

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.171.401 fees, 24.171.502) PROPOSED AMENDMENT AND
qualifications, and the adoption of) ADOPTION
NEW RULE I pertaining to outfitters)

TO: All Concerned Persons

1. On March 19, 2009, at 1:00 p.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

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 (board) no later than 5:00 p.m., on March 13, 2009, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, 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) 841-2309; e-mail dlibsout@mt.gov.

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

- 24.171.401 FEES (1) remains the same.
- (a) ~~resident~~ outfitter application and license. This fee includes the following costs, but does not include fees related to operations plan. \$1300
 - (i) through (iii) remain the same
 - (iv) ~~resident~~ license 400
- (b) Application for amendment to ~~resident~~ outfitter license. This fee includes the following costs: 450
 - (i) through (c) remain the same.
 - (i) ~~resident~~ outfitter annual license 375
 - (ii) ~~resident~~ outfitter inactive status 200
 - (d) and (e) remain the same.
 - (f) Annual fee for each additional hunting camp meeting the criteria in 37-47-318, MCA, ~~must be paid at the time the camp is approved for inclusion in the outfitter's operations plan.~~ 5000
- (g) and (h) remain the same.
- (i) ~~Resident~~ Guide or ~~resident~~ professional guide license effective until December 31, 2008

- (i) resident original guide license 100
- (ii) resident temporary guide license 100
- (j) Resident guide or resident professional guide license effective January 1, 2009
- (i) resident guide license 150
- (ii) resident emergency guide license 150
- ~~(k) Nonresident outfitters, guides, or professional guides will pay the fee their residency state charges for the similar license if in excess of the amount established by the board for the license. Otherwise they will pay the Montana resident fee.~~
- (l) through (o) remain the same but are renumbered (k) through (n).
- (2) The initial \$5000 fee for each additional hunting camp approved for inclusion in the outfitter's operations plan pursuant to 37-47-318, MCA must be paid before the camp is used and in no event later than ten business days after written notice to the outfitter of the board's approval. Thereafter the annual fee is due on December 31. Inclusion of the camp in the outfitter's approved operations plan and the outfitter's authority to use the camp terminate automatically on December 31 of each year unless renewed for the following year by payment of the \$5000 annual fee by that date.

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, 37-47-316, 37-47-317, 37-47-318, MCA

REASON: The board determined it is reasonably necessary to amend this rule by deleting the word "resident" in reference to licensees and by striking (1)(k). The board concluded that setting a fee based on what a similar license costs in a nonresident licensee's home state does not conform to 37-1-134, MCA, which requires that board fees be commensurate with associated licensure costs.

The board has experienced problems collecting the annual fee for the additional hunting camps approved for inclusion in outfitters' operations plans pursuant to 37-47-318(1)(c), MCA. The board is adding (2) to this rule to address the problem by setting a due date for the fee and specifying the consequences for nonpayment by that date.

24.171.502 OUTFITTER QUALIFICATIONS

(1) and (2) remain the same.

~~(3) Three days of experience may be waived by the board for an applicant for every day of training completed by the applicant in the category of licensure applied for (fishing or hunting), subject to a maximum waiver of 30 days, at an outfitter or guide school approved by the board.~~ Three days of experience may be waived by the board for every day of training completed by the applicant at an outfitter or guide school approved by the board provided that the training was in the category of licensure being sought (e.g., hunting or fishing). The maximum number of days of experience that may be waived is 30. All experience waivers shall be contingent upon the applicant completing the board's one-day education program at the time specified by the board.

(4) through (4)(d) remain the same.

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

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

IMP: 37-47-201, 37-47-302, 37-47-304, 37-47-307, 37-47-308, MCA

REASON: The board determined that the type of training obtained at approved schools as described in (3) gives applicants knowledge and practical skills relating to provision of outfitting services to clients that may substitute for some field experience but those programs do not have the same focus as the board's one-day education program on statutory and rule requirements imposed on outfitters. Likewise, when an applicant is purchasing an outfitter's operation and seeks a waiver of some field experience based on a 12-month plan of supervision by the selling outfitter, that supervision does not necessarily focus on statutory and rule requirements. In both instances the board concluded it is reasonable and necessary for the public protection to amend this rule to require completion of its one-day education program as a condition of granting experience waivers.

4. The proposed new rule provides as follows:

NEW RULE I FISHING OUTFITTER OPERATIONS PLAN (1) A fishing outfitter may include in a proposed operations plan, a general reference to "all surface waters governed by the Montana Stream Access Law, §23-2-302, MCA and accessible by public access points not requiring a permit issued by a state or federal agency(ies)". Alternatively, the outfitter may include in the proposed operations plan specific surface waters governed by the Montana Stream Access Law and accessible by public access points not requiring a permit issued by a state or federal agency, by including detailed descriptions of those specific waters as provided in 37-47-304(2)(h) and (i), MCA.

(2) Surface waters accessible only by private land or access points requiring a permit issued by a state or federal agency(ies) may only be included in a fishing outfitter's proposed operations plan by describing the waters in detail as provided in 37-47-304(2)(h) and (i), MCA. A copy of the permit(s) issued by the appropriate state or federal agency(ies) must be submitted to the board office with the outfitter's proposed operations plan.

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

IMP: 37-47-304, MCA

REASON: The Fishing Outfitters Association of Montana requested that the board simplify the process for identifying waters in fishing outfitters' operations plans under authority of 37-47-304(2)(i)(vii), MCA. The proposed new rule would allow an outfitter to include in an operations plan all surface waters governed by the Montana Stream Access Law and having public access points not requiring a permit, by a general reference to that law rather than by separately listing and specifically describing each such waterway in the operations plan. Identifying waters by the alternate means will eliminate the need for repeated amendments to operations plans and will give outfitters more flexibility to take clients to other locations when

there are temporary closures or poor fishing conditions in waters specifically described in the outfitters' operations plans or when clients express a preference to fish waters not specifically listed in the operations plan. The board notes that this new rule does not expand access by fishing outfitters to waters on which they currently have no access or only restricted access, but is administrative in nature and only changes how fisheries may be described in the operations plan. Waters for which permits are required still must be separately listed and specifically described in an operations plan. Section (2) articulates the requirement for submittal of permits issued by appropriate land management agencies in order to include in an operations plan waters that require such permits. In practice, the board has required submission of the permits but the requirement was not previously set forth in rule.

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) 841-2309, or by e-mail to dlibsout@mt.gov, and must be received no later than 5:00 p.m., March 27, 2009.

6. An electronic copy of this Notice of Public Hearing is available through the department and board site on the World Wide Web at www.outfitter.mt.gov. The department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address 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 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 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) 841-2309, e-mailed to dlibsout@mt.gov, or made by completing a request form at any rules hearing held by the agency.

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

9. Darcee Moe, attorney, has been designated to preside over and conduct this hearing.

BOARD OF OUTFITTERS
LEE KINSEY, CHAIRPERSON

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

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State February 17, 2009