

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, 24.171.407	)	PROPOSED AMENDMENT,
inspection, 24.171.408 outfitter	)	ADOPTION, AND REPEAL
records, 24.171.412 safety	)	
provisions, 24.171.413 watercraft	)	
identification, 24.171.501 application	)	
for outfitter license, 24.171.502	)	
outfitter qualifications, 24.171.504	)	
successorship, 24.171.507 outfitter	)	
examination, 24.171.520 amendment	)	
to operations plan, 24.171.601 guide	)	
qualifications, 24.171.602 guide	)	
license, 24.171.701 NCHU	)	
categories, transfers, and records,	)	
24.171.2101 renewals, and	)	
24.171.2301 unprofessional conduct,	)	
the adoption of NEW RULE I booking	)	
agents and advertising, NEW RULE II	)	
outfitter assistants, and NEW RULE	)	
III nonroutine applications, and the	)	
repeal of ARM 24.171.402 effect of	)	
fee for expansion of net client hunter	)	
use, and 24.171.503 outfitter	)	
application	)	

TO: All Concerned Persons

1. On October 31, 2014, at 10:00 a.m., a public hearing will be held in the Small Conference Room, 301 South Park Avenue, 4th Floor, 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 no later than 5:00 p.m., on October 24, 2014, to advise us of the nature of the accommodation that you need. Please contact Steve Gallus, Executive Officer, 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) 841-2305; or dlibsout@mt.gov (board's e-mail).

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2013 Montana Legislature enacted Chapter 241, Laws of 2013 (House Bill 187), an act

allowing and defining outfitter's assistants, and providing rulemaking authority. The bill became effective September 1, 2013. The board is adopting New Rule II and amending certain existing rules to coincide with the 2013 legislative changes and further implement the legislation by specifying standards for outfitter's assistants and the documentation required to prove employment and retention of the assistants.

Additionally, the 2013 Montana Legislature enacted Chapter 341, Laws of 2013 (House Bill 274), an act revising laws related to the licensing of outfitters and guides. The bill became effective October 1, 2013. Among other changes, HB 274 eliminated the professional guide license type. The board is amending several existing rules to coincide with the 2013 legislative changes and implement the legislation by striking reference to professional guides.

Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

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

24.171.401 FEES (1) Fees for outfitters, operations plan, guide, or ~~professional guides use of outfitter assistants~~ shall be as set forth below. The following fees are nonrefundable.

(a) through (d) remain the same.

(e) ~~Fee per hunting client served per year~~ \_\_\_\_\_ 2

Fee per outfitter assistant employed or contracted \_\_\_\_\_ 25

(f) remains the same.

~~(g) Professional guide license~~

~~(i) initial license (inclusive of application processing)~~ \_\_\_\_\_ 250

~~(ii) renewal of license~~ \_\_\_\_\_ 150

(h) remains the same but is renumbered (g).

~~(i)~~ (h) Fee for replacement or additional watercraft identification \_\_\_\_\_ 5

(j) remains the same but is renumbered (i).

~~(k) Notwithstanding the foregoing, the following fees will control for the 2012 license year:~~

~~(i) outfitter annual license~~ \_\_\_\_\_ 400

~~(ii) outfitter inactive status~~ \_\_\_\_\_ 225

~~(iii) initial and renewal guide license~~ \_\_\_\_\_ 175

(l) remains the same but is renumbered (j).

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, 37-47-318~~, MCA

REASON: The board determined it is reasonably necessary to amend (1)(e) and remove the fee per hunting client because HB 274 eliminated this fee from statute. The board is establishing a new fee for a licensed outfitter's use of assistants that is commensurate with associated costs of data gathering and administration. The board estimates that approximately 45 outfitter's assistants will be utilized by licensed outfitters per year, resulting in a \$1125 increase in annual revenue.

The board is striking (1)(g) to remove fees associated with professional guides, as this license type was eliminated in 2013 through HB 274. The board estimates no fiscal impact with this fee elimination, as there are fewer than ten professional guides in Montana, and they will likely obtain licensure as guides.

The board is amending (1)(h) to clarify that the \$5 fee applies to requests for both replacement and additional watercraft identification. Because ARM 24.171.413(8) provides that a fee will be assessed for both replacement and additional sets of identification, it is reasonably necessary to amend this rule to align provisions in both rules.

The board is deleting (1)(k) to remove reference to fees applicable only in the 2012 license year, which has passed.

The implementation citations are amended to delete reference to statutes repealed in 2013.

24.171.407 INSPECTION (1) Inspections of outfitter, ~~and guide and professional 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.

AUTH: 37-47-201, MCA

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

REASON: The board is striking professional guides from this rule, as this license type was eliminated in 2013 through HB 274.

24.171.408 OUTFITTER RECORDS (1) remains the same.

(2) Outfitter records shall be maintained on forms prescribed by the ~~board~~ department and 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 [NEW RULE II], shall include:

(a) the outfitter's name and license number;

~~(a) (b) names and addresses of clients, except that fishing outfitters may omit client addresses~~ each client's name and automated licensing system number;

(b) remains the same but is renumbered (c).

~~(c) (d) big game animals, except fish, taken by clients, specifying the species and sex of each big game animal and stating for each big game animal whether it was taken on public or private land within the outfitter's operations plan;~~

~~(d) clients' hunting or fishing license numbers;~~

~~(e) districts hunted and rivers and lakes~~ water bodies, including section of a river or stream, fished by clients;

(f) category of NCHU applicable for each client; and

~~(f) the actual leased acreage actively used by clients during that year;~~

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

(h) (g) the name of the outfitter assistant or the name and license number of the guide who accompanied the client.

(3) Amendments to ~~logs~~ records 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.

(4) ~~Submitted~~ In general, submitted outfitter ~~client~~ 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 ~~approval of the board,~~ written permission of the outfitter, subpoena or order of a court, or written request of a state or federal agency for law enforcement purposes ~~the purpose of furthering investigation of criminal activities.~~ A specific outfitter's number of NCHU is confidential information, but whether an outfitter has NCHU of a particular category is public information. Also, while total acreage of private lands where any outfitter is authorized to operate is a matter of public record, where a particular outfitter is authorized to operate is a confidential matter between the landowner and the outfitter. The Department of Fish, Wildlife and Parks or the Private Land/Public Wildlife Council may use board data to create a map depicting all private land where any outfitter is authorized to operate. 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: 37-47-301, MCA

REASON: The board is amending this rule for clarity and better organization, and to include provisions relating to outfitter's assistants and further implement HB 187. Additionally, the board is amending this rule to align with and further implement legislative changes in HB 274.

The board determined it is reasonably necessary to amend (4) and specifically describe the board's intent regarding public and private information maintained by the board. After receiving and processing several public records requests, staff brought these issues to the board. Following several full board discussions, the board is amending this rule to more clearly delineate information the board determined to be confidential or public, and the process used for public records requests.

24.171.412 SAFETY AND FIRST AID PROVISIONS (1) Outfitters and guides are required to hold a current basic first aid card at all times actively licensed.

(2) Basic first aid certification must be obtained through a provider ~~or~~ and course approved by the board ~~on a case-by-case basis.~~ For purposes of initial licensure, the board will only accept basic first aid certification that involves the direct, hands-on application of first aid materials and techniques. A list of approved providers and courses shall be maintained on the board web site. An applicant may also meet basic first aid certification if the applicant provides proof of a certification,

license, or other credential that is equivalent to or greater than basic first aid certification, approved on a case-by-case basis by the board. The board may also maintain on its web site a list of certifications, licenses, and other credentials that will be routinely accepted as equivalent to or greater than basic first aid.

~~(3) Guides and professional guides are required to hold a current basic first aid card while actively licensed.~~

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

AUTH: 37-47-201, MCA

IMP: 37-47-201, MCA

REASON: The board is amending (2) to clarify that for basic first aid certification, both the provider and course must be board approved. While the board has never approved providers on their own and without associated courses, this amendment is necessary to clarify the standard and avoid any confusion.

Additionally, the board is amending this rule to require that applicants obtain basic first aid certification for initial licensure through hands-on courses. While acknowledging that online courses are acceptable as refreshers on a biennial basis, the board concluded that an original hands-on course is necessary for a solid foundation of basic first aid that may be needed to preserve life in the field.

24.171.413 WATERCRAFT IDENTIFICATION (1) A person holding a valid outfitter, ~~professional guide~~, or guide license who utilizes any type of watercraft while providing services shall prove evidence of licensure by displaying, at all times, a Montana Board of Outfitters board-issued watercraft identification ~~on each watercraft to be occupied by the licensee.~~

(2) The tag shall display the outfitter, ~~professional guide~~ or guide license number for identification purposes.

(3) An unlicensed outfitter assistant shall display a board-issued watercraft identification on each watercraft to be occupied by the outfitter assistant, showing the license number of the employing outfitter.

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

~~(6) Requests for watercraft identification shall be made as part of the annual license and renewal application.~~

(7) remains the same.

(8) Licensees shall be provided with one set of watercraft identification at the time of application for licensure or renewal, upon request. A fee will be assessed for any replacement ~~or additional sets of identification needed~~, 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, 37-47-304,  
MCA

REASON: The board is striking professional guides from (1), as this license type was eliminated in 2013 through HB 274.

The board is adding (3) to specify watercraft identification provisions applicable to outfitter's assistants, pursuant to 2013's HB 187.

The board frequently receives requests for additional sets of watercraft identification. However, a licensee may occupy only one watercraft at a time, and the cost of preparing and providing additional sets of watercraft identification exceed the amount being charged by the board. Because licensees should only need one set of watercraft identification, and can request replacements at any time, the board is amending this rule to no longer allow licensees to order "additional" sets, thereby reducing unnecessary board costs.

24.171.501 APPLICATION FOR OUTFITTER LICENSE (1) An application for an outfitter license shall be on forms prescribed by the department and shall be accompanied by the required fee.

(2) A complete application, which is required prior to being allowed to take the examination, shall consist of two parts:

(a) the department's license application form, including all supporting documentation as required by that form; and

(b) an operations plan application form, accompanied by a NCHU transfer request form, if applicable.

(1) through (2)(a) remain the same but are renumbered (3) through (4)(a).

(b) successfully passed the required examinations pertaining to those categories described in ARM 24.171.507; filed an outfitter license application with the board office;

(c) filed an operations plan that has been approved by the board;

(d) filed a completed outfitter license application with the board office; successfully passed the required examinations pertaining to those categories described in ARM 24.171.507; and

(e) received an approved equipment inspection; and

(f) if applicable, filed a NCHU application that has been approved by the board.

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

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

REASON: It is reasonably necessary to combine all outfitter application provisions into a single rule. Therefore, the board is moving into this rule all relevant provisions from ARM 24.171.503 OUTFITTER APPLICATION, which is proposed for repeal in this notice.

The board is also amending this rule to streamline and simplify the outfitter application process. After amendment, the outfitter application will have two parts, as the NCHU application is being eliminated to align legislative changes in 2011 that eliminated NCHU expansions.

24.171.502 OUTFITTER QUALIFICATIONS (1) An applicant for an outfitter license shall have:

(a) 100 days of verified experience as a licensed guide or professional guide working for a licensed outfitter in this state, guiding clients in pursuing the types of game and using methods for which licensure is sought by the applicant (hunting or fishing); or

(b) through (4) remain the same.

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 is striking language associated with professional guides, as this license type was eliminated in 2013 through HB 274.

24.171.504 SUCCESSORSHIP (1) ~~The decision of whether to approve or conditionally approve a successor designated by the family of a deceased or incapacitated outfitter pursuant to 37-47-310, MCA, lies in the sole discretion of the board. However, the board chairperson may approve or conditionally approve a person designated by the family to outfit in place of the outfitter until the next regularly scheduled board meeting.~~

~~(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 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) A successor stands in the shoes of the outfitter for purposes of the board's power to administer and enforce the statutes and rules applicable to outfitters. Notwithstanding any agreement to the contrary, a successor is jointly and severally liable with the estate of the successor for all fines and fees owed in relation to the outfitter license. The successor continues to outfit, subject to the authority of the board, to the same extent as if the successor were the outfitter.~~

~~(4) A successor must appear before the board on an annual basis to request continuation of the successorship and to report the progress made toward licensure of the successor or sale of the business. In addition to all other powers of the board, the board may terminate a successorship at any time, and in the sole discretion of the board.~~

~~(5) NCHU allocated to the outfitter may be transferred only by a successor. The successor is authorized to transfer NCHU on behalf of the outfitter. NCHU of the outfitter is not "transferred" to the successor for purposes of 37-47-316, MCA, unless and until the successor becomes licensed.~~

~~(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) If the successor does not timely meet the foregoing requirements, then the license must be immediately placed on inactive status until one of the following occurs:~~

- ~~(a) the board refuses to continue the successorship;~~
- ~~(b) the successor qualifies for licensure; or~~
- ~~(c) the license terminates or is revoked.~~

~~(8) In the discretion of the board, and in addition to all other waivers that the successor may qualify for, a successor may request a waiver of up to 50 days of experience for each license function (hunting and fishing) by sufficiently documenting the successor's past experience and involvement with the particular outfitting business that occurred prior to the date the successorship was approved, and the successor may also use experience gained as a successor toward the licensure requirements.~~

~~(9) The family of the outfitter designates a successor when a written application for successorship, along with all other documents showing compliance with this rule, is received by the board on a form prescribed by the department. The form must be completed by someone who is at least 18 years old.~~

(1) A successorship is the permission granted to a person to renew the license of a deceased or incapacitated outfitter for a limited period of time for the purposes of operating or selling the business. Only a successor may renew the license of an outfitter who has deceased.

(2) A successor acceptable to the board must be designated by the family of a deceased outfitter within six months of the date that the outfitter becomes deceased. If a successor for a deceased outfitter is not designated within those six months, then no successor will be approved.

(3) The family of an outfitter designates a proposed successor by submitting the fee required for a successor under ARM 24.171.401; an application completed by the proposed successor on a form provided by the department; a sworn statement by the proposed successor explaining how the proposed successor has been involved with the outfitting industry, in general, and how the successor has been involved with the outfitting business for which the successorship is sought, in particular; and a sworn statement by someone on behalf of the family of the deceased or incapacitated outfitter, affirming the person's authority and how the authority was obtained to designate a successor on behalf of the family, and that the person so acting is at least 18 years of age. A successorship application must specify whether the successor will operate the business or will only seek to sell it.

(4) An application for the purpose of selling the business shall require the name; phone number; e-mail address, if available; social security or foreign ID number; date of birth; and sex of the proposed successor; as well as the mailing address where the successor will accept formal service of board documents. When a successorship is approved for the purpose of selling the business, the outfitter license is placed on inactive status and may be renewed only on inactive status and only until the successorship terminates or until the business sells, whichever occurs earlier. No clients may be contracted with or served under authority of an inactive license. All requests for successorship for the sole purpose of selling the business shall be routinely approved by staff upon the board's receipt of all the required information.

(5) An application for the purpose of operating the business shall require the same information that is required of an outfitter applicant. The decision of whether to approve a successorship for the purpose of operating the business shall be processed by the department unless the application is nonroutine under [NEW RULE III], in which case the matter will be brought to the board.

(6) Prior to approval, a successor must meet all qualifications for licensure aside from the experience and testing requirements. Approval may be granted upon the condition that documentation of 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 and all outfitting under that license shall immediately cease until the board is able to reconsider the approval.

(7) A successor stands in the shoes of the outfitter for purposes of the board's power to administer and enforce the statutes and rules applicable to outfitters. Notwithstanding any agreement to the contrary, a successor and the original licensee, or the estate if the original licensee is deceased, are jointly and severally liable and responsible for all conduct affecting the outfitter license occurring during that successor's service as the successor. The successor may operate the license subject to the authority of the board to the same extent as if the successor were the outfitter. An action addressing unprofessional conduct may be taken against an outfitter license regardless of the status of the successorship, and regardless of whether the conduct was that of the deceased or incapacitated outfitter or of one or more successors. Each living outfitter and successor who is alleged to be responsible for misconduct may be made a party to the action.

(8) A successor shall report to the board each year at its December board meeting or at the next regularly scheduled meeting if no meeting is held in December. To report, the successor shall either personally appear for the meeting or shall submit a written report to the board no less than 15 days before the meeting. The report shall inform the board of the progress made toward licensure of an outfitter for the business, or of the progress made toward sale of the business.

(9) If the board wishes to revoke a successorship for unprofessional conduct or for failing to appear or report, the public health, safety, or welfare is more likely to imperatively require emergency action because a successor is presumed to be less qualified than an outfitter and to be less invested in the protection of the public. If a successorship is revoked, then the outfitter license status becomes the status applicable to it as if the original licensee had deceased or become incapacitated on the date of the revocation. A successor shall not perform any outfitter functions if the successorship or the license is suspended or revoked.

(10) A successorship terminates the earlier of the date that is two years from the date that the successorship was approved under this rule, or the date that the successorship is revoked or voluntarily surrendered, or the date that the successor becomes a licensed outfitter.

(11) While operating the business as a successor, the successor may accumulate verified experience days in the same manner that a guide accumulates experience days to satisfy the requirements of ARM 24.171.502. In the discretion of the board, and in addition to all other waivers that a successor may qualify for, a successor may request a waiver of up to 50 days of experience for each license

function (hunting and fishing) by sufficiently documenting the successor's past experience and involvement with the particular outfitting business that occurred prior to the date the successorship was approved.

AUTH: 37-1-131, 37-47-201, MCA  
IMP: 37-1-131, 37-47-310, MCA

REASON: The board adopted this rule in 2011 to address issues with respect to how successors may be appointed, how long successors would be allowed to continue, how successorships would be terminated, and how disciplinary matters involving successors would be handled. Many of the new provisions were quickly put to the test as they applied to a number of existing successorships. Since then, the board has reviewed the rule as a whole and determined that while many of the principles are sound, it is reasonably necessary to amend the mechanics of how successors are created, monitored, and terminated. This is necessary to reflect the applicable law, and better describe and implement the principles regarding the regulation of successors. The board is proposing these amendments in an attempt to clarify how successorships will function.

24.171.507 OUTFITTER EXAMINATION (1) remains the same.

~~(2) The examination shall be given in Helena, Montana, on the second Tuesday of January, April, July, and October of each year.~~

~~(3) (2)~~ (2) 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 are include:

(a) through (d) remain the same.

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

~~(6) An applicant who has failed the examination shall be eligible to take the next scheduled examination, after submitting an updated application and new examination fee.~~

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

REASON: The board is amending this rule to be consistent with proposed amendments to ARM 24.171.501 and the repeal of ARM 24.171.503 in this notice.

24.171.520 AMENDMENT TO OPERATIONS PLANS AND AMENDMENTS

(1) An operations plan consists of the following:

(a) an affidavit by the outfitter to the board that the amount and kind of equipment that is owned, leased, or contracted for by the applicant is sufficient and satisfactory for the services advertised or contemplated to be performed by the applicant;

(b) for fishing outfitters, a written description of the boundaries of the outfitter's operation, provided in the following terms, except as otherwise provided in ARM 24.171.505:

(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; and

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

(c) for hunting outfitters a written description of the boundaries of the outfitter's operation, which is where the outfitter is authorized to operate, provided in the following terms:

(i) the name of each owner of private property;

(ii) contact information for the owner or the agent of each private property where the outfitter is authorized to operate, including, but not limited to, the owner's or agent's phone number and address;

(iii) total acreage on a per-owner basis of the private land where the outfitter is authorized to operate for any duration of time and for any species of game; and

(iv) the legal description of the private acreage where the outfitter is authorized to operate, either by geo-code number assigned by the Montana Department of Revenue, or by aliquot parts. If less than the entire section or parcel is reported, then the boundary shall be described down to the quarter-quarter section or the government lot number;

(d) the number of NCHU per category; and

(e) copies of leases and permits for public property where the outfitter is authorized to operate.

(4) (2) An outfitter may amend the operations plan by submitting the additional or replacement information to the board, except that when adding a service identified in (3), 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.

(3) As part of renewal, each outfitter shall attest that the private lands information required as part of the outfitters operations plan on file with the board is current and accurate.

(4) Whenever the outfitter gains permission to use additional private property, the outfitter shall update the operations plan the earlier of:

(a) the end of the license year during which the outfitter first became authorized to use it, and

(b) before actually using it.

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

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

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

REASON: It is reasonably necessary to amend this rule to align with and further implement legislative changes in HB 274.

24.171.601 GUIDE OR PROFESSIONAL GUIDE QUALIFICATIONS (1) An applicant for a guide ~~or professional guide~~ license shall have:

(a) through (c) remain the same.

~~(2) An applicant for a professional guide's license shall meet the following qualifications in addition to the qualifications in (1):~~

~~(a) have held a guide license in the state of Montana for at least three years;~~

~~(b) have not had disciplinary action taken against the applicant's guide license in this or any other state; and~~

~~(c) have spent at least 300 days guiding clients in the field as evidenced by:~~

~~(i) employment records, or~~

~~(ii) client report logs of endorsing outfitters.~~

~~(d) The applicant shall produce, on a form provided by the board, character references from:~~

~~(i) three clients the guide has guided,~~

~~(ii) one licensed outfitter, and~~

~~(iii) one licensed guide.~~

~~(e) A professional guide shall present evidence of 15 hours of training or education obtained in the year previous to application in addition to guiding experience, in topics relevant to guiding as approved by the board.~~

~~(3) (2) An outfitter whose license is currently suspended or revoked is not qualified for a guide or professional guide license.~~

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 striking provisions relating to professional guides from this rule, as this license type was eliminated in 2013 through HB 274.

24.171.602 GUIDE OR PROFESSIONAL GUIDE LICENSE (1) An applicant may apply for a guide or professional guide license on forms provided by the board department, and accompanied by the required fee. The application must include a signature of the endorsing outfitter confirming that, to the knowledge of the outfitter, the guide or professional guide meets all the qualifications of a guide or professional guide.

(2) An applicant must submit proof of current basic first aid certification with the application.

~~(3) Basic first aid certification must be obtained through a provider or course approved by the board on a case-by-case basis. A list of approved providers and courses shall be maintained on the board web site. An applicant may meet basic first aid certification if the applicant provides proof of a certification, license, or other credential that is equivalent to or greater than basic first aid certification, approved on a case-by-case basis by the board. The board may also maintain on its web site a list of certifications, licenses, and other credentials that will be routinely accepted as equivalent to or greater than basic first aid.~~

~~(4) (3) 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, and, following completion of the guide's service on behalf of the outfitter, shall specify dates on which the guide or professional guide provided service for the outfitter.~~

~~(5)~~ (4) An applicant for a guide or professional guide license who delivers a completed application and application fee to the board office will receive the license at that time.

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 striking professional guides from this rule, as this license type was eliminated in 2013 through HB 274. Additionally, the board is striking (3) and relocating all provisions on basic first aid certification to a single location in ARM 24.171.412.

24.171.701 NCHU CATEGORIES, TRANSFERS, AND RECORDS (1) remains the same.

~~(2)~~ In cases where a federal agency limits an outfitter's use of federal lands by some means other than NCHU, an outfitter is not required to have NCHU to perform services on those lands and may not use clients served on those lands in order to establish NCHU.

~~(3)~~ An outfitter's total authorized NCHU includes both established NCHU and nonestablished NCHU.

~~(4)~~ An outfitter's "client base" is the NCHU that has been established in accordance with this rule. NCHU is established only if one of the following applies to it:

~~(a)~~ Board records show the outfitter was licensed on or before April 28, 2001, and had established the NCHU through use of it on or before December 31, 2004.

~~(b)~~ Board records show the NCHU was obtained through an approved expansion request. However, if the approved expansion was granted to an outfitter newly licensed after April 28, 2001, then it was established only if used by that outfitter within five and a half years after the expansion.

~~(c)~~ Board records show the NCHU was transferred to the outfitter from another licensed outfitter and was used in any license year during the five and a half years following the transfer. An outfitter may elect an early adjustment of NCHU by:

~~(i)~~ submitting a completed form prescribed by the board for the purpose of establishing NCHU prior to the expiration of the five and a half year time period; and

~~(ii)~~ consenting to an adjustment of the client base to reflect the highest number of clients served in any category in any license year, since the date of the transfer.

(3) NCHU owned by a licensee is part of the operations plan and may be transferred only with notice to the board. Transfers between or among licensees are routinely processed by the department unless the department has received a complaint against the licensee who is the transferor in a NCHU transfer request. If the transferor is a respondent to a complaint, the request will not be processed until after the case is resolved. In addition, a license that has expired may not be part of a NCHU transfer, and any NCHU that is recorded as part of the operations plan of a license that terminates or is revoked ceases to exist upon termination or revocation.

~~(5) (4) An outfitter transferring NCHU to another~~ Each outfitter entering into a transfer of NCHU with one or more other outfitter outfitters must do so by completing a transfer request form prescribed by the board department. Prior to being processed by the department, a NCHU transfer request is not complete or valid for any purpose and may be cancelled by any licensee that is a party to it. Only NCHU that has been established in accordance with this rule may be transferred, and a transfer of established NCHU may not occur if the licensee holds any nonestablished NCHU.

~~(6) NCHU adjustments shall occur based on the most clients served during the five and a half years after the board's receipt of a valid form transferring NCHU.~~

~~(7) (5) The records of the board comprise the official records of NCHU and each purported transfer of NCHU is invalid and void that is not reflected in the board's records, unless and until the date that the proper and completed form is received by the board office.~~

(6) NCHU allocated to a deceased outfitter may be transferred only 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 the earlier of the date that the license terminates from nonrenewal, or the date that a successorship terminates, or, if no successor has been designated, the date that is one year following the death of the outfitter unless an extension is approved by the board based upon good cause appearing in a written request received by the board within one year. In cases where the outfitter dies and no successor is designated, someone authorized by the estate or the family of the outfitter must submit a NCHU transfer request form to the board within one year following the death of the outfitter. Authorization by the estate is shown by a certified copy of letters of appointment as a personal representative or by any other procedure allowed under Title 72, MCA, for the transfer of intangible personal property.

~~(8) When NCHU is transferred to a license applicant, the transfer is not valid and the time period for establishing the NCHU does not begin until the date the application is approved.~~

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

~~(10) Upon an adjustment of NCHU, all of the outfitter's nonestablished NCHU subject to the adjustment ceases to exist.~~

~~(11) When the board adjusts an outfitter's NCHU, the board will provide the outfitter notice and the right to a hearing in the manner provided in disciplinary matters.~~

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

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

REASON: It is reasonably necessary to amend this rule to align with and further implement legislative changes in HB 274 and also to clarify how NCHU is transferred in the event of the death of an outfitter.

24.171.2101 RENEWALS (1) The provisions of ARM 24.101.408 and 24.101.414 apply.

(2) License renewal applications for outfitters shall be made on forms provided by the ~~board~~ department and shall be accompanied by:

- (a) the required renewal fee;
- ~~(b) the annual "hunting client served" fee required under ARM 24.171.401;~~
- ~~(c) (b)~~ a copy of the licensee's valid and current first aid certification;
- ~~(d) (c)~~ a copy of the licensee's current insurance certificate with the licensee as the named insured;
- ~~(e) (d)~~ complete client report logs; and
- ~~(f) any amendments to an operations plan required by ARM 24.171.520.~~
- ~~(g) fishing and/or hunting statistical outfitter use level sheets, depending on the services provided by the outfitter in the preceding license year.~~

(3) An outfitter, ~~guide,~~ or ~~professional guide~~ must submit a completed renewal application with the required fee on or before the date set by ARM 24.101.413 of each license year.

(4) remains the same.

(5) License renewal applications for guides ~~and professional guides~~ shall be made on forms provided by the ~~board~~ department and shall be accompanied by the required fee.

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 striking professional guides from this rule, as this license type was eliminated in 2013 through HB 274. Additionally, the board is striking (2)(f) and relocating all provisions on record keeping to a single location in ARM 24.171.408.

24.171.2301 UNPROFESSIONAL CONDUCT AND MISCONDUCT (1) A violation of (1)~~(a) through (p)~~ or (3)~~(a) through (e)~~ by an outfitter, or (2)~~(a) through (d)~~ or (3)~~(a) through (e)~~ by a guide ~~or professional guide~~ 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. An outfitter shall:

(a) remains the same.

(b) not conduct any services or allow services to be conducted by a supervised guide ~~or professional guide~~ 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 services or allow services to be conducted by a supervised guide ~~or professional guide~~ to clients outside the boundaries of the outfitter's approved operations plan;
- (d) not endorse a guide ~~or professional guide~~ license until the outfitter has made reasonable inquiry and determined that the guide ~~or professional guide~~ is qualified for licensure;
- (e) through (h) remain the same.
- (i) set all contract terms and conditions with clients;
- (j) through (l) remain the same.
- (m) obtain and maintain a reasonable degree of supervision over ~~the guide or professional~~ each guide 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 or retain a guide ~~or professional guide~~ without first confirming that the guide ~~or professional guide~~ has current basic first aid certification;
- (o) and (p) remain the same.
- (q) not use a guide with an inactive license, ~~unless the proper fee is mailed within the time provided by rule; or and~~
- (r) ~~not fail to return any inactive guide license that is not activated during the license year~~ when advertising services, clearly designate the outfitter's registered business name or personal name and the outfitter's license number.
- (2) A guide ~~and professional guide~~ shall:
  - (a) not advertise ~~outfitting services~~ to the general public, but may advertise their services directly to outfitters;
  - (b) ~~not only~~ make agreements with clients concerning monetary consideration or services offered, or collect fees from clients, without the express consent of the supervising outfitter, and only as expressly provided in [NEW RULE I];
  - (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) ~~(d)~~ not act as a guide under a guide license, unless and until the guide and the outfitter have first signed and dated the guide license, ~~evidencing that the license is active; and~~
  - (f) ~~not act as a guide under a guide license, unless the proper fee is mailed within the time provided by rule.~~
- (3) through (3)(h) remain the same.
- (i) produce their current license at the request of law enforcement or a representative of the board;
- (j) ~~clearly designate who the responsible outfitter is in any advertisement of outfitting, guiding, or professional guiding services;~~
- (k) and (l) remain the same but are renumbered (j) and (k).
- (~~m~~) (l) not act beyond the scope of activities for which the individual is licensed;

~~(n) clearly designate the business name and personal name, address, telephone number, and license number of the outfitter, when advertising outfitter and guide services. In cases where a guide owns the outfitting business, the guide must identify the endorsing and supervising outfitter in any advertisement for the business;~~

(o) and (p) remain the same but are renumbered (m) and (n).

~~(q) (o)~~ not fail to respond to board inquiries and requests; ~~or~~

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

(q) not fail to 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, 37-47-341, MCA

REASON: The board is striking professional guides from this rule, as this license type was eliminated in 2013 through HB 274. The board is also amending this rule for clarity, simplicity, and better organization throughout.

It is reasonably necessary to amend several sections of this rule to clarify provisions regarding advertising. These changes align with amendments made via HB 274 that allow outfitters to engage booking agents and clarify that the services advertised must be the outfitter's services. Also, as provided in 37-47-404(3), MCA, a person may not use the services of a guide, and a guide may not offer services unless the services are obtained through an endorsing outfitter. Thus, guides may only advertise their guiding services directly to outfitters.

The board is amending (1)(q) and deleting (2)(f) regarding fees for emergency and provisional guides, as these are no longer valid guide types.

The board is amending (1)(r) regarding return of inactive guide licenses since only outfitters can obtain inactive license status.

The board is eliminating (2)(d) regarding outfitter-sponsored licenses to align with the 2011 ballot initiative I-161 that abolished outfitter-sponsored nonresident big game and deer combination licenses and replaced them with general nonresident big game licenses.

The board is amending (3)(i) to clarify the board's intent that licensees must produce their current licenses when requested by Montana Fish, Wildlife and Parks personnel who are considered law enforcement.

It is reasonably necessary to add (3)(q) to remind licensees that the board considers failure to comply with all requirements and standards in statute and rule as unacceptable unprofessional conduct, and not just those enumerated in this rule.

5. The proposed new rules provide as follows:

NEW RULE I BOOKING AGENTS AND ADVERTISING (1) Any person authorized by the outfitter may schedule trips, provide clients with information regarding refunds and services, receive client fees on behalf of the outfitter, secure a guide who is employed by or with whom the outfitter has an existing contractual

relationship, and take other steps to establish contracts for services, as long as these activities are at the direction of the outfitter and as long as the terms and conditions of the contracts are directly between the outfitter and the client.

(2) Outfitters may enter into an arrangement with a 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 advertising to outfitters using media or 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 proposing NEW RULE I to align with HB 274 amendments to 37-47-301, MCA. The bill clarified that licensed outfitters may contract with others to provide advertising, booking, and other services. This new rule will provide guidance regarding these services and further implement the legislation.

NEW RULE II OUTFITTER ASSISTANTS (1) For each outfitter 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 assistant in writing. The writing shall include each of the following characteristics:

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

(ii) an explanation for the emergency replacement of a licensed guide with the outfitter assistant;

(iii) the signature of the outfitter;

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

(v) the beginning and ending dates of the service period.

(b) The outfitter assistant shall keep a copy of the documentation at all times during the service period.

(c) Within 15 days of the first date the outfitter assistant serves any client for the outfitter under the particular emergency use, the outfitter shall send the documentation to the board's official e-mail address or facsimile number, or shall deposit it in the U.S. mail to the board's address, or shall personally deliver it to the board office.

(2) Before an outfitter assistant serves a client, the outfitter shall disclose to each client that the outfitter assistant is not a licensed guide or outfitter and shall also disclose whether the outfitter assistant has received first aid certification.

(3) Unless otherwise authorized under [NEW RULE I], regarding booking agents and advertising, an outfitter assistant may not:

(a) be designated by an outfitter to collect fees from clients;

- (b) make agreements with participants concerning monetary consideration of services provided; or
- (c) advertise outfitting services.
- (4) Except where an outfitter assistant's conduct is further limited by statute or rule, the standards of conduct set forth in ARM 24.171.2301 applicable to guides shall also be observed by the outfitter assistant.

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

IMP: 37-47-201, 37-47-301, 37-47-325, 37-47-405, MCA

REASON: It is reasonably necessary to adopt NEW RULE II to further implement 2013's HB 187 by specifying standards for outfitter's assistants and the documentation required to prove employment and retention of assistants.

NEW RULE III NONROUTINE APPLICATIONS (1) A nonroutine application means an application submitted to the board in which the applicant has one or more of the following:

- (a) past convictions or pending charges of state or federal laws relative to fish, wildlife, or parks, but only if those convictions:
  - (i) ever resulted in the loss of privileges to hunt or fish;
  - (ii) totaled two or more for which the applicant was sentenced no earlier than five years before the board received the application; or
  - (iii) total more than three regardless of when the applicant was sentenced;
- (b) a total of three or more currently pending charges or past convictions of misdemeanor crimes if the applicant was sentenced for the past convictions no earlier than five years before the board received the application;
- (c) a diagnosis or other information indicating physical or mental impairment by mental illness or chronic physical illness that may adversely affect the applicant's ability to provide services safely, but only if either the treatment for which is ongoing or the symptoms of which currently exist;
- (d) a pending charge of any felony crime or a past conviction of any felony crime for which the applicant was either sentenced no earlier than ten years before the date the board received the application or for which the sentence has not been fully satisfied and discharged;
- (e) traffic-related convictions if the applicant is deemed a habitual offender on or after the date the board first received the application; or
- (f) an outfitter or guide license in this or any other state that was ever suspended, revoked, surrendered, or subjected to restrictions or other sanctions of a similar gravity.

(2) The department may, but is not required to, submit any routine application for board review if the department finds inconsistencies, irregularities, or other matters of concern in the application or in the documentation related to the application.

(3) For the purposes of this rule, any reference to "pending charges" shall include, but not be limited to, deferred prosecutions that have not been dismissed as of the date that the application is first submitted to the board.

(4) Applications that are nonroutine for an outfitter license for the same reason that they were nonroutine as a guide license are, nonetheless, nonroutine for the outfitter license, which is a privilege to practice at a higher level of public trust.

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

IMP: 37-1-101, 37-1-131, 37-47-201, MCA

REASON: It is reasonably necessary to adopt this new rule to further implement 37-1-101, MCA, which requires the department to process routine licensure applications on behalf of the professional and occupational licensing boards. Nonroutine applications requiring board review and approval are generally defined in department rule at ARM 24.101.402. The board is proposing NEW RULE III to identify additional criteria determined by the board to characterize nonroutine applications which require the board's consideration for processing. In adopting this rule, the board seeks to facilitate timely licensing processes, while ensuring that licensing decisions are based on sound principles and the public is adequately protected.

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

24.171.402 EFFECT OF FEE FOR EXPANSION OF NET CLIENT HUNTER USE found at page 24-18516, Administrative Rules of Montana.

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

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

REASON: It is reasonably necessary to repeal this rule to align with and further implement legislative changes in HB 274.

24.171.503 OUTFITTER APPLICATION found at page 24-18547, Administrative Rules of Montana.

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

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

REASON: It is reasonably necessary to repeal this rule as the relevant provisions are being incorporated into ARM 24.171.501 elsewhere in this notice.

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) 841-2305, or e-mail to [dlibsout@mt.gov](mailto:dlibsout@mt.gov), and must be received no later than 5:00 p.m., November 7, 2014.

8. An electronic copy of this notice of public hearing is available at [www.outfitter.mt.gov](http://www.outfitter.mt.gov) (department and board's web site). 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 that 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) 841-2305; e-mailed to [dlibsout@mt.gov](mailto: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, apply and have been fulfilled. The primary bill sponsors were contacted on April 26, 2013 [Rep. Flynn/HB 187] by electronic mail, and on May 7, 2013 [Rep. Greef/HB274], by regular mail.

11. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.171.401, 24.171.407, 24.171.408, 24.171.412, 24.171.413, 24.171.501, 24.171.502, 24.171.504, 24.171.507, 24.171.520, 24.171.601, 24.171.602, 24.171.701, 24.171.2101, and 24.171.2301 will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the adoption of NEW RULE I, NEW RULE II, and NEW RULE III will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.171.402 and 24.171.503 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination(s) is available upon request to the Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; facsimile (406) 841-2305; or e-mail [dlibsout@mt.gov](mailto:dlibsout@mt.gov).

12. Tyler Moss, attorney, has been designated to preside over and conduct this hearing.

BOARD OF OUTFITTERS  
ROBIN CUNNINGHAM, CHAIRPERSON

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

/s/ PAM BUCY  
Pam Bucy, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State September 29, 2014