

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, 24.171.408) NOTICE OF AMENDMENT AND
outfitter records, 24.171.412 safety) ADOPTION
provisions, 24.171.512 inactive)
license, 24.171.602 guide license,)
24.171.701 determination of client)
hunter use, 24.171.2101 renewals,)
and the adoption of NEW RULES I)
and II web site posting and)
successorship)

TO: All Concerned Persons

1. On July 14, 2011, the Board of Outfitters (board) published MAR notice no. 24-171-31 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 1265 of the 2011 Montana Administrative Register, issue no. 13.

2. On August 8, 2011, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the August 16, 2011, deadline.

3. The board has thoroughly considered the comments received. A summary of the comments received and the board's responses are as follows:

GENERAL COMMENT: A few commenters offered general support of the rule notice or regarding various rules.

GENERAL RESPONSE: The board appreciates all comments made during the rulemaking process.

COMMENT 1: Two commenters emphasized that the proposed fee increases in ARM 24.171.401 are intended as one-time increases. The commenters asked that the board thoroughly review and discuss costs and fees in the upcoming year.

RESPONSE 1: The board continues to review and discuss ways to control costs and avoid unnecessary fee increases. The board confirms that this change will implement a one-time fee increase.

COMMENT 2: Two commenters supported the proposed amendment of ARM 24.171.408 to allow fishing outfitters to omit client addresses from client logs. One commenter also suggested that the board take steps to coordinate with other involved entities to repeal this requirement for hunting outfitters as well.

RESPONSE 2: The board will consider the request for a similar amendment for hunting outfitters in a future action, but notes that this request falls outside the scope of this rulemaking notice.

COMMENT 3: Two commenters stated that renaming category 2 NCHU and category 3 NCHU in ARM 24.171.701 will cause confusion. The commenters suggested instead that the board simply omit category 1 NCHU and leave the other two categories as they are.

RESPONSE 3: The board agrees with this suggestion and is amending this rule accordingly.

COMMENT 4: One commenter stated that the proposed amendments to ARM 24.171.701 will change how licensees account for NCHU when serving bird hunters who are also served pursuing big game under a combination license. The commenter stated that this is likely an unintentional consequence of the amendments and suggested specific language to address the problem.

RESPONSE 4: The board discussed at length how one should account for NCHU in relation to a client pursuing upland game birds, incidental to the pursuit of big game, under a combination license. Currently, an incidental upland bird hunt done in conjunction with a big game hunt under a combination license only, requires an outfitter to use one NCHU in category 2. Meanwhile, an outfitter who serves a client in the pursuit of upland birds under a combination license, without pursuing big game, uses no NCHU at all.

The board notes that the proposed amendments to this rule should not change how NCHU has been accounted for in the past, except that if an outfitter serves a client who pursues upland birds only, the outfitter must hold and use a category 3 NCHU. The board is therefore amending ARM 24.171.701 to clarify and ensure that clients served in the pursuit of big game and birds under a combination license are category 2 NCHU clients, while clients served in the pursuit of only birds under a combination license are category 3 NCHU clients.

COMMENT 5: One commenter generally supported New Rule II, but requested clarification of the phrase "certain licensure requirements" in (2) and the application of New Rule II to long-existing successorships.

RESPONSE 5: The board is also concerned with how New Rule II will apply to existing successorships. Because each existing successorship is reviewed for continuing approval on an annual basis, the board understands that those successors will not need to comply with this new rule until after their successorships have been approved under the terms of this new rule at an annual review.

The board is amending New Rule II to clarify how it will apply to existing successorships. Also, the board is deleting the word "certain" from (2) to clarify that a successorship may be conditionally granted, pending documentation of meeting

any licensure requirements, not just some unknown particular licensure requirements.

4. The board has amended ARM 24.171.401, 24.171.408, 24.171.412, 24.171.512, 24.171.602, and 24.171.2101 exactly as proposed.

5. The board has adopted NEW RULE I (24.171.2305) exactly as proposed.

6. The board has amended ARM 24.171.701 with the following changes, stricken matter interlined, new matter underlined:

24.171.701 NCHU CATEGORIES, TRANSFERS, AND RECORDS

(1) remains as proposed.

(a) Category 4 2, consisting of all clients served in the pursuit of upland game birds and big game under combination licenses or in the pursuit of big game; and

(b) Category 2 3, consisting of all clients served in the pursuit of upland game birds, water fowl, and turkeys.

~~(2) Category 1 NCHU is accounted for and established on the basis of the hunting licenses held by clients served. Category 2 NCHU is accounted for and established on the basis of the individual clients served, regardless of licenses held. For example, a client having a deer/elk/upland game bird combination license requires one Category 1 NCHU of the outfitter, regardless of whether one or both big game species are pursued under that license, and the same client requires one Category 2 NCHU when the upland game bird is pursued.~~

(3) through (12) remain as proposed, but are renumbered (2) through (11).

7. The board has adopted NEW RULE II (24.171.504) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE II SUCCESSORSHIP (1) remains as proposed.

(2) Prior to approval, a successor must meet all qualifications for licensure aside from the experience and testing requirements. Among other conditions, approval may be granted upon the condition that documentation of ~~certain~~ licensure requirements will be received by the board no later than a specified date. If the documentation of licensure requirements is not received in a timely manner, board staff shall immediately place the license on inactive status until the board is able to reconsider the conditional approval.

(3) through (5) remain as proposed.

(6) A successor seeking licensure must meet all the qualifications of an outfitter, successfully complete the required examination, and submit to the board all required applications, fees, and other documents and information no later than the date that is three years from the date the successorship was approved under this rule. If a successor obtains licensure, the NCHU is transferred to the successor as a newly licensed outfitter.

(7) through (9) remain as proposed.

BOARD OF OUTFITTERS
TIM LINEHAN, 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 October 3, 2011