

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

In the matter of the amendment of)
ARM 24.171.401 fees, 24.171.412)
safety provisions, 23.171.2301)
unprofessional conduct and)
misconduct, the adoption of NEW)
RULE I provisional guide license, and)
the repeal of 24.171.604 emergency)
guide license)

TO: All Concerned Persons

1. On July 15, 2010, at 11:00 a.m., a public hearing will be held in room B-07, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment, adoption, and repeal 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 July 9, 2010, to advise us of the nature of the accommodation that you need. Please contact Debbie Tomaskie, Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2373; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsout@mt.gov.

3. General Statement of Reasonable Necessity: At its March 10, 2010, meeting, the department informed the board that ARM 24.171.604, the Emergency Guide License rule, was not legally defensible and that the department would no longer process applications submitted under this rule. A similar opinion had been provided to the board in 1997, approximately one year before the rule was first adopted; however, the department continued to process applications until abuses became apparent and enforcement proved ineffective. In addition to abuse and enforcement issues, the Emergency Guide rule allows outfitters to license guides without any investigation by the department and without the board's determination of qualifications, in direct conflict with 37-47-307(1), MCA. The board chair appointed a committee to draft a rule to replace the Emergency Guide rule. A proposal was provided to the board at the June 9, 2010, meeting and the board accepted the committee's proposal with a few minor changes.

This board determined it is reasonably necessary to amend and repeal certain existing rules and adopt a new rule to replace the emergency guide license with a legally defensible and enforceable provisional guide license that provides for the protection of the public health, safety, and welfare. The proposed rule changes will ensure the proper vetting of applicants by the board following a department

investigation, the ongoing accountability of outfitters and guides, and the enforcement of the requirement of a first aid card for all actively licensed guides.

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

24.171.401 FEES (1) through (1)(h) remain the same.

- ~~(i) Guide or professional guide license effective until December 31, 2008~~
- ~~(i) original guide license~~ 100
- ~~(ii) temporary guide license~~ 100
- ~~(j) (i) Guide or professional guide license effective January 1, 2009~~
- (i) remains the same.
- (ii) emergency initial processing of provisional guide license 450 50
- (iii) activation of provisional guide license 100
- (iv) renewal of provisional guide license 50
- (k) through (n) remain the same but are renumbered (j) through (m).
- (2) remains the same.

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 to comply with the provisions of 37-1-134, MCA, and set fees to be commensurate with the costs associated with provisional guide licensure. The board estimates that the fee changes will affect approximately 100 guides and result in approximately \$5,000 in additional revenue above previous years. That additional revenue is expected to meet the direct costs of processing those 100 applications, but will not meet any additional expenses that are likely to be incurred relative to the implementation and enforcement of this new rule. Because this new rule is designed to serve the needs of outfitters, current and future renewal fees for outfitters are expected to cover any additional expenses relative to this new rule.

24.171.412 SAFETY PROVISIONS (1) remains the same.

~~(2) Except for the one-time, 30-day exemption provided for emergency guide licenses in ARM 24.171.604, guides~~ Guides and professional guides are required to hold a current basic first aid card while actively licensed.

(3) through (5) remain the same.

AUTH: 37-47-201, MCA

IMP: 37-47-201, MCA

24.171.2301 UNPROFESSIONAL CONDUCT AND MISCONDUCT (1) through (1)(m) remain the same.

~~(n) not employ or retain an emergency guide after the 30th day following the date of the emergency guide's application for licensure without first confirming that the emergency guide has current basic first aid certification;~~

~~(o) (n) not employ or retain a guide or professional guide without first confirming that the guide or professional guide has current basic first aid certification; or~~

~~(p) (o) not exceed the licensee's NCHU;~~

(p) not use a provisional guide prior to ensuring that the form evidencing initial licensure is fully signed and dated;

(q) not use a provisional guide unless the proper fee is mailed within the time provided by rule; or

(r) not fail to return any provisional guide license that is not activated during the license year.

(2) through (2)(b) remain the same.

(c) not provide services to clients who have not been specifically referred to the guide or professional guide from the endorsing outfitter; and

(d) not provide guiding services during the same license year in which an outfitter also sponsors the guide or professional guide for an outfitter-sponsored license issued by the Montana Department of Fish, Wildlife and Parks;

(e) not act as a guide under a provisional guide license, unless and until the guide and the outfitter have first signed and dated the sworn statement evidencing that the license is active; and

(f) not act as a guide under a provisional guide license, unless the proper fee is mailed within the time provided by rule.

(3) remains the same.

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

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

5. The proposed new rule provides as follows:

NEW RULE I PROVISIONAL GUIDE LICENSE (1) An outfitter may endorse up to three additional guides each license year who are designated by the outfitter on the application form as "provisional guides" under this rule.

(2) A guide license must be issued to the outfitter on behalf of a provisional guide if the application is complete, routine, and accompanied by all supporting documentation required by the application, and the initial processing fee for a provisional guide license. A provisional guide license will not be issued if the application is incomplete, nonroutine, or not accompanied by all supporting documentation required by the application and the initial processing fee.

(3) The provisional guide license is not active when issued. A provisional guide license is active only after the guide and the outfitter sign and date the guide license. The fee for activation of the provisional guide license must be sent to the board office within ten days of activation.

(4) A provisional license may be renewed.

(5) Each provisional guide license issued by the board to an outfitter shall be either activated or returned to the board office on or before December 31 of the license year.

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

IMP: 37-1-131, 37-47-201, 37-47-301, 37-47-303, 37-47-307, MCA

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

24.171.604 EMERGENCY GUIDE LICENSE found at ARM page 24-18573.

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

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

7. 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., July 23, 2010.

8. An electronic copy of this Notice of Public Hearing is available through the department and board's 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.

9. 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.

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

11. Tyler Moss, 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 June 14, 2010