

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, 24.171.408)	PROPOSED AMENDMENT AND
outfitter records, 24.171.413)	REPEAL
watercraft identification, 24.171.502)	
outfitter qualifications, 24.171.505)	
fishing outfitter operations plan,)	
24.171.507 outfitter examination,)	
24.171.520 operations plans and)	
amendments, 24.171.2101 renewals,)	
24.171.2301 unprofessional conduct)	
and misconduct, and the repeal of)	
24.171.702 transfer of river-use days)	

TO: All Concerned Persons

1. On June 10, 2016, at 9:00 a.m., a public hearing will be held in room B-07, basement conference room, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Outfitters (board) no later than 5:00 p.m., on June 3, 2016, to advise us of the nature of the accommodation that you need. Please contact Steve Gallus, 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. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

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

(h) Fee for <u>each set of two</u> replacement or additional watercraft identification	5
<u>tags</u>	
(i) Fee for audit of river-use days	50
(j) remains the same, but is renumbered (i).	

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, MCA

REASON: The board determined it is reasonably necessary to amend this rule to address questions from board staff and licensees applying that replacement sets of watercraft identification tags consist of two tags and cost \$5. The amendment will also clarify that additional sets of watercraft identification tags will not be issued at the time replacement sets are issued.

The board is striking the fee for audit of river-use days to align with the board's repeal of ARM 24.171.702, the rule containing provisions on auditing river-use days. Because the board has neither processed an audit nor collected the audit fee in over two years, the board estimates there will be no effect on annual revenue for the elimination of this process and the accompanying fee.

24.171.408 OUTFITTER RECORDS (1) Outfitters shall maintain current, true, complete, and accurate records ~~at all times~~, submit the records to the board ~~with application to renew licenses as required by administrative rule~~, and make the records available at all times at the outfitter's main base camp or business office to enforcement or investigative personnel authorized or appointed by the board, upon subpoena or order of a court, or written request of the board or a state or federal agency for law enforcement purposes.

(2) and (3) remain the same.

(4) In general, ~~submitted~~ outfitter 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 written permission of the outfitter, subpoena or order of a court, or written request of a state or federal agency for law enforcement purposes. 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: 37-47-201, 37-47-301, MCA

REASON: The board is amending this rule to address concerns that licensees could be required to maintain records at all times even in the field or back country. The board determined it is reasonably necessary to amend (1) to clarify the board's intent that outfitter records be accurately maintained at the place of operation and provided as required in rule and in specific stated instances. The board concluded that these amendments will reflect a more reasonable method of record keeping that fits the practice of outfitting, while still ensuring that records are provided when needed.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.171.413 WATERCRAFT IDENTIFICATION (1) A person holding a valid outfitter or guide license who utilizes any type of watercraft while providing services shall prove evidence of licensure by displaying, at all times, a services are being provided, board-issued watercraft identification tags.

(2) The ~~tag~~ tags shall display the outfitter or guide license number for identification purposes. Licenses must add license numbers to the tags and maintain the tags in a readable fashion.

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

~~(4) The tag shall be effective for one calendar year.~~

~~(5) (4) The One tag shall be affixed to either each side of the watercraft at the bow, or at the oarlock, or stern of the watercraft and be of a size approved by the board so that if they may be easily seen from another watercraft or from shore.~~

~~(6) (5) The Each tag shall be affixed to the watercraft or on a removable plaque or in such a way that if the craft is sold or is not being used by the licensee while the licensee is providing services, the tag may be removed or concealed to prevent misidentification of the occupant(s) as licensees.~~

~~(7) Improper use of watercraft identification shall be considered misconduct under ARM 24.171.2301.~~

~~(8) (6) Licensees shall may be provided with one set of two watercraft identification tags at the time of application for licensure or renewal, at no charge, upon request. A fee will be assessed for any replacement 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 amending (1) to address licensee questions by clarifying that licensees need only ensure their watercraft tags are displayed while providing licensed services, and not necessarily at all other times.

It is reasonably necessary to amend this rule to revise the process for issuance and use of watercraft identification tags. While the purpose of these tags is not to validate licensure but to identify watercraft as commercial in the pursuit of fish or game, the decal number must correlate with the license number which must be in possession when providing services. To increase efficiencies and reduce board costs, the board is amending the rule to issue tags without a specific year and on which licensee will add their license numbers. This will allow the tags to be reused for several years as the board will no longer issue them annually.

The board is amending (5) and (6) to address confusion and clarify the board's intent that watercraft identification tags be affixed to each side of the watercraft. Although tags are currently issued in pairs at licensure or renewal for no additional charge, the board concluded these amendments are necessary to address licensee questions.

The board is striking (7) as redundant and unnecessarily confusing. Law enforcement will cite licensees who do not properly display watercraft identification and report such violations to the board. Failure to comply with the board's laws and rules is already included as unprofessional conduct under ARM 24.171.2301.

24.171.502 OUTFITTER QUALIFICATIONS (1) through (1)(b)(i) remain the same.

(ii) 100 days of verified experience ~~as a licensed outfitter~~ in another state guiding clients in pursuing the types of game and using the methods for which licensure is sought by the applicant, subject to approval by the board as a licensed outfitter, a licensed guide, or equivalent experience as determined by the board. All experience in this subsection is subject to board approval.

(2) 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 amending this rule to clarify that out-of-state outfitter, guide, or equivalent experience is acceptable for outfitter applicants. The board concluded that this change will facilitate licensure while still ensuring qualified licensed outfitters, since administration of outfitter licensure varies from state to state, but the practice remains essentially the same.

24.171.505 FISHING OUTFITTER OPERATIONS PLAN (1) A fishing outfitter may include in a proposed or an existing operations plan, a general reference to "all surface waters governed by the Montana Stream Access Law, 23-2-302, MCA and accessible by public access points not requiring a permit issued by a state or federal agency(ies)". Alternatively, the outfitter may include in a proposed or existing operations plan specific surface waters governed by the Montana Stream Access Law and accessible by public access points not requiring a permit issued by a state or federal agency, by including detailed descriptions of those specific waters as provided in ~~37-47-304(2)(h) and (i) (c)(ii)~~, MCA.

(2) Surface waters accessible only by private land or access points requiring a permit issued by a state or federal agency(ies) may only be included in a fishing outfitter's proposed or existing operations plan by describing the waters in detail as provided in ~~37-47-304(2)(h) and (i) (c)(ii)~~, MCA. A copy of the Description and submission of private land access permission and permit(s) issued by the appropriate state or federal agency(ies) must be submitted to the board office with the outfitter's proposed operations plan or any amendment to an existing operations plan shall be governed by ARM 24.171.520.

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

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

REASON: In 2013, House Bill 274 revised several statutes regarding outfitter and guide licensure, including 37-47-304, MCA. The board is amending this rule now to reflect the correct statutory section, as the statute was renumbered by the 2013 bill.

The board is further amending (2) to align with amendments proposed to ARM 24.171.520(1)(b) in this notice. Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.171.507 OUTFITTER EXAMINATION (1) ~~Application to take Applicants for the outfitter examination shall be by~~ submit a completed license application accompanied by the required fee no later than 30 days prior to the examination date. (2) through (5) remain the same.

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-47-201, 37-47-305, MCA

REASON: The board is updating this rule to facilitate current technology and utilize the department's network of service centers that can now administer exams inside of the 30-day requirement.

24.171.520 OPERATIONS PLANS AND AMENDMENTS (1) An operations plan is prepared by the outfitter and submitted to the board and consists of the following:

(a) remains the same.

(b) for fishing outfitters, a ~~written description~~ summarization 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; and

(iii) an affidavit by the outfitter to the board that the outfitter is in possession of any public land permits or licenses properly executed for federal or state public property where the outfitter is authorized to operate;

(c) for hunting outfitters a ~~written description~~ summarization of the locations and 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 public land agency or owner of private property;

(ii) through (d) remain the same.

~~(e) copies of leases and permits for~~ an affidavit by the outfitter to the board that the outfitter possesses public land permits or licenses properly executed for federal or state public property where the outfitter is authorized to operate.

(2) An outfitter may amend the operations plan ~~by submitting the on record~~ by adding or subtracting any additional or replacement information to the board, and submitting the updated plan to the board, except that when adding a service identified in (5), 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~~ all lands information required as part of the outfitter's operations plan on file with the board is current and accurate.

- (4) Whenever the outfitter gains permission to use additional private or public property, the outfitter shall update the operations plan the earlier of:
(a) through (5) remain the same.

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-47-201, 37-47-304, MCA

REASON: The board is amending this rule to require that outfitters affirm and report land use information to the board, and maintain records in their place of business, without submitting actual copies of land use agreements to the board. The amendments will reduce administrative responsibilities and improve efficiencies by allowing the department to utilize standardized forms and processes in fulfillment of 37-1-104, MCA.

Currently, outfitters must submit a written description on individual forms for each property in their operations plans. The board is amending (1)(b) and (c) to simplify the process by requiring outfitters to submit summaries of all lands including legal descriptions.

The board is amending (2) to simplify and streamline the process for amending outfitter operations plans. The board determined that having outfitters amend the plans and then submit the updated plans to the board will help ensure the board has the most accurate, up-to-date plans on record.

Outfitters have been required for many years to report and clarify land use, whether public or private. The board is now amending (3) and (4) to align with these established standards and processes.

24.171.2101 RENEWALS (1) through (4) remain the same.

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

(a) the required renewal fee; and

(b) a copy of the licensee's valid and current first aid certification.

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 amending this rule to prevent unnecessary costs and time during the audit process. The board concluded that by directing licensed guides to submit first aid certification documentation at renewal time, staff will have necessary documents on hand, as opposed to the current process where proof is requested via U.S. mail within a time specified. The amendments will prevent numerous board-generated and costly complaints for licensees who fail to respond to department communications, but who do in fact hold valid and current first aid certification.

Implementation citations are being amended to delete a reference to a repealed statute.

24.171.2301 UNPROFESSIONAL CONDUCT AND MISCONDUCT

(1) remains the same.

- (a) not violate any law, rule, or policy of the Department of Fish, Wildlife, and Parks concerning the certification of nonresidents for procuring hunting licenses;
- (b) through (j) remain the same.
- (k) maintain current, true, complete, and accurate records at all times;
- (l) make all client records available at the outfitter's main base camp or business office to enforcement or investigative personnel authorized or appointed by the board upon subpoena or order of a court or written request of the board or a state or federal agency for law enforcement purposes;
- (m) through (3) remain the same.

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 amending this rule to provide consistency and align with proposed amendments to ARM 24.171.408 and 24.171.520. These amendments clarify that failing to comply with the revised requirements is considered unprofessional conduct for licensees.

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

24.171.702 TRANSFER OF RIVER-USE DAYS found at ARM page 24-18580

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

IMP: 37-47-201, 37-47-310, MCA

REASON: The board determined it is reasonably necessary to repeal this rule because the authority governing river-use days lies with another Montana state agency and not with the board. This rule refers to a regulatory function of the restricted use permitted rivers that are regulated by the Montana Department of Fish, Wildlife and Parks and governed by the Montana Fish and Wildlife Commission.

5. 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, and must be received no later than 5:00 p.m., June 17, 2016.

6. An electronic copy of this notice of public hearing is available at 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.

7. 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; or made by completing a request form at any rules hearing held by the agency.

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

9. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.171.401, 24.171.408, 24.171.413, 24.171.502, 24.171.505, 24.171.507, 24.171.520, 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 repeal of ARM 24.171.702 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations are available upon request 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.

10. Steve Gallus, Executive Officer, 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 May 9, 2016