

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

In the matter of the amendment of)
ARM 24.171.401, 24.171.502,)
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)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
REPEAL

TO: All Concerned Persons

1. On January 13, 2023, at 9:00 a.m., a public hearing will be held via remote conferencing to consider the proposed amendment and repeal of the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

- a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/87987277013>
Meeting ID: 879 8727 7013, Passcode: 550469
-OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 879 8727 7013, Passcode: 550469

The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

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 no later than 5:00 p.m., on January 6, 2023, to advise us of the nature of the accommodation that you need. Please contact Dan Ritter, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2244; Montana Relay 711; facsimile (406) 841-2305; or dlibsdout@mt.gov.

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

24.171.401 FEES (1) Fees for outfitters, operations plan, guide, or use of outfitter assistants shall be as set forth below. The following fees are nonrefundable.

(a) New outfitter application and license. \$1300

~~This fee includes the following costs, but does not include fees related to operations plan.~~

(i) application processing	_____	350
(ii) examination	_____	150
(iii) investigation	_____	400

(iv) license	400
(b) Application for amendment <u>adding endorsement to</u> outfitter license.	450
This fee includes the following costs:	
(i) application processing	300
(ii) examination	150
(c) through (g) remain the same.	
(h) Fee for transfer of NCHU from each outfitter involved in the transfer	25
(i) and (j) remain the same but are renumbered (h) and (i).	

AUTH: 37-1-131, 37-1-134, 37-47-201, 37-47-306, MCA

IMP: 37-1-134, 37-1-141, 37-47-304, 37-47-306, 37-47-307, 37-47-308, 37-47-310, MCA

REASON: The proposed fee elimination is needed to make fees commensurate with costs and to maintain board cash reserves that are compliant with statute. The department has upgraded many processes and technologies recently that have lowered the cost to administer the function of transferring NCHU.

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 an~~ an outfitter applicant with a watercraft endorsement:

(i) a minimum of three years and 120 days of verified experience as a licensed guide working for a licensed outfitter in this state, guiding clients and using methods for pursuing fish, ~~reduced by no more than 50 experience days for any waiver or combination of waivers~~ or game; or

(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 ~~reduced by no more than 50 experience days for any waiver or combination of waivers~~ or game. All experience in this subsection (a)(ii) is subject to board approval; or

(b) for all other outfitter applicants:

(i) 100 days of verified experience as a licensed guide working for a licensed outfitter in this state, guiding clients in pursuing ~~the types of~~ fish or game and using methods for which licensure is sought by the applicant; or

(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~~ fish or game and using the methods for which licensure is sought by the applicant. All experience in this subsection (b)(ii) is subject to board approval.

(2) remains the same.

(3) Three days of experience may be waived by the board for every day of training completed by the applicant at a department-approved outfitter or guide school. The maximum number of days of experience that may be waived is 30. ~~All experience waivers are contingent upon the applicant completing the board's one-~~

day education program. The department shall approve guide schools based on the following minimum criteria:

~~(a) The school must require written tests and participants must receive completion certificates.~~

~~(b) The school must include, at a minimum, instruction specific to adequate exposure to the knowledge needed to become an outfitter including but not limited to:~~

- ~~(i) advertising;~~
- ~~(ii) marketing and public relations;~~
- ~~(iii) maintaining rate and refund schedules;~~
- ~~(iv) client records and all paperwork for board and agency compliance;~~
- ~~(v) guiding techniques;~~
- ~~(vi) setting up of campsites;~~
- ~~(vii) practical woodsmanship;~~
- ~~(viii) knowledge of firearms;~~
- ~~(ix) field preparation of trophies;~~
- ~~(x) knowledge of equipment, terrain (including water bodies), and hazards to competently provide a safe experience for those persons guided;~~
- ~~(xi) board and other agency laws and requirements;~~
- ~~(xii) federal and state fish and game laws and regulations;~~
- ~~(xiii) knowledge of outfitting area;~~
- ~~(xiv) proper handling of all fish and game;~~
- ~~(xv) federal and Montana employment and wage requirements;~~
- ~~(xvi) preservation of ecosystem and maintaining present quality of wildlife and environment; and~~
- ~~(xvii) protection of the health, safety, and welfare of clients, other employees, and the public.~~

(a) Training for purposes of the waiver must be obtained through a provider and course approved by the department based upon the following minimum criteria:

(i) the provider must require a written test, and successful participants must be issued completion certificates; and

(ii) the provider program must include instruction on topics relevant to being an outfitter, including but not limited to any of the following topics: advertising; marketing and public relations; maintaining rate and refund schedules; client and other records for board and other agency compliance; guiding techniques; setting up of camp sites; practical woodsmanship; knowledge of firearms; field preparation of trophies; knowledge of equipment, terrain (including water bodies), and hazards to competently provide a safe experience for those persons guided; general board and other agency laws and requirements; federal and Montana fish and game laws and regulations; knowledge of outfitting area; proper handling of fish and game; federal and Montana employment and wage requirements; preservation of ecosystem; and maintaining present quality of wildlife and environment; and health, safety and welfare of clients, other public members, and employees.

~~(4) The board may waive up to 50 days of experience for an applicant if the applicant is purchasing an existing outfitter operation, is a family member being groomed for succession of an existing outfitter operation to take over as outfitter of record, or is a licensed outfitter seeking an additional license endorsement by~~

applying to add new services to the operations plan. An applicant is not qualified for a waiver under this provision unless:

(a) the applicant receives preapproval from the board for a training and instruction plan documenting, on forms prescribed by the department, how and in what capacity the applicant will work with the licensed outfitter who is providing the training;

(b) the applicant:

(i) has entered into a sales agreement with the selling outfitter for the purchase of the operation;

(ii) is named by the family in a documented succession plan agreement; or

(iii) is seeking operation plan expansion and has entered into a training and supervision agreement with a licensed outfitter;

(c) the applicant has entered into an agreement with the licensed outfitter that stipulates supervision of the applicant by the licensed outfitter during the 12-month period following board approval of the application. The licensed outfitter may assign or hire another licensed outfitter to provide training detailed within the training and supervision agreement;

(d) the licensed outfitter has a current, approved operations plan on file with the board;

(e) the applicant files an operations plan that is approved by the board; and

(f) the applicant has completed the board's one-day education program.

(4) The board may waive up to 50 days and one year of experience for an applicant seeking a fishing outfitter license with a watercraft endorsement, or 50 days for all other outfitter applicants.

(a) A waiver under this section (4) may be granted only to the following applicants:

(i) an applicant who is purchasing an existing outfitter operation;

(ii) an applicant being prepared for succession of an existing outfitter operation without purchasing; or

(iii) an applicant already licensed but seeking additional license endorsement.

(b) An applicant seeking a waiver under this section (4) must satisfy the following conditions:

(i) enter into a sales agreement or other arrangement with a licensed outfitter to receive all or part of an existing outfitting business that has an operations plan on file with the board;

(ii) obtain board preapproval of a 12-month plan of supervision for training and instruction documenting, on forms prescribed by the department, how and in what capacity the applicant will work with the licensed outfitter providing the training. The plan shall be an agreement between the applicant and either the outfitter of record for the existing outfitting business or a licensed outfitter designated by that outfitter of record for training purposes; and

(iii) obtain board approval of an operations plan for the applicant.

(5) All experience waivers granted under this rule shall be contingent upon the applicant completing the board's one-day education program within a time specified by the board.

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 finds it necessary to amend this rule as proposed in response to recent directives contained within Ch. 281, L. 2021 (SB 275). These changes reduce unnecessary administrative requirements consistent with the spirit of that legislation, and they will help add clarity to the rule. Also consistent with the spirit of the legislation, this amendment will remove obstacles to the transfer of an outfitter's business by allowing a larger class of outfitters to supervise an outfitter applicant seeking a waiver following completion of a board-approved plan. Likewise, it is time to delineate which outfitter functions or activities justify the need for the 120 days and three years of experience now being indiscriminately required of all fishing outfitters because, as applied, the current rule results in an unnecessary barrier to licensure and, consequently, to the transfer of an outfitter's business. The board has previously determined that some waterways and especially rivers are subject to constant change that presents new hazards that may be mitigated by ensuring outfitters are educated, tested, and endorsed in watercraft safety.

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:~~ includes the information required in 37-47-304(2)(c), MCA.

~~(a) an affidavit by the outfitter to the board that the amount and kind of equipment that is owned, leased, or contracted for by the applicant is sufficient and satisfactory for the services advertised or contemplated to be performed by the applicant;~~

~~(b) (a) for fishing outfitters, Fishing operations plans must include a summarization of the boundaries of the outfitter's fishing operation, provided in the following terms, except as otherwise provided in ARM 24.171.505: If a fishing operations plan includes surface waters accessible only by private land or access points requiring a permit issued by a state or federal agency(ies), those surface waters must be described in detail, including the following information:~~

~~(i) through (iii) remain the same.~~

~~(iv) All other fishing operations plans may be described in detail pursuant to (2)(a), or an outfitter may summarize the boundaries of the outfitter's operations plan by referencing "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)."~~

~~(e) (b) for hunting outfitters Hunting operations plans must include a summarization of the locations and boundaries of the outfitter's hunting operation, which is where the outfitter is authorized to operate, provided in the following terms:~~

~~(i) 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 consolidating all provisions related to operations plans, including fishing operations plans, into a single rule to clarify and simplify these

provisions for the reader. This amendment does not substantively change outfitter operation plan requirements.

24.171.601 GUIDE QUALIFICATIONS (1) An applicant for a guide license shall have:

(a) not less than one season of experience of hunting or fishing for the type of game for which the applicant will guide or have worked for the outfitter that signs the license for a period of at least six weeks and in the area to be guided in, or have successfully completed a school licensed by a state, approved by the board, and that trains persons to be a guide ~~or professional guide~~;

(b) through (2) remain the same.

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

IMP: 37-47-101, 37-47-201, 37-47-303, 37-47-307, MCA

REASON: The amendment is needed to clarify that all guide applicants are applying for a guide license. "Professional guide" is an antiquated reference to a repealed license type.

24.171.602 GUIDE LICENSE (1) ~~An applicant may apply for a guide license on forms provided by the department, and accompanied by the required fee. The application must include a signature of the endorsing outfitter confirming that, to the knowledge of the outfitter~~ all license requirements and the endorsement of a licensed outfitter, when required, attesting that, the guide applicant meets all the qualifications of a guide for licensure.

(2) and (3) remain the same.

~~(4) An applicant for a guide license who delivers a completed application and application fee to the board office will receive the license at that time.~~

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

IMP: 37-47-101, 37-47-201, 37-47-301, 37-47-303, 37-47-307, 37-47-308, MCA

REASON: The amendment is needed to clarify that all guide applicants must have the appropriate application materials. In circumstances where the materials require the confirmation of a licensed outfitter the amendment will allow the department to receive information and confirmation in a manner that does not require a signature but may be confirmed with more efficient technology. The proposal is further needed to remove internal processes and timelines that are outdated due in part to advancement in technology.

24.171.701 NCHU CATEGORIES, TRANSFERS, AND RECORDS

(1) through (6) remain the same.

(7) Category 2 NCHU may be used to serve category 3 NCHU clients.

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

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

REASON: Reasonable necessity exists to amend this rule to permit outfitters who hold category 2 NCHU to serve category 3 clients. Currently, outfitters would be barred from serving clients in category 3, even if they had unused category 2 NCHU. This change does not increase the total amount of NCHU available but would increase flexibility to serve clients who are interested in multiple specie opportunities.

4. The rule proposed to be repealed is as follows:

24.171.505 FISHING OUTFITTER OPERATIONS PLAN

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

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

REASON: For clarity, the board is repealing this rule and incorporating the provisions into ARM 24.171.520.

5. 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., January 20, 2023.

6. An electronic copy of this notice of public hearing is available at <https://boards.bsd.dli.mt.gov/outfitters/>. Although the department strives to keep its websites accessible at all times, concerned persons should be aware that websites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a website do not excuse late submission of comments.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons wishing to have their name added to the list shall make a written request that includes the name and e-mail or mailing address of the person to receive notices and specifies the intent to receive notices of all board administrative rulemaking proceedings or a particular subject matter. The request must indicate whether e-mail or standard mail is preferred and may be sent or delivered to the Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to (406) 841-2305; e-mailed to dlibsout@mt.gov; or by completing a request form at any rules hearing held by the board.

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

9. Pursuant to 2-4-111, MCA, the board has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

10. Department staff has been designated to preside over and conduct this hearing.

BOARD OF OUTFITTERS
JOHN WAY, CHAIRPERSON

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

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

Certified to the Secretary of State December 13, 2022.