

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

In the matter of the amendment of) AMENDED NOTICE OF PUBLIC
ARM 24.171.408 outfitter records,) HEARING ON PROPOSED
24.171.412 safety and first aid) AMENDMENT
provisions, 24.171.520 operations)
plans and amendments, and)
24.171.2301 unprofessional conduct)
and misconduct)

TO: All Concerned Persons

1. On January 17, 2020, the Board of Outfitters (board) published MAR Notice No. 24-171-40 regarding the public hearing on the proposed amendment of the above-stated rules, at page 28 of the 2020 Montana Administrative Register, Issue No. 1. A public hearing was scheduled in the notice to be held on February 11, 2020.

2. It was subsequently discovered that the proposal notice had not been sent to interested persons as required by the Montana Administrative Procedure Act. Therefore, the board is reissuing this proposal notice of public hearing and is rescheduling the public hearing as shown below.

3. On March 11, 2020, 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.

4. 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 no later than 5:00 p.m., on March 4, 2020, 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 dlibsout@mt.gov (board's e-mail).

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

24.171.408 OUTFITTER RECORDS (1) through (3) remain the same.

(4) In general, outfitter records, including, but not limited to the operations plans, shall be maintained as confidential information and shall not be released to any person or organization without written permission of the outfitter, subpoena or order of a court, or written request of a state or federal agency for law enforcement

purposes. A specific outfitter's number of NCHU is confidential information, but whether an outfitter has NCHU of a particular category is public information. Also, while total acreage of private lands where any outfitter is authorized to operate is a matter of public record, where a particular outfitter is authorized to operate is a confidential matter between the landowner and the outfitter. 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, excluding private lands that allow unrestricted public access and are managed under cooperative agreements with adjacent public lands. 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, 37-47-304, MCA

REASON: The 2019 Montana Legislature enacted Chapter 236, Laws of 2019 (Senate Bill 222), an act revising the board's rulemaking authority. The bill became effective October 1, 2019. The board is amending ARM 24.171.408 and 24.171.520 to implement the bill and reflect the changes to 37-47-201 and 37-47-304, MCA, regarding reporting requirements for certain private lands.

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

24.171.412 SAFETY AND FIRST AID PROVISIONS (1) through (6) remain the same.

(7) Each watercraft or vessel shall contain a serviceable U.S. Coast Guard approved personal floatation device for each person onboard and a rescue throw line measuring at least 55 feet in length. Children under 12 are required to wear a personal floatation device. Watercraft 16 feet and longer are required to be equipped with a throwable Type IV floatation device. Personal floatation devices must be readily accessible at all times.

(8) remains the same.

AUTH: 37-47-201, MCA

IMP: 37-47-201, MCA

REASON: Following recent news stories involving client deaths from drowning, and at the request of associations that represent fishing outfitters and guides, the board has determined it is reasonably necessary to amend this rule to impose a higher duty on guides and outfitters to protect clients consistent with its mission to protect public health, safety, and welfare. Many other states require safety throw lines, and federal law requires PFDs to be readily accessible. The board is amending this rule to adopt these standards for the board's licensees.

24.171.520 OPERATIONS PLANS AND AMENDMENTS (1) through (1)(c) remain the same.

(i) the name of each public land agency, and owners of private lands that allow unrestricted public access and are managed under cooperative agreements with adjacent public lands;

(ii) remains the same.

(iii) total acreage on a per-owner basis of the private land where the outfitter is authorized to operate for any duration of time and for any species of game; ~~and~~

(iv) the legal description of the private acreage where the outfitter is authorized to operate, either by geo-code number assigned by the Montana Department of Revenue, or by aliquot parts. If less than the entire section or parcel is reported, then the boundary shall be described down to the quarter-quarter section or the government lot number; and

(v) with respect to (ii) through (iv), outfitters are not required to report private lands that allow unrestricted public access and are managed under cooperative agreements with adjacent public lands;

(d) 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: See REASON for ARM 24.171.408.

24.171.2301 UNPROFESSIONAL CONDUCT AND MISCONDUCT

(1) through (3)(d) remain the same.

(e) not use alcohol or any other controlled substance as defined in Title 50, chapter 32, MCA, including marijuana and marijuana derivatives, to the extent that the use impairs the user physically or mentally, while engaged by a client;

(f) through (j) remain the same.

(k) not have hunting or fishing privileges or a wildlife conservation license suspended, revoked, placed on probation, or voluntarily surrendered in the state of Montana or any other jurisdiction;

(l) have a valid wildlife conservation license before providing guiding services;

(l) through (q) remain the same but are renumbered (m) through (r).

AUTH: 37-1-131, 37-1-319, 37-47-201, MCA

IMP: 37-1-312, 37-1-316, 37-1-319, 37-47-201, 37-47-325, 37-47-341,
MCA

REASON: The board has determined it is reasonably necessary to amend (3)(e) to clarify that impairment from any controlled substance while performing job-related functions is unprofessional conduct. Board members have received anecdotal reports that outfitters and guides are performing services for clients while impaired by marijuana. Although the board recognizes that, under the Montana Medical Marijuana Act, 50-46-301, MCA, et. seq., registered card holders may use marijuana, it is necessary for the public's protection to prohibit all outfitters and guides from using marijuana to the extent the use impairs the outfitter or guide while engaged in professional duties.

The board is also amending (3)(k) and adding (3)(l) because board staff noticed that, while 37-47-304, MCA, requires outfitters and guides to have a wildlife conservation license at the time of application, board statutes and rules do not clearly state this as a continuing requirement. The board recognizes the legislative intent to require all licensees to maintain a valid wildlife conservation license before providing guiding services and is amending this rule to clarify that requirement.

6. 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 dlibsout@mt.gov, and must be received no later than 5:00 p.m., March 13, 2020.

7. An electronic copy of this notice of public hearing is available at www.outfitter.mt.gov (department and board's web site). Although the department strives to keep its web sites accessible at all times, concerned persons should be aware that web sites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a web site do not excuse late submission of comments.

8. 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.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on December 19, 2019, by telephone.

10. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.171.408, 24.171.412, 24.171.520, and 24.171.2301 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.

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

BOARD OF OUTFITTERS
JOHN WAY, CHAIRPERSON

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

/s/ THOMAS K. LOPACH
Thomas K. Lopach, Interim Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State February 4, 2020.