

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

In the matter of the amendment of)
ARM 24.171.401, 24.171.405,)
24.171.407, 24.171.408, 24.171.410,)
24.171.412, 24.171.413, 24.171.501,)
24.171.502, 24.171.507, 24.171.508,)
24.171.512, 24.171.520, 24.171.601,)
24.171.701, and 24.171.2301, the)
adoption of NEW RULES I and II, and)
the repeal of ARM 24.171.104,)
24.171.404, 24.171.602, 24.171.2101,)
24.171.2104, and 24.171.2305)
pertaining to the board of outfitters)

TO: All Concerned Persons

1. On August 20, 2024, at 9:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to 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/83163246715>
Meeting ID: 831 6324 6715, Passcode: 826442
- OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 831 6324 6715, Passcode: 826442

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 department no later than 5:00 p.m., on August 13, 2024, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

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

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) through (g) remain the same.
- ~~(h) Fee for each set of two replacement watercraft~~

~~identification tags~~ _____ 5

- (i) remains the same but is renumbered (h).

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 board is amending this rule to remove the fee for replacement watercraft tags after amending the watercraft identification rule to require self-generated and maintained tags. The board has averaged 705 yearly requests for replacement tags over the past five years. The board anticipates that by repealing the corresponding replacement tag fee, the board will receive \$3000 less in yearly revenue, but reduction of staff time in producing the replacement tags will offset the lost revenue.

24.171.405 BOOKING AGENTS AND ADVERTISING (1) remains the same.

(2) Outfitters may enter into an arrangement with a guide or other person whereby the outfitter's services are advertised by or at the direction of that person or whereby clients are referred to the outfitter, but the outfitter is accountable to the board for the appearance and propriety of all such advertising and for all interactions between the other person and the clients and potential clients. All advertising regarding outfitting services must comply with the rules applicable to outfitters.

(3) Guides are prohibited from advertising to outfitters directly to the general public using any media or, including but not limited to print, digital or social methods that the general public may also view shall include a clear and conspicuous disclaimer that advises the general public that the advertisement is for outfitters only, not the general public.

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-47-201, 37-47-301, MCA

REASON: The board is amending this rule to clarify that all forms of advertising media are covered by this rule.

24.171.407 INSPECTION (1) Inspections of outfitter and guide operations may be made by a representative of the board at all reasonable times. ~~The purpose of the inspection is to periodically examine the premises, equipment, and/or procedures of a licensed individual to determine whether the individual's practice is being conducted in a manner consistent with the laws and rules of the board, and the public health, safety and welfare.~~

(2) Licensees may be subject to disciplinary action as a result of inspections.

AUTH: 37-47-201, MCA
IMP: 37-47-301, 37-47-302, MCA

REASON: The board is amending this rule to clarify that licensees may be subject to a disciplinary action for failing to comply with or otherwise failing a department inspection.

24.171.408 OUTFITTER RECORDS (1) Outfitters shall maintain current and accurate records and make the records available:

~~(a) to enforcement or investigative personnel authorized or appointed by the board upon written request of the board or department; or~~

~~(b) upon subpoena or order of a court;~~

~~(c) upon written request of the board; or~~

~~(d) (b) upon written request of a state or federal agency for law enforcement purposes provided the outfitter voluntarily consents to the disclosure or the disclosure is compelled by legal process such as a warrant, subpoena, or other court order.~~

~~(2) Outfitter records shall contain: information as required by the board. The information required, in addition to information for operations plans under ARM 24.171.520 and employment records relative to outfitter assistants under ARM 24.171.410, shall include:~~

~~(a) remains the same.~~

~~(b) each client's client name and/or unique identifier assigned to the client by the Department of Fish, Wildlife and Parks;~~

~~(c) remains the same.~~

~~(d) category of NCHU applicable for each client; and~~

~~(e) the name of the outfitter assistant or the name and license number of the guide who accompanied the client.;~~

~~(f) operations plans as required by ARM 24.171.520; and~~

~~(g) employment records for outfitter assistants as required by ARM 24.171.410.~~

~~(3) In general, outfitter 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 or as provided in (1). A specific outfitter's number of NCHU is confidential information, but whether Whether an outfitter has NCHU of a particular category is public information. 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 board is amending this rule to remove statutory duplication and unnecessary language. This rule is also being amended to correct an error that allowed outfitter records to be disclosed without notice to the outfitter at the request of any state or federal agency for "law enforcement purposes." Outfitter records, as confidential information, may be disclosed to other governmental agencies only with the consent of the outfitter or pursuant to legal process.

24.171.410 OUTFITTER'S ASSISTANTS (1) remains the same.

(2) For each outfitter's assistant employed or contracted with by an outfitter, the following documentation procedures shall be followed:

~~(a) An outfitter shall document the employment or retention of each outfitter's assistant. The outfitter's assistant shall keep a copy of the employment documentation at all times during the service period. Within 15 days of the first date the outfitter's assistant serves a client, the outfitter shall submit to the department a copy of the employment documentation and fee required in ARM 24.171.401. The employment documentation shall include: have in the outfitter's assistant's possession the form prescribed by the department that shall provide the information required by (b)(i) through (b)(iii), along with the first date the outfitter's assistant serves a client.~~

~~(i) the name, license number, address, phone number, and, if available, e-mail address of the outfitter;~~

~~(ii) the signature of the outfitter;~~

~~(iii) the name, date of birth, address, telephone number, and, if available, e-mail address of the outfitter's assistant; and~~

~~(iv) the beginning and ending dates of the service period.~~

(b) Within 15 days of the first date the outfitter's assistant serves any client, the outfitter shall submit to the department the fee required in ARM 24.171.401 along with the following information to either electronically or on a form prescribed by the department:

(i) the name, license number, address, phone number, and e-mail address of the outfitter;

(ii) the signature of the outfitter;

(iii) the name, date of birth, address, phone number, and e-mail address of the outfitter's assistant;

(iv) the beginning and ending dates of the service period;

~~(i) (v) an explanation of the emergency causing the need to employ or contract with the outfitter's assistant;~~

~~(ii) (vi) an explanation for why the outfitter's assistant could not obtain a guide license before serving a client;~~

~~(iii) (vii) a statement indicating whether the outfitter's assistant has applied for a guide license; and~~

~~(iv) (viii) an affidavit by the outfitter that the outfitter has complied with all laws and rules relating to outfitter's assistants.~~

~~(c) Outfitters shall maintain a copy of this documentation and make the records available at all times in accordance with ARM 24.171.408 following the provision of services by the outfitter's assistant.~~

(3) remains the same.

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

IMP: 37-1-131, 37-47-101, 37-47-201, 37-47-301, 37-47-325, 37-47-404, 37-47-405, MCA

REASON: The board is amending this rule to standardize language and to remove an "if available" reference to email as being no longer necessary. The proposed amendments are also necessary to clarify and simplify the documentation to be

carried by an outfitter's assistant, the information about an outfitter's assistant that an outfitter shall submit to the board, and to reorganize the rule for clarity.

24.171.412 SAFETY AND FIRST AID PROVISIONS (1) through (4) remain the same.

(5) Whenever ~~guests~~ clients are present, each watercraft; vessel; vehicle; primary, secondary, and temporary base of operations must possess a serviceable basic first aid kit.

(6) and (7) remain the same.

AUTH: 37-47-201, MCA

IMP: 37-47-201, MCA

REASON: The board is amending this rule to reflect the language of "client" used elsewhere in rule.

24.171.413 WATERCRAFT IDENTIFICATION (1) A person holding a valid outfitter or guide license who utilizes any type of watercraft while providing services shall prove evidence of licensure by displaying, at all times services are being provided, ~~board-issued~~ watercraft identification tags. The department shall email to each licensee a pdf with the form of the watercraft identification tag to be used, along with instructions for its use.

(2) The watercraft identification tags shall display the outfitter or guide license number for identification purposes.

(3) An unlicensed outfitter assistant shall display ~~board-issued~~ watercraft identification tags on each watercraft to be occupied by the outfitter assistant.

(4) One watercraft identification tag shall be affixed to each side of the watercraft at the bow, oarlock, or stern of the watercraft ~~and be of a size approved by the board so that they may be easily seen from another watercraft or from shore.~~

(5) Watercraft identification must use numbers not less than 1.5 inches in height, representing the outfitter or guide license number and be contrasting to any background.

(5) remains the same but is renumbered (6).

~~(6) (7)~~ Licensees may be provided with one set of two watercraft identification tags at the time of application for licensure or renewal, at no charge, upon request. ~~A fee will be assessed for any replacement in accordance with ARM 24.171.401.~~

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

IMP: 37-1-134, 37-47-201, 37-47-301, 37-47-302, 37-47-303, 37-47-325, 37-47-405, MCA

REASON: The board has found in the past that it is reasonable and prudent to require licensees to display their license number while providing outfitting services via watercraft in an effort to enhance professionalism and protect the public. The department has experienced supply chain issues in providing watercraft decals to licensees in a timely manner. The board is proposing to place the responsibility of

printing and displaying watercraft identification on to each licensee utilizing watercraft. The proposal enhances clarity by directing licensees to where decals must be displayed and a minimum size for numbers representing a particular license. The proposal would save staff time in generating a daily report and mailing and eliminate procurement issues related to unique equipment, particularly printers and supplies.

24.171.501 APPLICATION FOR OUTFITTER LICENSE (1) and (2) remain the same.

~~(3) The license issued shall designate, and thereby authorize the outfitter to conduct those functions of an outfitter that the applicant has qualified for. Functions of an outfitter to be indicated on the license application and license issued, if qualified for, shall be one or more of the following:~~

~~(a) and (b) remain the same.~~

~~(c) if applicable to the services provided in (3)(a) and (b), and qualified for, one or more of the following:~~

~~(i) through (4) remain the same.~~

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

IMP: 37-1-131, 37-47-101, 37-47-201, 37-47-301, 37-47-302, 37-47-305, 37-47-307, 37-47-308, MCA

REASON: The board is amending this rule to remove redundant language.

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 an outfitter applicant with a watercraft endorsement:~~

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

~~(2) For purposes of this rule, verified Verified experience includes:~~

~~(a) written affirmation on forms prescribed by the department from a licensed outfitter(s) in this state by whom the applicant was employed or retained, attesting to guiding experience. The written affirmation must quantify the number of guiding days the applicant earned while employed or retained by that outfitter; or~~

~~(b) written affirmation on forms prescribed by the department from outfitter(s) or guides from other states or provinces by whom the applicant was employed, attesting to guiding experience. The written affirmation must quantify the number of guiding days the applicant earned while under employment by that outfitter or guide; or~~

~~(c) 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. The department shall approve guide schools based on the following minimum criteria:~~

~~(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) remains the same but is renumbered (a).
- ~~(ii) (b) the provider program must include instruction on topics relevant to being an outfitter, including but not limited to any of the following topics:~~
- ~~(i) advertising;~~
 - ~~(ii) marketing and public relations;~~
 - ~~(iii) maintaining rate and refund schedules;~~
 - ~~(iv) client and other records for board and other agency compliance;~~
 - ~~(v) guiding techniques;~~
 - ~~(vi) setting up of camp sites;~~
 - ~~(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) general board and other agency laws and requirements; federal and Montana fish and game laws and regulations;~~
 - ~~(xii) knowledge of outfitting area;~~
 - ~~(xiii) proper handling of fish and game;~~
 - ~~(xiv) federal and Montana employment and wage requirements;~~
 - ~~(xv) preservation of ecosystem; and~~
 - ~~(xvi) maintaining present quality of wildlife and environment; and health, safety and welfare of clients, other public members, and employees.~~
- (4) remains the same.
- ~~(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 is amending this rule to remove duplicative provisions, and for easier understanding of the rule.

24.171.507 OUTFITTER EXAMINATION ~~(1) Applicants for the outfitter examination shall submit a completed license application accompanied by the required fee.~~

~~(2) (1) The following list is not intended to be exhaustive in detail. A wide range of issues and subtopics exist within each broad topic. The examination categories include:~~

- ~~(a) and (b) remain the same.~~
- ~~(c) fishing; and~~
- ~~(d) packing; and~~
- ~~(e) boat or other floating craft and motorized watercraft.~~

(2) Applicants may access FWP regulations and study materials provided by the board in paper or electronic form, though any electronic device may only be used in airplane mode.

(3) remains the same.

(4) An applicant who fails the written examination may, within 15 days of notification of failure, review his or her their examination at the board office. During this review, the applicant may review only questions answered incorrectly. Correct answers to those questions will be furnished to the applicant. No representative of the board shall discuss the substance of the examination with the applicant. The applicant will not be allowed to record any information from examination during the review.

(5) ~~Before taking the outfitter examination, an applicant must submit a complete application, as defined in ARM 24.171.501.~~ An applicant may not repeat any failed portion of the outfitter examination sooner than 30 days from the date of failing.

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

IMP: 37-47-201, 37-47-305

REASON: The board is amending this rule to remove redundant language and to clarify the form of the materials used by applicants taking an examination

24.171.508 INCOMPLETE OUTFITTER AND GUIDE LICENSE

APPLICATIONS (1) Applications received by the board will be reviewed for completeness. ~~If an application is not complete when first received by the board, the applicant will be mailed a letter stating that the application is incomplete. The board may indicate which documents or information is missing in this letter. However, the applicant remains responsible for ensuring all required information and documents are timely submitted.~~ If the application is not completed within one year from the date the incomplete application first arrived, the application expires, and the applicant shall be required to submit a new application and fees before being considered for licensure.

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

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

REASON: The board is striking language that is part of the standard application procedure followed by all licensing boards and is unnecessary to state in rule.

24.171.512 INACTIVE LICENSE (1) remains the same.

(2) Outfitters whose licenses are inactive more than three years and who choose to become active must take the parts of the outfitter test related to outfitter laws and rules and fish and game laws and rules. An inactive outfitter who wishes to reactivate his or her a license must update ~~their~~ the operation plan.

(3) remains the same.

AUTH: 37-1-319, MCA

IMP: 37-1-319, MCA

REASON: The board is removing gendered language and pronouns for

standardization purposes.

24.171.520 OPERATIONS PLANS AND AMENDMENTS (1) An operations plan is prepared by the outfitter and submitted to the board and includes the information required in 37-47-304(2)(c), MCA.

~~(a)~~ (2) Fishing operations plans must include a summarization of the boundaries of the outfitter's fishing operation.

(a) 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) the name of each water body, including the section of each river or stream, that may be utilized by the applicant while providing services;

(ii) a description of private land, by name of ranch and county where located, over which access is allowed; and

(iii) an affidavit by the outfitter to the board that the outfitter is in possession of any public land permits or licenses properly executed for federal or state public property where the outfitter is authorized to operate;

~~(iv)~~ (b) 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)."

~~(b)~~ (3) 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)~~ (a) 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)~~ (b) a description of private land, by name of ranch and county where located, over which access is allowed;

~~(iii)~~ (c) an affidavit attestation by the outfitter to the board that the outfitter is in possession of any public land permits or licenses properly executed for federal or state public property where the outfitter is authorized to operate; and

~~(iv)~~ (d) the number of NCHU ~~per category~~.

~~(2)~~ (4) An outfitter may amend the operations plan on record by adding or subtracting any additional or replacement information and submitting the updated plan to the board, except that ~~when adding a service identified in (5), the outfitter must apply for an amendment to the outfitter's operations plan by stating in writing the proposed changes and submitting it to the board, along with the fee required in ARM 24.171.401 as required by (7).~~

(3) and (4) remain the same but are renumbered (5) and (6).

~~(5)~~ (7) All amendments, when adding a service, will be considered by the board using the same criteria as new applicants, including being required to take those parts of the outfitter examination that apply to the proposed amendment, if an outfitter is applying to add the following to the operations plan:

(a) and (b) remain the same.

(c) ~~watercraft used for fishing or hunting boat, other floating craft, or motorized watercraft;~~ or

(d) remains 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 amending this rule for easier readability and understanding by licensees and the public.

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

(a) one of the following:

(i) licensure as a guide from another jurisdiction with substantially equivalent licensing requirements to Montana;

~~(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~~

(ii) have successfully completed a school licensed by a state, approved by the board, and that trains persons to be a guide board-approved guide education program;

(b) ~~knowledge of hunting and fishing techniques to provide the particular services contracted to the a client by the endorsing outfitter; and~~

(c) ~~knowledge of equipment, terrain, and hazards to competently provide a safe experience for those persons he or she guides clients.~~

(2) remains the same.

(3) A guide applicant must submit proof of current basic first aid certification.

(4) Each outfitter who uses the services of the guide during the license year shall sign and date the guide's license before allowing the guide to accompany a client.

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

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

REASON: The board is amending this rule to include provisions of ARM 24.171.602 and for easier understanding. The board also is amending this rule to better articulate standards for applicants who do not have the endorsement of a licensed outfitter after staff recommendation based on confusion from applicants.

24.171.701 NCHU CATEGORIES, TRANSFERS, AND RECORDS

(1) ~~NCHU categories are as follows:~~

~~(a) Category 2, consisting of all clients served in the pursuit of big game or big game and upland game birds under combination licenses; and~~

~~(b) Category 3, consisting of all clients served in the pursuit of upland game birds, waterfowl, and turkeys.~~

(1) Only one NCHU is required of an outfitter per client, regardless of the number of big game, upland birds, waterfowl, or turkey pursued in a given year.

(2) through (5) remain the same.

(6) NCHU allocated to a deceased or incapacitated outfitter may be transferred only by a personal representative, or a person having power of attorney, guardianship, or other legal authority over the disposition of the outfitter's property or by a successor if an approved successorship has not terminated under ARM 24.171.504. NCHU will expire and shall not be revived if it is not transferred before the license or successorship terminates. ~~In cases where the outfitter dies and no successor is designated, someone authorized by the estate or the family of the outfitter~~ The estate, other legal authority, or successor must submit a NCHU transfer request form to the board within one year following the death or incapacity of the outfitter. Authorization by the estate is shown by a certified copy of a power of attorney form, letters of appointment as a guardian or personal representative, or by any other procedure allowed under Title 72, MCA, for the transfer of intangible personal property. The one year may be extended by a showing of good cause.

~~(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: The board is amending this rule to simply the use of NCHU into one category and define its application to one client per NCHU. Further language to clarify successorship has been added.

24.171.2301 UNPROFESSIONAL CONDUCT AND MISCONDUCT ~~(1) A violation of (1) or (3) by an outfitter, or (2) or (3) by a guide or outfitter's assistant is misconduct, specified as a basis for disciplinary action under 37-47-341, MCA. Such violation is also determined by the board to be unprofessional conduct, as provided in 37-1-319, MCA, specified as a ground for disciplinary action under 37-1-312, MCA. A violation of this rule may result in any sanction provided by 37-1-312 or 37-47-341, MCA. Unprofessional conduct by an outfitter's assistant is grounds for disciplinary action against the outfitter who employed or contracted with the outfitter's assistant. An outfitter shall:~~

(1) It is unprofessional conduct for a licensee or license applicant to violate any statute, rule, or standard of practice governing their scope of practice.

(2) In addition, the following is unprofessional conduct for a licensee or a license applicant:

(a) failing to respect the rights of others, private and public property, and failing to provide for the health, safety, and well-being of clients, employees, and the general public;

(b) providing services on public land in a manner that interferes with the general public access to public land or waterways or access to wildlife on public land;

(c) providing services detrimental to the wildlife or the environment where operating;

(d) failing to report to the board office, at the earliest opportunity, any violation of fish and game laws or outfitter, guide, and outfitter's assistant laws of which the licensee has knowledge;

- (e) charging any fee for certifying or aiding or assisting any nonresident in procuring or attempting to procure a hunting license, or preference point;
- (f) harassing, assaulting, or abusing clients, employees, outfitters, guides, or outfitter's assistants, or members of the general public, verbally or otherwise;
- (g) abusing livestock;
- (h) failing to produce records as required by ARM 24.171.410 (electronic proof of license or certification is permitted);
- (i) failing to carry the licensee's current license and certifications at all times when providing services (electronic proof of license or certification is permitted);
- (j) having 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;
- (k) failing to have a valid wildlife conservation license before providing guiding services;
- (l) acting beyond the scope of activities for which the individual is licensed;
- (m) offering an unlicensed individual any watercraft identification tag identifying the occupant of the watercraft as a licensee; or
- (n) failing to respond to board inquiries and requests; and
- (o) failing to comply with or failing an inspection conducted by the department.

(3) The following is unprofessional conduct for outfitters and outfitter applicants:

- ~~(a) not violate~~ violation of any law, rule, or policy of the Department of Fish, Wildlife and Parks concerning the certification of nonresidents for procuring hunting licenses;
- ~~(b) not conduct~~ conducting any services or allow allowing services to be conducted by a supervised guide or outfitter's assistant on private or public land, except legal transportation across such lands, without first having obtained written permission from the landowner or written authorization from the agency administering public land, unless the landowner or agency does not require such permission;
- ~~(c) not provide~~ providing services or allow allowing services to be conducted provided by a supervised guide or outfitter's assistant to clients outside the boundaries of the outfitter's approved operations plan;
- ~~(d) not endorse~~ endorsing a guide license until before the outfitter has made reasonable inquiry and determined that the guide is qualified for licensure;
- ~~(e) not interfere~~ interfering, by solicitation or otherwise, with a contract between another outfitter and client, including certifications for game license or permits, when it is known or reasonably should be known that a contract to provide services exists between that other outfitter and a client;
- (f) failing to furnish each client with a current and complete rate schedule, which shall include all charges, a deposit policy, and deposit refund policy, all in writing, for services offered;
- (g) failing to specify in writing, when offering services to a nonresident hunting client, the refund policy for failure by the prospective client to draw a license required to participate in the service offered;
- ~~(h) not change~~ changing the rates and/or policies from those published

without the written consent of the client after the outfitter receives and accepts the deposit from the client;

- (i) failing to set all contract terms and conditions with clients;
 - (j) failing to personally collect, or designate an agent to collect, all fees from clients. The outfitter is solely responsible for complying with the outfitter's deposit and deposit refund policy;
 - (k) failing to maintain current and accurate records;
 - (l) failing to make all client records available in accordance with ARM 24.171.408;
 - (m) failing to obtain and maintain a reasonable degree of supervision over each guide and outfitter's assistant to ensure that the services offered are being provided in accordance with the laws and rules, with particular regard to those laws and rules pertaining to the health, safety, and welfare of the participants, the public, and landowners;
 - (n) ~~not employ~~ employing or ~~retain~~ retaining a guide without first confirming that the guide has current basic first aid certification;
 - (o) ~~not exceed~~ exceeding the licensee's NCHU;
 - (p) ~~not use~~ using a guide prior to ensuring that the guide license is fully signed and dated;
 - ~~(q) not use a guide with an inactive license;~~
 - (r) failing to comply with all laws and rules relating to outfitter's assistants;
- and

(s) (r) when advertising services, failing to clearly designate the outfitter's registered business name or personal name and the outfitter's license number.

~~(2) (4) Guides shall~~ The following is unprofessional conduct for guides and guide applicants:

- (a) ~~not advertise~~ advertising services to the general public, ~~but may advertise their services directly to outfitters;~~
- (b) ~~only make~~ making agreements with clients concerning monetary consideration or services offered, or collect fees from clients, ~~with~~ without the express consent of the supervising outfitter, ~~and only as expressly provided in ARM 24.171.405;~~
- (c) ~~not provide~~ providing services to clients who have not been specifically referred to the guide from the endorsing outfitter; and
- (d) ~~not act~~ acting as a guide ~~under a~~ without a signed and dated guide license, ~~unless and until the guide and the outfitter have first signed and dated the guide license.~~

~~(3) All licensees shall:~~

- ~~(a) provide services with respect for the rights of others, private and public property, and provide for the health, safety, and well-being of their clients, employees, and the general public;~~
- ~~(b) provide services on public land in a manner such that they do not interfere with the general public access to public land or waterways or access to wildlife on public land;~~
- ~~(c) provide their services in such a manner as not to be detrimental to the wildlife or the environment where they operate;~~
- ~~(d) report to the board office, at their earliest opportunity, any violation of fish~~

and game laws or outfitter, guide, and outfitter's assistant laws of which they have knowledge;

~~(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) not charge any fee for certifying or aiding or assisting any nonresident in procuring or attempting to procure a hunting license;~~

~~(g) not harass, assault, or abuse clients, employees, outfitters, guides, or outfitter's assistants, or members of the general public, verbally or otherwise;~~

~~(h) not abuse livestock;~~

~~(i) produce their current license, proof of first aid certification, or employment documentation required by ARM 24.171.410 at the request of law enforcement or a representative of the board (electronic proof of license or certification is permitted);~~

~~(j) carry the licensee's current license and certifications at all times when providing services (electronic proof of license or certification is permitted);~~

~~(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;~~

~~(m) not act beyond the scope of activities for which the individual is licensed;~~

~~(n) not offer for use by an unlicensed individual any watercraft identification identifying another licensee as the occupant of the watercraft;~~

~~(o) not intentionally misrepresent board laws or rules;~~

~~(p) not fail to respond to board inquiries and requests;~~

~~(q) not remit a "nonsufficient fund check" or a check on a closed account for board fees or fines; and~~

~~(r) comply with the statutes and rules applicable to licensees of the board.~~

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 is amending this rule to remove provisions which duplicate statute, and taking the opportunity to revise the rule for better readability and understanding by licensees and the general public. The board is further adding the provision that outfitter licensees may be subject to disciplinary action for failing department inspections. The board is further striking the reference to outfitters using guides with inactive licenses, as there is not an inactive status for guides.

4. The proposed new rules are as follows:

NEW RULE I ADMINISTRATIVE SUSPENSION (1) The board authorizes the department to:

(a) administratively suspend licenses for deficiencies set forth in 37-1-321(1)(a) through (e), MCA; or

(b) file a complaint pertaining to the deficiencies in (1) that are based on

repeated or egregious conduct, or that have co-occurring misconduct allegations that directly implicate public safety and may warrant formal disciplinary action.

(2) An administrative suspension is not a negative, adverse, or disciplinary action under Title 37, MCA, and is not reportable under federal law or the department's licensee lookup and license verification databank.

AUTH: 37-1-131, 37-68-201, MCA

IMP: 37-1-321, MCA

REASON: Section 37-1-321, MCA, permits the board to authorize the department to take certain non-disciplinary actions regarding licensees who are out of compliance with administrative licensure requirements such as not meeting continuing education requirements, failing to respond to continuing education audits, not paying required fees, not meeting initial licensing requirements, and noncompliance with board final orders. The board authorized the department to take these actions previously by motion. Reasonable necessity exists to adopt this rule to formally, publicly, and accessibly reiterate that authorization, so the public and licensees are aware of the authorization.

NEW RULE II FEE ABATEMENT (1) The Board of Outfitters adopts and incorporates by reference the fee abatement rule of the Department of Labor and Industry found at ARM 24.101.301.

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

IMP: 17-2-302, 17-2-303, 37-1-134, MCA

REASON: The board has determined there is reasonable necessity to adopt and incorporate by reference ARM 24.101.301 to allow the board to authorize the department to perform renewal licensure fee abatements as appropriate and when needed, without further vote or action by the board. The department adopted ARM 24.101.301 to implement a means for the prompt elimination of excess cash accumulations in the licensing programs operated by the department.

5. The rules proposed to be repealed are as follows:

24.171.104 BOARD PURPOSE

AUTH: 37-47-201, MCA

IMP: 37-47-201, MCA

REASON: The proposed repeal is necessary because the rule is largely duplicative of 37-47-201, MCA, in violation of 2-4-305, MCA. The rule also contains policy statements that do not amplify or clarify statutory language and are not appropriate for administrative rules.

24.171.404 MILITARY TRAINING OR EXPERIENCE

AUTH: 37-1-145, MCA
IMP: 37-1-145, MCA

REASON: Reasonable necessity exists to repeal this rule, effective October 1, 2023, at the earliest, due to House Bill 583 (2023). That legislation amends 37-1-145, MCA, and eliminates the requirement for adoption by the board of a specific military training rule, setting forth specific obligations for the board to accept military experience for granting licensure. As such, the need for this rule is obsolete.

24.171.602 GUIDE LICENSE

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 board is combining ARM 24.171.601 and 24.171.602 because they each contain information related to the application process.

24.171.2101 RENEWALS

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-1-104, 37-1-141, 37-47-201, 37-47-302, 37-47-304, 37-47-306,
37-47-307, MCA

REASON: The proposed repeal is necessary because the rule is duplicative of ARM 24.101.408, 24.101.413, and 24.171.520.

24.171.2104 ACTIVE DUTY STATUS FOR LICENSEES IN THE MILITARY

AUTH: 37-1-131, 37-1-138, 37-47-201, MCA
IMP: 37-1-138, 37-47-307, MCA

REASON: The board is repealing this rule as duplicative of 37-1-138, MCA

24.171.2305 WEB SITE POSTING OF LICENSE DISCIPLINE

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-1-131, 37-1-311, 37-47-201, MCA

REASON: The board is striking this rule as unnecessary. If a licensee is disciplined by the board, or if a license application is denied based on unprofessional conduct, those are public disciplinary actions that are posted to the website.

6. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728, Helena, Montana 59624. Comments must be received no later than 5:00 p.m., August 23, 2024.

7. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and rules.mt.gov.

8. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

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

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

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

BOARD OF OUTFITTERS,
JOHN WAY, CHAIR

/s/ JENNIFER STALLKAMP
Jennifer Stallkamp
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 16, 2024.