

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.171.502 outfitter)
qualifications)

TO: All Concerned Persons

1. On May 14, 2015, the Board of Outfitters (board) published MAR Notice No. 24-171-35 regarding the public hearing on the proposed amendment of the above-stated rule, at page 521 of the 2015 Montana Administrative Register, Issue No. 9.

2. It was subsequently discovered that an error had occurred and the amendments to the rule were not complete when the proposal notice was filed. The board then reissued the proposal notice and rescheduled the public hearing at page 624 of the 2015 Montana Administrative Register, Issue No. 10.

3. On June 25, 2015, a public hearing was held on the proposed amendment of the above-stated rule in Helena. Several comments were received by the July 2, 2015, deadline.

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

COMMENT 1: Several commenters generally approved or disapproved the rule changes, without specifying rationale for either position.

RESPONSE 1: The board appreciates all comments made during the rulemaking process.

COMMENT 2: Several commenters favored increasing the experience hours and limiting the available waivers as a means of developing a higher level of outfitter professionalism. The commenters stated there is no replacement for experience in the field and that the increased experience will translate into better prepared, more competent outfitters who can serve the public more safely and more professionally, benefiting the industry and the general public.

RESPONSE 2: The board agrees and notes that these commenters appear to agree with the board's rationale for the proposed amendments.

COMMENT 3: A few commenters supported the amendments and further proposed increasing the requirement to between 150 and 200 experience days with no waivers. One commenter asserted that, because outfitters are the ones who hire the guides that accompany the public in the field, the public needs more experienced,

mature outfitters with the right work ethic and service attitude to make decisions and operate outfitting businesses in Montana. The commenters indicated a significant increase to the experience requirement is needed.

RESPONSE 3: During the process of drafting and proposing these amendments, the board fully considered the reasonableness of increasing the minimum number of experience days to more than 120 and also eliminating waivers. After considering the opposition against the amendments, the board concluded that it is not necessary to require any more days of experience or to further limit the availability of waivers.

COMMENT 4: A few commenters supported the proposed amendments because they meet the policy, intent, and purpose of the board by providing regulations that create an improved degree of competence in the profession.

RESPONSE 4: See RESPONSE 2.

COMMENT 5: One supporter asserted that the increase of 20 days serving clients as a fishing guide is not onerous since it can be achieved during one season for the majority of fishing guides.

RESPONSE 5: The board notes that the changes not only increase the experience days, but also set a minimum number of years in the field. While the board does not fully agree with the conclusions drawn by this commenter, the board is amending the rule exactly as proposed.

COMMENT 6: One commenter supported the amendments because they essentially restore licensure qualifications to the level originally established when outfitters became licensed in 1988.

RESPONSE 6: See RESPONSE 2.

COMMENT 7: Several commenters opposed increasing the minimum required days of experience. The commenters asserted the increase will do little more than provide an unnecessary barrier to market entrance, protect only those already in the industry, and discourage new entrepreneurial talent from entering the profession. The commenters further asserted the change will reduce competition and increase costs of services to the public, ultimately harming the public by causing a negative effect on commerce and tourism in Montana.

RESPONSE 7: The board acknowledges that raising the standard will impact those seeking entry into the industry. However, the majority of the board members believe that the overall anticipated benefits to the industry and the public outweigh any potential negative consequence to individual license applicants.

COMMENT 8: Several commenters expressed concern that the proposed changes will make transferring an outfitting business more difficult, even within families.

RESPONSE 8: The board acknowledges that raising the standard for those seeking industry entry may result in a delayed ability to sell an outfitting business when the purchaser has not already acquired the necessary experience. However, the majority of the board members do not view this as a significant and direct impact on small businesses and concluded that the public benefits of raising the licensing standard will outweigh any potential negative impacts on transferability of an outfitting business.

COMMENT 9: A few commenters noted that eastern Montana lake and river fishing is much different than float and fly fishing, and asserted that a change appropriate for a problem perceived in outfitter qualifications in one part of Montana, may not be appropriate or helpful in other areas of the state. One commenter questioned how three years on whitewater would make a guide better qualified to be an outfitter in another area of the state.

RESPONSE 9: The board recognizes there are many fishing outfitting operations across the state, all with certain unique challenges and hazards due to the water course or body accessed, the means of accessing the water, the weather, terrain, wildlife, etc. Regardless of this diversity, there is at least one licensure qualification that applies to every Montana outfitting operation, and that is experience in the field. By increasing the minimum required field experience, the majority of the board expects to improve public safety and professional conduct, regardless of the particular circumstances of an outfitting operation.

COMMENT 10: A few commenters stated that the amendments will place a significant burden on those who work in the backcountry, because the seasons for pursuing game there are much shorter than other areas. Most backcountry guides have difficulty getting more than 30 days of experience per year.

RESPONSE 10: The board recognizes the amendment may impact backcountry operations disproportionately, but the majority of the board members believe that the overall anticipated benefits to the industry and the public outweigh any potential negative consequences to individual license applicants.

COMMENT 11: One commenter asserted that the increased experience will require those seeking to sell an outfitting business to continue operating and remain liable for the operation for more years until the purchaser can meet the new experience qualification for licensure.

RESPONSE 11: The board acknowledges that raising the standard for those seeking entry into the industry may result in a delayed ability to sell an outfitting business when the purchaser has not already acquired the necessary experience. However, the majority of the board members do not view this as a significant and direct impact on small businesses and believe the public benefits of raising the licensing standard will outweigh any potential negative impact on the transferability of an outfitting business.

COMMENT 12: Several commenters asserted that the board has not identified any particular need for the proposed amendments or stated how the amendments would meet a need or solve a particular problem. Commenters stated the board has provided no data showing the board receives more complaints regarding younger, less experienced outfitters than those with more experience, and likewise, no report of accidents where those outfitting lacked experience or judgment to be operating outfitting businesses. The commenters suggested the board conduct research to determine how to improve outfitting quality by identifying specific objectives and then analyzing the requirements to meet the objectives.

RESPONSE 12: Rather than attempting to address a specific or particularized problem, the majority of the board determined that increasing the minimum amount of required experience in the field will improve public safety and professional conduct.

COMMENT 13: Several commenters opined that no data exists to support the assertion that more experience as a guide will make the guide a better outfitter.

RESPONSE 13: At least one licensure qualification applies generally to every Montana outfitting operation, and that is experience in the field. The majority of the board believes that by increasing the minimum amount of required field experience, the board will license better prepared outfitters who will be more capable of protecting the public and more likely to conduct themselves professionally.

COMMENT 14: One commenter stated that waivers of experience are based on rigorous and specific experiences that exceed the experience of the actual days working in the field that are being waived.

RESPONSE 14: In the process of proposing the rule amendments, the elimination of waivers was briefly suggested and quickly rejected. However, the amendments increase experience days and limit the availability of waivers, which suggests the importance the board places on experience in the field.

COMMENT 15: A commenter pointed out that the licensure examination requires an applicant to have knowledge in many areas, none of which will be better served by an additional 20 days of experience.

RESPONSE 15: The licensure examination and field experience are two separate prerequisites to licensure as an outfitter in Montana. The board fails to see how subject areas tested on the examination are relevant to determining whether the required amount of experience should be increased.

COMMENT 16: A few commenters suggested that outfitters are allowed to use independent contractor guides who are not subject to any minimum number of experience days to serve clients without outfitter supervision. One commenter also suggested a higher risk (safety and compliance) may come with independent

contractors who are allowed to operate without direct outfitter supervision and without meeting minimal qualification requirements.

RESPONSE 16: The board notes that, regardless of whether hired as employees or contracted as independent contractors, guides are subject to the same supervision requirements. To the extent that the comment addresses guide qualifications and the supervision of guides, it falls outside the scope of the current rule notice.

COMMENT 17: Commenters suggested that continuing education would be an alternative to the current proposal, and that the Coast Guard and Fish Wildlife and Parks may have such training available regarding navigation and water safety, as well as fisheries biology. The suggestion was also made that the Fishing Outfitters Association of Montana (FOAM) and the Montana Outfitters and Guides Association (MOGA) could collaborate on sponsoring some of these types of classes for their members as well as for nonmember outfitters, and the board could encourage licensed outfitters and guides to voluntarily participate in such continuing education, which would enhance professionalism.

RESPONSE 17: The board does not believe these suggestions are acceptable alternatives to the proposed increase in required experience. The board appreciates the suggestions, but they fall outside the scope of this rule notice.

5. The board has amended ARM 24.171.502 exactly as proposed.

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 October 5, 2015