

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

In the matter of the amendment of) AMENDED NOTICE OF PUBLIC
ARM 24.101.413 renewal dates and) HEARING ON PROPOSED
requirements, 24.171.401 fees,) AMENDMENT, ADOPTION, AND
24.171.408 outfitter records,) REPEAL
24.171.701 NCHU categories,)
transfers, and records, 24.171.2101)
renewals, the adoption of NEW RULE)
I incomplete outfitter and guide)
license applications, and the repeal of)
24.171.409 guide to hunter ratio and)
24.171.605 provisional guide license)

TO: All Concerned Persons

1. On October 25, 2012, the Board of Outfitters (board) published MAR notice no. 24-171-32 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules, at page 2107 of the 2012 Montana Administrative Register, issue no. 20. A public hearing was scheduled in the notice to be held on November 19, 2012, in Helena.

2. It was subsequently discovered that an error had occurred and the proposal notice had not been sent to all interested persons as required by the Montana Administrative Procedure Act. Therefore, the board is reissuing this proposal notice and is rescheduling the public hearing as shown below.

3. On December 18, 2012 at 1:30 p.m. a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

4. 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 December 12, 2012, to advise us of the nature of the accommodation that you need. Please contact Trudy Phippen, 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.

5. The department is proposing to amend the following rule. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

24.101.413 RENEWAL DATES AND REQUIREMENTS (1) through (5)(w) remain the same.

(x)	Outfitters	Outfitter Professional Guide Guide (including provisional guide)	Annually Annually Annually	December 31 December 31 December 31
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(y) through (7) remain the same.

AUTH: 37-1-101, 37-1-141, MCA

IMP: 37-1-101, 37-1-141, MCA

REASON: The board is amending this rule and ARM 24.171.401, and repealing ARM 24.171.605, because after passage of a full licensing year, the board concluded the rule is not fulfilling its intended purpose of allowing outfitters to license up to three guides a year on inactive status, but not pay any fees until activating the licenses. It is also apparent that there is no need within the industry, as the board has not issued any inactive guide licenses since the initial adoption of the rule on August 27, 2010.

6. The board is proposing to amend the following rules. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

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

~~(f) Guide license~~

~~(i) initial~~

(f) Initial and renewal guide license 150

~~(ii) initial processing of inactive guide license~~ 50

~~(iii) activation of inactive guide license~~ 100

~~(iv) renewal of inactive guide license~~ 50

(g) through (k)(iii) remain the same.

~~(iv) activating inactive guide license~~ 125

(l) remains the same.

AUTH: 37-1-131, 37-1-134, ~~37-1-319~~, 37-47-201, 37-47-306, MCA

IMP: 37-1-134, 37-1-141, ~~37-1-319~~, 37-47-304, 37-47-306, 37-47-307, 37-47-308, 37-47-310, 37-47-316, 37-47-318, MCA

REASON: Authority and implementation cites are amended to align with the elimination of the inactive guide license.

24.171.408 OUTFITTER RECORDS (1) remains the same.

(2) Outfitter records shall be maintained on forms prescribed by the board and shall contain information as required by the board. The information required shall include, ~~but not be limited to:~~

(a) through (f) remain the same.

(g) the actual leased acreage unused by clients during that year; and

(h) tally sheets reflecting the number of clients served per NCHU category as defined in ARM 24.171.701 each year shall be maintained and submitted to the board during the renewal of the license or when the outfitter's license is lapsed; and

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

(3) Amendments to logs shall be made immediately when errors are discovered. Amendments that only supplement records with information that arose after license renewal are always proper. However, cases of amendments to records for any other reason shall be brought to the screening panel for a decision as to whether an investigation should follow.

(3) remains the same, but is renumbered (4).

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

IMP: 37-47-301, MCA

REASON: The board determined it is reasonably necessary to amend (2) so that all the information required on the board forms is presented in rule. Without the amendment, the board is able to amend the forms and change what must be reported without providing notice to licensees. The board has received numerous complaints regarding the amount of record-keeping required on the forms, as some of the information requested is not called for by statute or rule. The board is deleting the NCHU tally sheets in (h), because the information required on the sheets is already reported in client logs, and the tally sheet forms request information not required by rule or statute.

In conjunction with the amendment to ARM 24.171.2101, the board is amending (3) to require that licensees amend client logs as soon as errors are discovered. It is the board's intent that this is an ongoing licensee obligation, and is specifying that amendments for any reason other than to supplement records with updated information will be reviewed by the screening panel. This amendment is reasonably necessary to address recent situations that convinced the board of the need to monitor amendments to outfitter records to avoid abuse.

24.171.701 NCHU CATEGORIES, TRANSFERS, AND RECORDS

(1) through (8) remain the same.

(9) An outfitter who is subject to an adjustment of NCHU under 37-47-316, MCA, that would otherwise occur on or before December 4 ~~31, 2013~~ 2014, shall have up to and including December 4 ~~31, 2013~~ 2014, to establish the NCHU. The category definitions under this rule may be applied retroactively for purposes of establishing NCHU.

(10) and (11) remain the same.

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

IMP: 37-1-131, 37-47-201, 37-47-316, MCA

REASON: Net client hunter use (NCHU) received in a transfer that occurred during the time period set forth in 37-47-316, MCA, and this rule, is subject to loss if not used within the prescribed time. When this provision was originally effective on October 14, 2011, licensees were expected to receive the results of a recently

concluded board audit of NCHU, so they would have three hunting seasons to use any NCHU that might otherwise be subject to loss. The audit was not completed until after the 2011 hunting season had ended, leaving licensees only two years to use the NCHU that was at risk, according to the audit. The board is extending the timeline to maintain the original intent of the rule and allow licensees three hunting seasons after the publication of the audit results to use NCHU that might otherwise be subject to loss.

24.171.2101 RENEWALS (1) through (2)(c) remain the same.

(d) a copy of the licensee's current insurance certificate with the licensee as the named insured; and

(e) complete client report logs; and

~~(f) fishing and/or hunting statistical outfitter use level sheets, depending on the services provided by the outfitter in the preceding license year.~~

(3) through (5) remain the same.

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, 37-47-318, MCA

REASON: The board is deleting certain required records from this rule as the information is no longer necessary and such tally sheets are being deleted from ARM 24.171.408.

7. The proposed new rule provides as follows:

NEW RULE I 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 will occasionally receive an application that will remain active, but not complete, for an extended period of time. Open applications require additional time and resources to maintain. The board is proposing this rule to establish a procedure to close application files that do not progress to licensure within a reasonable period of time, which the board has determined to be within one year of beginning the process. This rule is not intended to affect the department's

practice of refusing incomplete applications when no fee accompanies the application.

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

24.171.409 GUIDE TO HUNTER RATIO found at ARM page 24-18525.

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

IMP: 37-1-131, 37-47-201, 37-47-402, MCA

REASON: The board is repealing this unnecessary rule, as it no longer serves any purpose following the elimination of outfitter-sponsored licenses.

24.171.605 PROVISIONAL GUIDE LICENSE found at ARM page 24-18573.

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

IMP: 37-1-131, 37-1-319, 37-47-201, 37-47-301, 37-47-303, 37-47-307,
MCA

9. 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., December 26, 2012.

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

11. 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.

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

13. 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 November 13, 2012