

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

In the matter of the amendment of ) NOTICE OF AMENDMENT AND  
ARM 24.171.401, 24.171.502, ) REPEAL  
24.171.520, 24.171.601, 24.171.602, )  
and 24.171.701 and the repeal of )  
ARM 24.171.505 pertaining to the )  
Board of Outfitters )

TO: All Concerned Persons

1. On December 23, 2022, the Board of Outfitters (agency) published MAR Notice No. 24-171-42 regarding the public hearing on the proposed changes to the above-stated rules, at page 2345 of the 2022 Montana Administrative Register, Issue No. 24.

2. A public hearing was scheduled for January 13, 2023, at 9:00 a.m., via remote conferencing to consider the proposed amendment and repeal of the above-stated rules. Due to unforeseen technical difficulties, the hearing was not held.

3. On January 27, 2023, the agency published an amendment to MAR Notice No. 24-171-42 regarding the public hearing on the proposed changes to the above-stated rules, at page 71 of the 2023 Montana Administrative Register, Issue No. 2.

4. On February 17, 2023, a public hearing was held on the proposed changes to the above-stated rules via the videoconference and telephonic platform. Comments were received by the deadline.

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

COMMENT 1: Several commenters supported the rules package as proposed.

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

COMMENT 2: One commenter who supports the rule package stated the amendments will lessen burden on staff and simplify outfitting standards.

RESPONSE 2: The board agrees.

COMMENT 3: Many of the commenters who support the rule amendments specifically noted support for the amendment of ARM 24.171.701 but gave no rationale for their support.

RESPONSE 3: The board appreciates all comments received during the rulemaking process.

COMMENT 4: One commenter who supports the amendment of ARM 24.171.701 noted that this change will likely benefit new outfitters in the industry.

RESPONSE 4: The board agrees that this will allow newly licensed outfitters better opportunity to serve clients by having more flexibility to purchase NCHU.

COMMENT 5: Some commenters who support the rules package, and in particular the change to ARM 24.171.701, noted an excess demand for category 3 NCHU without enough NCHU available to meet demand. These commenters feel the amendments benefit the entire outfitting industry. Specifically, amending ARM 24.171.701 as proposed will allow licensees in the industry greater flexibility to meet demand without increasing the aggregate amount of NCHU available, and thus the aggregate number of client hunters on the landscape.

RESPONSE 5: The board agrees.

COMMENT 6: Several commenters oppose the amendments to ARM 24.171.701. Some commenters who oppose the amendments assert the proposed changes will increase competition for upland bird-hunting, an area which is already over-crowded. One commenter noted this will negatively impact public hunting opportunities.

RESPONSE 6: The board feels the proposed change in ARM 24.171.701 will benefit hunting opportunities in this state by adding flexibility to help meet the current demand for upland bird game hunting without negatively impacting public hunting opportunities or causing over-crowding in the field.

COMMENT 7: Some commenters opposed the changes proposed to ARM 24.171.701, asserting that it devalues category 3 NCHU. These commenters noted that there are more category 2 NCHU than category 3 NCHU and the proposed change will alter these numbers by allowing category 2 NCHU holders to operate as if they hold category 3. The commenters believe the change would have a net effect of increasing NCHU thereby causing economic and financial harm by devaluing the commenters' existing category 3 NCHU.

RESPONSE 7: The board notes that the value of category 2 and category 3 NCHU on the market are substantially the same. The board has no information indicating that the proposed changes would materially affect the value of either category of NCHU, and the board is not prepared to speculate on these perceived impacts. Also, as noted in the statement of reasonable necessity, the board is not increasing the total number of NCHU available, only allowing flexibility to serve clients who are interested in multiple specie opportunities. Therefore, the board is not exceeding its statutory authority by increasing the number of NCHU available.

COMMENT 8: Some commenters who oppose the changes to ARM 24.171.701 assert the board lacks statutory authority to implement these changes and believe the amendment sidesteps an important outfitting regulation by taking historical use out of the equation for NCHU, and this could possibly add thousands more category 3 NCHU. The commenters further believe that the board does not have the statutory authority to expand NCHU by combining category 2 and 3.

RESPONSE 8: The board agrees with these commenters that much of the statutory authority initially granted to the board to regulate NCHU has been repealed since 2011. Included in these statutory changes is the board's authority to consider historic use as a basis for increasing NCHU available to licensees. However, along with the authority the board retained to maintain categories of NCHU at all, the board has determined that it also has authority to determine how those NCHU categories may be used. Additionally, as stated in response to comment 7, the total number of NCHU available remains the same and, therefore, the board is not exceeding its statutory authority by increasing the number of NCHU available.

COMMENT 9: One commenter opposed any changes in AMR 24.171.701 and feels the proposed change would create a hardship on the industry and see the death of a category of NCHU. The commenter feels there is currently a shortage of category 3 NCHU, and the change could cause a shortage of category 2 NCHU. Another commenter agreed that the ability of an outfitter to "downgrade" category 2 NCHU to category 3 will lead to a shortage of category 2 NCHU.

RESPONSE 9: The board does not feel the proposed changes will create hardship on the industry. Further the overall numbers of category 2 and category 3 NCHU are not changing and the proposed amendment simply allows category 2 NCHU to be used as category 3. The board believes that this will not contribute to any additional shortage of NCHU.

COMMENT 10: One commenter opposed to the amendments to ARM 24.171.701 suggested that any outfitter who switches their category 2 NCHU to category 3 use should undergo an audit or, as a matter of fairness, that the board should also allow outfitters with category 3 NCHU to be used for category 2 services.

RESPONSE 10: The board notes that these proposed changes are outside of the scope of the proposed amendments. However, the board will continue to review its rules and may consider additional amendments to ARM 24.171.701 in the future.

6. The agency has amended ARM 24.171.401, 24.171.502, 24.171.520, 24.171.601, 24.171.602, and 24.171.701 as proposed.

7. The agency has repealed ARM 24.171.505 as proposed.

BOARD OF OUTFITTERS  
JOHN WAY, CHAIRPERSON

/s/ QUINLAN L. O'CONNOR  
Quinlan L. O'Connor  
Rule Reviewer

/s/ LAURIE ESAU  
Laurie Esau, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 4, 2023.