.

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

COMMENT 1: Many commenters strongly supported the rule amendments, stating that the rules are consistent with board statutes. Several commenters further noted that outfitters are responsible for the conduct of outfitter's assistants.

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

COMMENT 2: Numerous commenters supported the amendments in general, but asserted that economic emergencies and overbooking situations do not fall within the legislative intent or the board's definition of emergency. Several commenters also questioned who would decide the "case by case" use of the emergency, and requested the board ensure outfitter's assistant laws are not abused.

RESPONSE 2: The board recognizes that implementing the amendments will require them to develop policies to guide staff in reviewing each case of an outfitter hiring or employing an outfitter's assistant and define circumstances which require staff to file complaints for review by the screening panel. At this time, the board will not define any specific circumstance as not meeting the definition of emergency in the board's statutes and rules. Each case will be reviewed according to individual factual circumstances.

COMMENT 3: Several commenters opposed the use of outfitter's assistants, stating they may be used to circumvent licensing requirements for guides, and their use does not provide for the welfare of the public. One commenter was concerned that

outfitter's assistants may not have insurance or CPR or first aid certification, and asserted that use of outfitter's assistants on public lands could create legal problems for land-based agencies such as the Montana Department of Fish, Wildlife and Parks.

RESPONSE 3: By amending the rules as proposed, the board is implementing statutory direction from the Montana Legislature. The board does not have authority to repeal outfitter's assistant laws enacted by the legislature. Moreover, the question of liability for land-based agencies is beyond the authority of the board to determine. Approximately 50 percent of outfitter's assistants registered by outfitters have also applied for a professional license requiring current first aid certification. Outfitter's assistants are covered by an outfitter's insurance policy.

COMMENT 4: One commenter opposed the first aid requirement rule as not providing for the health and welfare of the public being served.

RESPONSE 4: The board did not propose any amendments to ARM 24.171.412 in this proposal notice; therefore the comment is beyond the scope of this rulemaking.

4. The board has amended ARM 24.171.410 and 24.171.2301 exactly as proposed.

BOARD OF OUTFITTERS  
JOHN WAY, CHAIRPERSON

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

/s/ GALEN HOLLENBAUGH  
Galen Hollenbaugh, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State August 14, 2018.