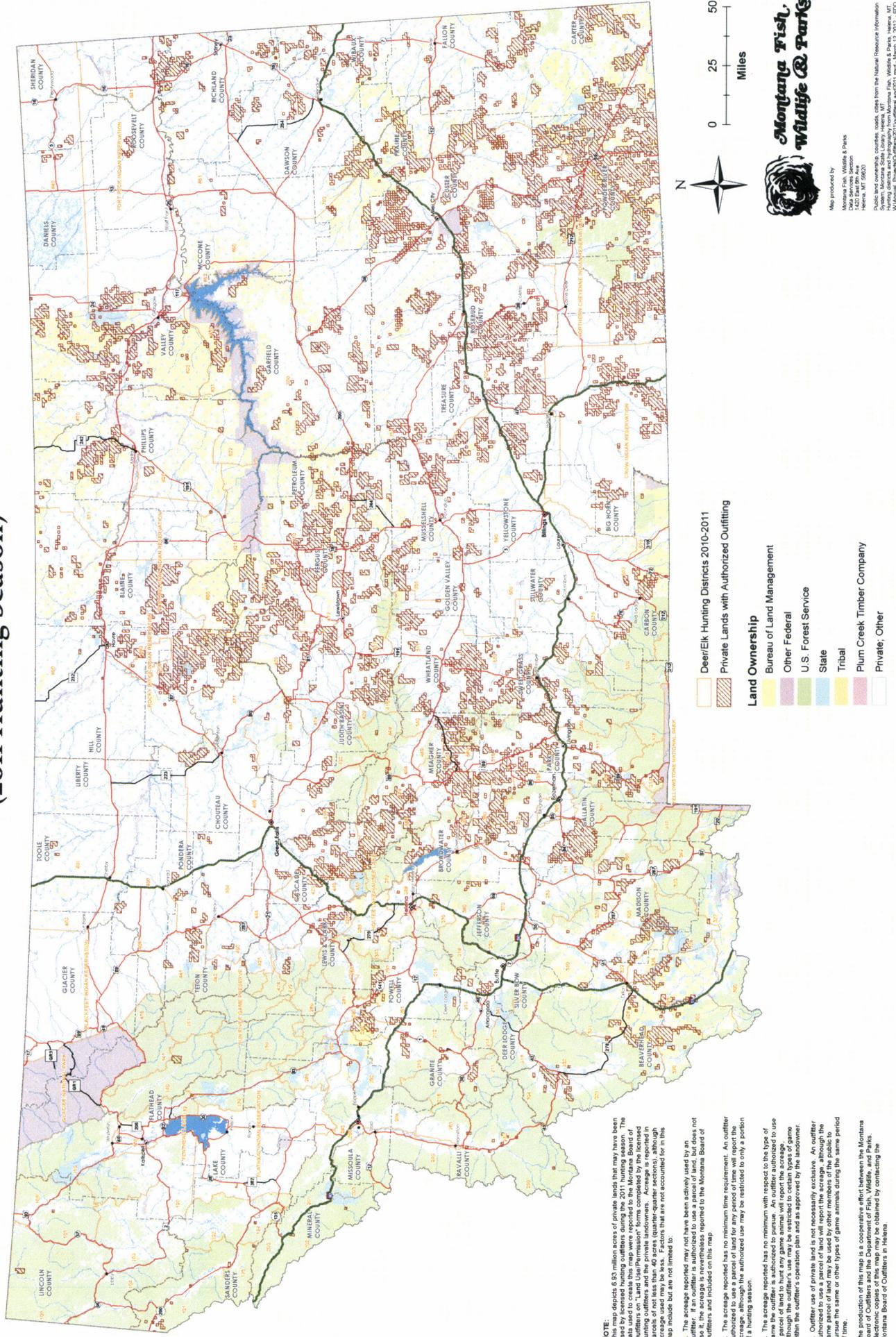


Exhibit 3
2/20/13
HB 511

Private Lands Where Landowners Authorize Licensed Hunting Outfitters to Operate (2011 Hunting Season)



NOTE: This map depicts 6.53 million acres of private lands that may have been authorized for use by licensed hunting outfitters. The data used to create this map were reported to the Montana Board of Outfitters on "Land Use/Permission" forms completed by the licensed hunting outfitters and the private landowners. Acreage is reported in acres and may be less than the actual acreage of the land. Acreage used may be less. Factors that are not accounted for in this map include but are not limited to:

1. The acreage reported may not have been actively used by an outfitter. If an outfitter is authorized to use a parcel of land, but does not use it, the acreage is nevertheless reported to the Montana Board of Outfitters and included on this map.
2. The acreage reported has no minimum time requirement. An outfitter may report a parcel of land for any period of time will report the acreage although the authorized use may be restricted to only a portion of a hunting season.
3. The acreage reported has no minimum with respect to the type of game the outfitter is authorized to pursue. An outfitter authorized to use a parcel of land to hunt any game animal will report the acreage. Although the outfitter's use may be restricted to certain types of game animals, the acreage reported is for the entire parcel of land. The acreage reported is for the entire parcel of land and may be used by other members of the public to pursue the same or other types of game animals during the same period of time.
4. Outfitter use of private land is not necessarily exclusive. An outfitter may report a parcel of land for use by other members of the public to pursue the same or other types of game animals during the same period of time.

The production of this map is a cooperative effort between the Montana Board of Outfitters and the Department of Fish, Wildlife, and Parks. The data used to create this map were obtained by contacting the Montana Board of Outfitters in Helena.

Montana Fish, Wildlife & Parks

Map produced by:
Wildlife & Parks
Data Services Section
1400 East 9th Ave.
Helena, MT 59617
Phone: 406/444-2000
System: Montana State Library, Helena, MT
Map Date: 12/20/12
Map Title: Private Lands with Authorized Outfitting
Map Scale: 1:500,000
Map Projection: NAD 83 UTM Zone 13N
Map Date: 12/20/12

NOTE:

This map depicts 6.93 million acres of private lands that may have been used by licensed hunting outfitters during the 2011 hunting season. The data used to create this map were reported to the Montana Board of Outfitters on "Land Use/Permission" forms completed by the licensed hunting outfitters and the private landowners. Acreage is reported in parcels of not less than 40 acres (quarter-quarter sections), although acreage used may be less. Factors that are not accounted for in this map include but are not limited to:

1. The acreage reported may not have been actively used by an outfitter. If an outfitter is authorized to use a parcel of land, but does not use it, the acreage is nevertheless reported to the Montana Board of Outfitters and included on this map.
2. The acreage reported has no minimum time requirement. An outfitter authorized to use a parcel of land for any period of time will report the acreage, although the authorized use may be restricted to only a portion of a hunting season.
3. The acreage reported has no minimum with respect to the type of game the outfitter is authorized to pursue. An outfitter authorized to use a parcel of land to hunt any game animal will report the acreage, although the outfitter's use may be restricted to certain types of game within the outfitter's operation plan and as approved by the landowner.
4. Outfitter use of private land is not necessarily exclusive. An outfitter authorized to use a parcel of land will report the acreage, although the same parcel of land may be used by other members of the public to pursue the same or other types of game animals during the same period of time.

The production of this map is a cooperative effort between the Montana Board of Outfitters and the Department of Fish, Wildlife, and Parks. Electronic copies of this map may be obtained by contacting the Montana Board of Outfitters in Helena.

Report for Montana Department
of Fish, Wildlife and Parks

EXECUTIVE SUMMARY

BREWER PROPERTY ACQUISITION
SOCIAL AND ECONOMIC IMPACT ASSESSMENT

John Duffield
June 1989

MAJOR FINDINGS

- No unfavorable changes in taxable valuation or tax revenues to local county governments
- Annual expenditures resulting from DFWP plan estimated at \$223,000 versus \$40,000 for no purchase alternative
- Total annual economic impact on the state of Montana is \$527,500 for the DFWP plan and \$99,000 for the no purchase alternative
- Present value of net social benefits associated with the DFWP plan are estimated at \$2.3 to \$3.2 million compared to the DFWP cost of \$1.2 million
- Proposed purchase by DFWP appears to be in the public interest

ACKNOWLEDGEMENTS

Many people contributed time and energy to this study. I am especially grateful to the individuals most directly impacted by this project, including the Brewer family, adjacent landowners, outfitters and local merchants, for sharing their views with me. A number of Montana Department of Fish, Wildlife and Parks personnel also contributed materially to this project, including Rob Brooks, Candy Post, Greg Risdahl, Neal Martin and Gary Hammond. Bruce Bugbee and Jan Konigsberg provided useful background information on conservation easements. Michael Reilly and Terry Anderson at Montana State University kindly provided copies of studies concerning outfitting and fee hunting. John Widdoss provided additional interpretation of his property appraisal. None of these individuals is in any way responsible for the interpretation and analysis made here.

EXECUTIVE SUMMARY

The Montana Department of Fish, Wildlife and Parks (DFWP) has proposed to purchase the 34,342 acre Brewer Ranch near Broadus for purposes of protecting and enhancing wildlife habitat. DFWP intends to place a conservation easement on this property to ensure protection of the sagebrush-grassland habitat and to provide open access to hunters. The easement encumbered property will be traded back into private ownership for conservation easements on adjoining property. The likely final project size will be on the order of 90,000 acres. This report provides a social and economic impact assessment of the purchase as required by HB 720 (1989 Montana State Legislature).

On financial grounds and from the viewpoint of DFWP, the cost of the proposed Brewer property purchase is around \$1.2 million. There are expected to be no unfavorable changes in taxable valuation or tax revenue to local county governments. This is because agricultural land in Montana is taxed on a production basis. Unless the state legislature changes the tax law for agricultural land to a market value basis, a decline in market value due to a conservation easement will not be reflected in assessed valuation. During the interim period of DFWP ownership, the Montana code (sec.87 -1-603) is unambiguous as to DFWP's obligation to make payments to counties in lieu of taxes.

The likely alternative to the DFWP plan is sale of the Brewer ranch on the open market to a private party. It is conceivable that a new owner-operator of the Brewer property would purchase haying equipment subject to county tax. However, this possibility holds equally for an owner-operator who gains control of the property through an exchange for conservation easements. The dominant use of the ranch will continue to be as a livestock operation; this use is unchanged across management alternatives.

Except for the open access provision, all of the key terms in the conservation easement are oriented to protect habitat: no sodbusting, limit sagebrush control, no commercial development, institution of a rest rotation grazing system and range monitoring. With

regard to habitat protection, the difference between the DFWP plan and the no purchase alternative (except for rest rotation) is one of degree. The easement protects the habitat with virtual certainty for perpetuity. The alternative of no purchase entails a possibility of habitat degradation: sod-busting, sagebrush control, and possibly overgrazing. The likelihood and extent of this degradation is difficult to quantify. A major clear difference in the two alternatives with regard to habitat protection has to do with the rest-rotation system. It appears that this should be regarded as a promising experiment as far as presently quantifiable differences for this specific habitat and species mix.

There are no obvious direct use changes associated with preservation of the wildlife habitat per se, though the implications for indirect benefits are significant, as developed below. The main immediate difference between the DFWP plan and the no purchase alternative has to do with the management of hunting on the land. Following the Widdoss appraisal of the highest and best use of the land, it is assumed that "no purchase" by DFWP will lead to fee hunting on the property. This seems reasonable since land currently leased for hunting adjoins the Brewer property.

Annual hunter expenditures associated with the DFWP plan amount to \$223,000 compared to \$40,000 for the no purchase alternative (Table A). The majority of these expenditures for both alternatives are by nonresidents, amounting to \$211,000 per year and \$39,600 per year respectively. The total economic impact on the state of Montana is \$527,500 for the DFWP plan and \$99,000 under the no purchase alternative. The significantly higher expenditures (and associated economic impacts) for the DFWP plan are somewhat surprising and are explained by two factors. The first is that current use on the Brewer property, which appears to be typical of block management in Region 7, is at a fairly high hunter density of 3.78 hunters per square mile over the big game season.

TABLE A

Economic Impact of Hunter Expenditures
Under Management Alternatives for Brewer Property
(1989 dollars)

	DFWP Plan	No Purchase Alternative
Total hunting expenditure on Brewer's 34,342 acres	87,196	15,743
Total hunting expenditure on final easement area of 88,000 acres	223,000	40,000
Nonresident expenditure on 88,000 acre project	211,000	39,600
Total economic impact on state of Montana	527,500	99,000

Note: assumes multiplier of 2.5 used by Taylor and Reilly (1986).

This is almost four times as high as the historic average density (deer and antelope hunters combined) for Region 7 (Table B). By contrast, guided hunting (particularly for exceptional trophy animals) is very land intensive; the largest outfitter in the Broadus area averages .128 guided hunters per square mile. This is about one eighth the regional average and about 25 times as low a density as on block management units. A total of 203 hunters used the Brewer property under the 1988 block management program. At a guided hunter density of .15, this 53 square mile ranch would support 8 guided hunters. In short, the expenditure difference in part reflects the very differing number of hunters under a hunting lease arrangement compared to block management.

The second reason expenditures are surprisingly high for block management is the unexpectedly high share of nonresidents. The historic Region 7 average is for about 20 percent nonresident hunters for both deer and antelope. Permission slip records for Region 7 block management indicate that nonresidents make up 68 percent of total hunters, or over three times the regional average. It appears that nonresident use is concentrated on block management because of information availability and assured access. Unguided nonresident expenditures per hunting trip (averaging about \$598 for the property) are about ten times higher than resident expenditures (\$72) per trip. Accordingly the nonresident hunter share is an important factor in showing block management related hunting expenditures being much higher than a similar sized area under lease hunting. It may be noted that average expenditure per guided hunter (including landowner exceptions at a ratio of one for every guided hunter) for the property are \$1968 per trip.

The influence of both hunter density and relative expenditures per hunter are summarized in Table B. Fee hunting in the Broadus area with low hunter density but high expenditure per hunter generates about \$295 in hunter expenditure per square mile

TABLE B

Region 7 Deer and Antelope Hunting - Montana
 Relative Hunter Density and Expenditures
 Block Management versus Fee Hunting

	hunters per sq. mile	sq. mile per hunter	expenditure per hunter (dollars)	expenditure per sq. mile (dollars)
Fee hunting	.15	6.7	1968	295
Block management	3.51	.28	430	1509
Region 7 Average	.98	1.02	185	181

Notes: Fee hunter density based on outfitters in Broadus area. Block management based on average for 11 landowners in Broadus area. Regional average for hunter density is ten year historical average. Expenditure data derived from Brooks (1988) and Loomis (1988) and is updated to 1989 price levels. Fee hunting expenditure is per guided hunter and includes spending by one landowner exception for every two guided hunters. All expenditures assume one trip per hunter. Expenditure for Region 7 average is based on 73 percent deer hunters and 27 percent antelope hunters and 17.7 percent of deer hunters being nonresidents and 25.3 percent of antelope hunters being nonresidents.

leased. Block management in the Broadus area has lower expenditure per hunter, but supports many more hunters and generates \$1509 in hunter expenditure per square mile. The regional average is for intermediate hunter densities, but low expenditure per hunter (because only about 20 percent are nonresident hunters) and hunter expenditures per square mile of \$181. In the Broadus area, both fee hunting and block management are therefore more "productive" than the regional average as far as expenditure generated per square mile.

Net social benefits associated with the project are primarily in two categories: indirect values for habitat and wildlife preservation and direct use values. Indirect values refer to the desire of many individuals to protect valuable resources for their children, future generations, possibly their own future use, or just for the satisfaction that something valued is being protected. Indirect values associated with wildlife habitat preservation on the Brewer property are difficult to quantify but may lie in the range of \$750,000 to \$1.6 million (Table C). The lower end of the range is supported by the fact that The Nature Conservancy (TNC) showed considerable interest in purchasing the site to protect wildlife values. Since TNC funds all such purchases through voluntary donations, this is market evidence of indirect values associated with wildlife and wildlife habitat. The upper end of the estimate is based on economic survey studies that tend to show indirect values for recreational sites that are at least equivalent to the direct recreational use values. Such site-specific studies are the appropriate method for the problem of valuing indirect uses, but were beyond the scope of this particular project.

The present value of net social benefits associated with hunting under the DFWP plan is \$1.6 million (Table C). These values are based on detailed economic studies of Montana hunters using methodologies approved by the U.S. Water Resources Council for recreation valuation. The present value of net social benefits for the purchase alternative is \$419,000, including benefits to guided hunters and net income to landowners and outfitters. The net value used for guided hunts was adjusted upward by 30 percent (compared to the values used for the DFWP plan) to reflect higher success ratios, strong

Table C
Summary of Annual and Present Net Values
Net Social Benefits Associated with
Management Alternatives on Total 88,000 Acre Project
(1989 dollars)

	DFWP Plan	No Purchase Alternative
A. Net Social Benefits- Annual		
Wildlife habitat protection	49,000 to 103,000	none
Hunting use	103,000	27,000
	-----	-----
Total	152,000 to 206,000	27,000
B. Net Social Benefits - Present Value		
Wildlife habitat Protection	750,000 to 1,588,000	none
Hunting use	1,588,000	419,000
	-----	-----
Total	2,338,000 to 3,176,000	419,000

Notes: Present value derived based on the annual benefits into perpetuity and with a capitalization rate of .065 based on Widdoss (1988). Considerable uncertainty is associated with the wildlife habitat protection values, as indicated by the range of values.

preferences for hunting, and typically higher income associated with this group of hunters.

Taken together, the value of wildlife habitat protection and open access hunting suggest total net social benefits in the \$2.3 to \$3.2 million range (Table C). Since the cost to DFWP is around \$1.2 million, these estimates indicate a favorable benefit/cost ratio for the proposed purchase. Given that there are negligible negative impacts on the local community, this project appears to be in the public interest.

From a distributive standpoint, it was found that the major beneficiaries of the proposed project are likely to be nonresident hunters. This may be viewed as an equitable arrangement in that most of the funds in the DFWP habitat acquisition budget come from increased nonresident license fees. Of the total approximately 6000 hunters using block management in this region in 1988, about 68 percent were nonresidents.

Much of the controversy related to the Brewer property acquisition seemed to have little to do with the kind of factual issues summarized above. Many individuals seemed to base their views of the issue on political principles or views of what is right. One principle often expressed was that individuals (including Bud Brewer) have "the right to sell to whoever they want". The opposing principle was that "the government shouldn't be buying up private land". There is little an economist can contribute to a discussion on this level, as the issues are more in the judicial or ethical realm.

The considerable controversy concerning the Brewer property also seems to reflect public concern with a more tractable but still complex general problem - that of managing hunting opportunities in Eastern Montana. Many seem to view the situation as one of inevitable conflict between fee hunting and open access. However, from the standpoint of economic theory, it appears that block management and fee hunting may be complementary approaches. The implication of this perspective for the allocation of hunting opportunities in Region 7 can be briefly outlined.

A fundamental economic problem arises when game is publicly owned (and managed) while land is private. This disparity in property rights leads to a situation where landowners are not compensated for costs they bear related to policing trespass, property damage and the general costs of dealing with hunters. When hunting pressure is very high, as it has occasionally been in Region 7 as a whole, the costs to the landowner may outweigh any benefits such as reduced game damage or the satisfaction of positive and long-standing landowner sportsmen relationships. Additionally, the landowner has no financial incentive to improve or protect wildlife habitat.

Both block management and fee hunting compensate the landowner. They differ in that block management typically compensates the landowner through a personal services contract for managing the hunters (policing trespass and giving permission and information). The hunting lease generally places responsibility for dealing with hunters on the outfitter, and more or less removes the landowner from contact with sportsmen. Additionally, the compensation under lease hunting is essentially for the right of access. However, the biggest difference between the two systems probably has to do with the hunting experience. Guided hunters have a higher probability of bagging trophy animals, are catered to in the field, experience much lower congestion, and are in an arms-length market relationship with the land owner. From the standpoint of economic theory, what is being observed is product differentiation, with block management and fee hunting serving somewhat different clients. It appears that more or less separate markets for at least two distinctly different types of hunts have emerged. If this is true, it is likely that the total social benefits associated with hunting in Region 7 would be maximized by a mix of the two management approaches.

This perspective raises the interesting allocative question of the optimal share of Region 7 land that should be in fee hunting versus block management. (Posing the question in this way is of course a simplification in that a third type of hunting is going on as well and that is the traditional situation where individuals hunt on private land with

permission of the owner and often in a relatively uncongested setting. It also implies that currently closed land and publicly available lands are assumed to be a 'fixed constraint to the problem.) Although it is beyond the scope of this study to investigate this problem in detail, one can look at the statistics for the Brewer property to indicate what is happening at the margin. It appears that the demand for block management is so high that the expenditure and associated net social benefits far outweigh those for fee hunting on a typical property. This implies that it is socially beneficial to expand the block management program.

It is likely that the total demand for block management type hunting in Region 7 is more or less stable, being dominated by the spatial location of population centers vis-a-vis SE Montana and by the economics of travel and hunter participation rates. Accordingly, if more lands were included in the program, hunter densities would drop. This would also tend to raise the overall quality of the experience and perhaps tend to disperse nonresidents more broadly and entice greater resident hunter participation. Since hunter density and nonresident share are the key factors that effect the economic comparison of block management and fee hunting, eventually a breakeven point would be reached where the social returns to each were equal. At this point an approximately optimal allocation would hold. For example, with the average hunter expenditure levels used in this report, suppose that the nonresident share of hunters using block management declined from 68 percent to the regional average of around 20 percent. At this nonresident share, hunter expenditures are equal per square mile (or for a given ranch) if use density on block management drops to 1.6 hunter per square mile. It is considerably beyond the scope of this report to identify the amount of block management land needed for this situation to occur.

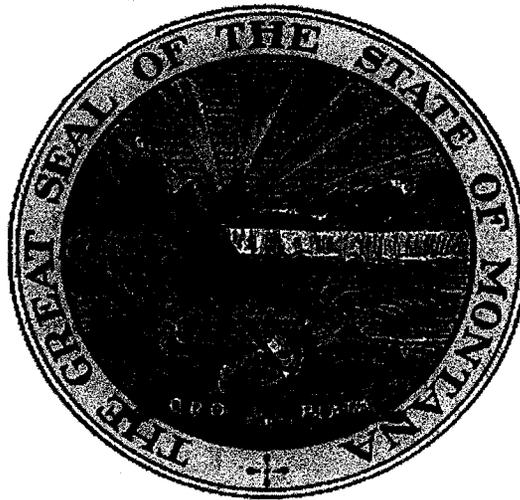
The points noted in this executive summary are developed in greater detail in the main report. A table of contents for the latter is provided in Appendix A.

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State of Montana
Department of Labor and Industry
Business Standards Division

MONTANA BOARD OF OUTFITTERS
STATUTES AND RULES



ISSUED BY:

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UPDATED JANUARY 2012

DEPARTMENT OF LABOR AND INDUSTRY

STATUTES

MONTANA CODE ANNOTATED

2-15-1701. Department of labor and industry -- head. (1) There is a department of labor and industry. As prescribed in Article XII, section 2, of the Montana constitution, the department head is the commissioner of labor and industry.

(2) The commissioner must be appointed and serve as provided in 2-15-111.

(3) The commissioner must receive an annual salary in an amount equal to other department directors.

(4) Before entering on the duties of the office, the commissioner shall take and subscribe to the oath of office prescribed by the Montana constitution.

History: (1)En. 82A-1001 by Sec. 1, Ch. 272, L. 1971; Sec. 82A-1001, R.C.M. 1947; (2) thru (4)Ap. p. Sec. 2, Ch. 177, L. 1951; Sec. 41-1602, R.C.M. 1947; Ap. p. Sec. 3, Ch. 177, L. 1951; amd. Sec. 1, Ch. 27, L. 1957; amd. Sec. 2, Ch. 225, L. 1963; amd. Sec. 20, Ch. 177, L. 1965; amd. Sec. 2, Ch. 237, L. 1967; amd. Sec. 19, Ch. 100, L. 1973; amd. Sec. 6, Ch. 343, L. 1977; Sec. 41-1603, R.C.M. 1947; R.C.M. 1947, 41-1602, 41-1603, 82A-1001(part); amd. Sec. 20, Ch. 184, L. 1979; amd. Sec. 1, Ch. 116, L. 1981; amd. Sec. 85, Ch. 61, L. 2007.

2-15-1773. Board of outfitters. (1) There is a board of outfitters.

(2) The board consists of the following seven members to be appointed by the governor:

(a) one big game hunting outfitter;

(b) one fishing outfitter;

(c) two outfitters who are engaged in the fishing and hunting outfitting business;

(d) two sportspersons; and

(e) one member of the general public.

(3) A favorable vote of at least a majority of all members of the board is required to adopt any resolution, motion, or other decision.

(4) A vacancy on the board must be filled in the same manner as the original appointment.

(5) The members shall serve staggered 3-year terms and take office on the day they are appointed.

(6) The board is allocated to the department of labor and industry for administrative purposes only as prescribed in 2-15-121.

(7) Each member of the board is entitled to receive compensation and travel expenses as provided for in 37-1-133.

History: En. 82A-2005 by Sec. 57, Ch. 511, L. 1973; amd. Sec. 1, Ch. 63, L. 1974; R.C.M. 1947, 82A-2005; amd. Sec. 1, Ch. 545, L. 1981; amd. Sec. 3, Ch. 192, L. 1983; amd. Sec. 1, Ch. 528, L. 1987; Sec. 2-15-3403, MCA 1985; redes. 2-15-1883 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 1, Ch. 501, L. 1989; amd. Sec. 1, Ch. 543, L. 1999; amd. Sec. 17, Ch. 483, L. 2001; Sec. 2-15-1883, MCA 1999; redes. 2-15-1773 by Sec. 221(2), Ch. 483, L. 2001; amd. Sec. 1, Ch. 328, L. 2011.

TITLE 37 PROFESSIONS AND OCCUPATIONS

CHAPTER 1 GENERAL PROVISIONS

Part 1 -- Duties and Authority of Department, Director, and Boards

37-1-101. Duties of department.

37-1-102. Renumbered 37-1-121.

- 37-1-103. Renumbered 37-1-131.
- 37-1-104. Standardized forms.
- 37-1-105. Reporting disciplinary actions against licensees.
- 37-1-106. Biennial report.
- 37-1-107. Joint meetings -- department duties.
- 37-1-108 through 37-1-120 reserved.
- 37-1-121. Duties of commissioner.
- 37-1-122 through 37-1-129 reserved.
- 37-1-130. Definitions.
- 37-1-131. Duties of boards -- quorum required.
- 37-1-132. Nominees for appointment to licensing and regulatory boards.
- 37-1-133. Board members' compensation and expenses.
- 37-1-134. Fees commensurate with costs.
- 37-1-135. Licensing investigation and review -- record access.
- 37-1-136. Disciplinary authority of boards -- injunctions.
- 37-1-137. Grounds for disciplinary action as grounds for license denial -- conditions to new licenses.
- 37-1-138. Protection of professional licenses for activated military reservists -- rulemaking authority -- definitions.
- 37-1-139 and 37-1-140 reserved.
- 37-1-141. License renewal -- lapse -- expiration -- termination.
- 37-1-142 (Temporary) Review of licensing boards -- termination

Part 2 -- Licensure of Criminal Offenders

- 37-1-201. Purpose.
- 37-1-202. Intent and policy.
- 37-1-203. Conviction not a sole basis for denial.
- 37-1-204. Statement of reasons for denial.
- 37-1-205. Licensure on completion of supervision.

Part 3 -- Uniform Professional Licensing and Regulation Procedures

- 37-1-301. Purpose.
- 37-1-302. Definitions.
- 37-1-303. Scope.
- 37-1-304. Licensure of out-of-state applicants -- reciprocity.
- 37-1-305. Temporary practice permits.
- 37-1-306. Continuing education.
- 37-1-307. Board authority.
- 37-1-308. Unprofessional conduct -- complaint -- investigation -- immunity -- exceptions.
- 37-1-309. Notice -- request for hearing.
- 37-1-310. Hearing -- adjudicative procedures.
- 37-1-311. Findings of fact -- order -- report.
- 37-1-312. Sanctions -- stay -- costs -- stipulations.
- 37-1-313. Appeal.
- 37-1-314. Reinstatement.
- 37-1-315. Enforcement of fine.
- 37-1-316. Unprofessional conduct.

- 37-1-317. Practice without license -- investigation of complaint -- injunction -- penalties.
- 37-1-318. Violation of injunction -- penalty.
- 37-1-319. Rules.
- 37-1-320. Mental intent -- unprofessional conduct.
- 37-1-321 through 37-1-330 reserved.
- 37-1-331. Correctional health care review team.

Part 1
Duties and Authority of Department, Director, and Boards

37-1-101. Duties of department. In addition to the provisions of 2-15-121, the department shall:

- (1) establish and provide all the administrative, legal, and clerical services needed by the boards within the department, including corresponding, receiving and processing routine applications for licenses as defined by a board, issuing and renewing routine licenses as defined by a board, disciplining licensees, setting administrative fees, preparing agendas and meeting notices, conducting mailings, taking minutes of board meetings and hearings, and filing;
- (2) standardize policies and procedures and keep in Helena all official records of the boards;
- (3) make arrangements and provide facilities in Helena for all meetings, hearings, and examinations of each board or elsewhere in the state if requested by the board;
- (4) contract for or administer and grade examinations required by each board;
- (5) investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board or a program within the department;
- (6) assess the costs of the department to the boards and programs on an equitable basis as determined by the department;
- (7) adopt rules setting administrative fees and expiration, renewal, and termination dates for licenses;
- (8) issue a notice to and pursue an action against a licensed individual, as a party, before the licensed individual's board after a finding of reasonable cause by a screening panel of the board pursuant to 37-1-307(1)(d);
- (9) (a) provide notice to the board and to the appropriate legislative interim committee when a board cannot operate in a cost-effective manner;
- (b) suspend all duties under this title related to the board except for services related to renewal of licenses;
- (c) review the need for a board and make recommendations to the legislative interim committee with monitoring responsibility for the boards for legislation revising the board's operations to achieve fiscal solvency; and
- (d) notwithstanding 2-15-121, recover the costs by one-time charges against all licensees of the board after providing notice and meeting the requirements under the Montana Administrative Procedure Act;
- (10) monitor a board's cash balances to ensure that the balances do not exceed two times the board's annual appropriation level and adjust fees through administrative rules when necessary;
- (11) establish policies and procedures to set fees for administrative services, as provided in 37-1-134, commensurate with the cost of the services provided. Late penalty fees may be set without being commensurate with the cost of services provided.
- (12) adopt uniform rules for all boards and department programs to comply with the public notice requirements of 37-1-311 and 37-1-405. The rules may require the posting of only

the licensee's name and the fact that a hearing is being held when the information is being posted on a publicly available website prior to a decision leading to a suspension or revocation of a license or other final decision of a board or the department.

History: En. 82A-1603 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1603; amd. Sec. 1, Ch. 293, L. 1981; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 390, L. 1983; amd. Sec. 1, Ch. 307, L. 1985; amd. Sec. 42, Ch. 83, L. 1989; amd. Sec. 6, Ch. 413, L. 1989; amd. Sec. 21, Ch. 429, L. 1995; amd. Sec. 106, Ch. 483, L. 2001; amd. Sec. 6, Ch. 467, L. 2005; amd. Sec. 17, Ch. 11, L. 2007; amd. Sec. 39, Ch. 44, L. 2007; amd. Sec. 1, Ch. 225, L. 2007.

37-1-102. Renumbered 37-1-121. Code Commissioner, 1981.

37-1-103. Renumbered 37-1-131. Code Commissioner, 1981.

37-1-104. Standardized forms. The department shall adopt standardized forms and processes to be used by the boards and department programs. The standardization is to streamline processes, expedite services, reduce costs and waste, and facilitate computerization.

History: En. Sec. 2, Ch. 293, L. 1981; amd. Sec. 7, Ch. 467, L. 2005.

37-1-105. Reporting disciplinary actions against licensees. The department has the authority and shall require that all boards and department programs require each applicant for licensure or renewal to report any legal or disciplinary action against the applicant that relates to the propriety of the applicant's practice of or fitness to practice the profession or occupation for which the applicant seeks licensure. Failure to furnish the required information, except pursuant to 37-1-138, or the filing of false information is grounds for denial or revocation of a license.

History: En. Sec. 3, Ch. 293, L. 1981; amd. Sec. 5, Ch. 271, L. 2003; amd. Sec. 8, Ch. 467, L. 2005.

37-1-106. Biennial report. The department, in cooperation with each licensing board, shall prepare a biennial report. The biennial report of the department shall contain for each board a summary of the board's activities, the board's goals and objectives, a detailed breakdown of board revenues and expenditures, statistics illustrating board activities concerning licensing, summary of complaints received and their disposition, number of licenses revoked or suspended, legislative or court action affecting the board, and any other information the department or board considers relevant. The department shall submit the report to the office of budget and program planning as a part of the information required by 17-7-111.

History: En. Sec. 4, Ch. 293, L. 1981; amd. Sec. 10, Ch. 125, L. 1983; amd. Sec. 32, Ch. 112, L. 1991; amd. Sec. 30, Ch. 349, L. 1993.

37-1-107. Joint meetings -- department duties. (1) The department shall convene a joint meeting once every 2 years of two or more boards that:

- (a) have licensees with dual licensure in related professions or occupations;
- (b) have licensees licensed by another board in a related profession or with similar scopes of practice, including but not limited to:
 - (i) health care boards;
 - (ii) mental health care boards;
 - (iii) design boards;
 - (iv) therapeutic boards; or
 - (v) technical boards; or
- (c) have issues of joint concern or related jurisdiction with each other.

(2) A quorum is not required for the joint meeting. However, one member from each board shall attend.

(3) The department shall report to the interim committee responsible for monitoring boards with regard to attendance and issues of concern addressed by the boards.

History: En. Sec. 1, Ch. 11, L. 2007.

37-1-108 through 37-1-120 reserved.

37-1-121. Duties of commissioner. In addition to the powers and duties under 2-15-112 and 2-15-121, the commissioner of labor and industry shall:

(1) at the request of a party, appoint an impartial hearings examiner to conduct hearings whenever any board or department program holds a contested case hearing. The hearings examiner shall conduct hearings in a proper and legal manner.

(2) establish the qualifications of and hire all personnel to perform the administrative, legal, and clerical functions of the department for the boards. Boards within the department do not have authority to establish the qualifications of, hire, or terminate personnel. The department shall consult with the boards regarding recommendations for qualifications for executive or executive director positions.

(3) approve all contracts and expenditures by boards within the department. A board within the department may not enter into a contract or expend funds without the approval of the commissioner.

History: En. 82A-1604 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 14, Ch. 533, L. 1977; R.C.M. 1947, 82A-1604; amd. Sec. 3, Ch. 274, L. 1981; Sec. 37-1-102, MCA 1979; redes. 37-1-121 by Code Commissioner, 1981; amd. Sec. 1, Ch. 165, L. 1985; amd. Sec. 22, Ch. 429, L. 1995; amd. Sec. 107, Ch. 483, L. 2001; amd. Sec. 9, Ch. 467, L. 2005.

37-1-122 through 37-1-129 reserved.

37-1-130. Definitions. As used in this part, the following definitions apply:

(1) "Administrative fee" means a fee established by the department to cover the cost of administrative services as provided for in 37-1-134.

(2) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

(3) "Board fee" means:

(a) a fee established by the board to cover program area costs as provided in 37-1-134; and

(b) any other legislatively prescribed fees specific to boards and department programs.

(4) "Department" means the department of labor and industry established in 2-15-1701.

(5) "Department program" means a program administered by the department pursuant to this title and not affiliated with a board.

(6) "Expired license" means a license that is not reactivated within the period of 46 days to 2 years after the renewal date for the license.

(7) "Lapsed license" means a license that is not renewed by the renewal date and that may be reactivated within the first 45-day period after the renewal date for the license.

(8) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation, regardless of the specific term used for the permission, including permit, certificate, recognition, or registration.

(9) "Terminated license" means a license that is not renewed or reactivated within 2 years of the license lapsing.

History: En. Sec. 5, Ch. 274, L. 1981; amd. Sec. 108, Ch. 483, L. 2001; amd. Sec. 10, Ch. 467, L. 2005; amd. Sec. 7, Ch. 502, L. 2007.

37-1-131. Duties of boards -- quorum required. (1) A quorum of each board within the department shall:

(a) (i) set and enforce standards and adopt and enforce rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within the board's jurisdiction; and

(ii) apply the standards and rules referred to in subsection (1)(a)(i) in a manner that does not discriminate against any person licensed by the board with regard to how the standards and rules are applied to other persons licensed by the board and that does not restrain trade or competition unless necessary to protect public health and safety;

(b) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within the board's jurisdiction. The hearings must be conducted by a hearings examiner when required under 37-1-121.

(c) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection (1)(b), is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers' compensation system in violation of the provisions of Title 39, chapter 71;

(d) take disciplinary action against the license of a person in a medical assistance program under chapter 3, 4, 7, or 8 if, in the period under contract, the licensee has on three separate occasions returned to the use of a prohibited or proscribed substance. The requirements of this subsection (1)(d) may not be construed as affecting the rights of an employer to evaluate, discipline, or discharge an employee.

(e) pay to the department the board's pro rata share of the assessed costs of the department under 37-1-101(6);

(f) consult with the department before the board initiates a program expansion, under existing legislation, to determine if the board has adequate money and appropriation authority to fully pay all costs associated with the proposed program expansion. The board may not expand a program if the board does not have adequate money and appropriation authority available.

(2) A board, board panel, or subcommittee convened to conduct board business must have a majority of its members, which constitutes a quorum, present to conduct business.

(3) A board that requires continuing education or continued state, regional, or national certification for licensees shall require licensees reactivating an expired license to submit proof of meeting the requirements of this subsection for the renewal cycle.

(4) The board or the department program may:

(a) establish the qualifications of applicants to take the licensure examination;

(b) determine the standards, content, type, and method of examination required for licensure or reinstatement of a license, the acceptable level of performance for each examination, and the standards and limitations for reexamination if an applicant fails an examination;

(c) examine applicants for licensure at reasonable places and times as determined by the board or enter into contracts with third-party testing agencies to administer examinations; and

(d) require continuing education for licensure, as provided in 37-1-306, or require continued state, regional, or national certification for licensure. Except as provided in subsection (3), if the board or department requires continuing education or continued state, regional, or national certification for continued licensure, the board or department may not audit or require proof of continuing education or continued state, regional, or national certification requirements as a precondition for renewing the license, certification, or registration. The board or department

may conduct random audits after the lapsed date of up to 50% of all licensees with renewed licenses for documentary verification of the continuing education requirement.

(5) A board may, at the board's discretion, request the applicant to make a personal appearance before the board for nonroutine license applications as defined by the board.

(6) A board shall adopt rules governing the provision of public notice as required by 37-1-311.

History: En. 82A-1605 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 11, Ch. 250, L. 1973; R.C.M. 1947, 82A-1605(1) thru (3); amd. Sec. 3, Ch. 274, L. 1981; Sec. 37-1-103, MCA 1979; redes. 37-1-131 by Code Commissioner, 1981; amd. Sec. 2, Ch. 165, L. 1985; amd. Sec. 1, Ch. 90, L. 1991; amd. Sec. 10, Ch. 619, L. 1993; amd. Sec. 23, Ch. 429, L. 1995; amd. Sec. 6, Ch. 492, L. 2001; amd. Sec. 8, Ch. 416, L. 2005; amd. Sec. 11, Ch. 467, L. 2005; amd. Sec. 2, Ch. 225, L. 2007; amd. Sec. 8, Ch. 502, L. 2007; amd. Sec. 1, Ch. 51, L. 2011; amd. Sec. 3, Ch. 122, L. 2011.

37-1-132. Nominees for appointment to licensing and regulatory boards. Private associations and members of the public may submit to the governor lists of nominees for appointment to professional and occupational licensing and regulatory boards. The governor may consider nominees from the lists when making appointments to such boards.

History: En. Sec. 9, Ch. 244, L. 1981.

37-1-133. Board members' compensation and expenses. Unless otherwise provided by law, each member of a board allocated to the department is entitled to receive \$50 per day compensation and travel expenses, as provided for in 2-18-501 through 2-18-503, for each day spent on official board business. Board members who conduct official board business in their city of residence are entitled to receive a midday meal allowance, as provided for in 2-18-502. Ex officio board members may not receive compensation but shall receive travel expenses.

History: En. Sec. 1, Ch. 474, L. 1981; amd. Sec. 2, Ch. 123, L. 1983; amd. Sec. 4, Ch. 672, L. 1983.

37-1-134. Fees commensurate with costs. Each board allocated to the department shall set board fees related to the respective program area that are commensurate with costs for licensing, including fees for initial licensing, reciprocity, renewals, applications, inspections, and audits. A board may set an examination fee that must be commensurate with costs. A board that issues endorsements and licenses specialties shall set respective fees commensurate with costs. Unless otherwise provided by law, the department may establish standardized fees, including but not limited to fees for administrative services such as license verification, duplicate licenses, late penalty renewals, licensee lists, and other administrative service fees determined by the department as applicable to all boards and department programs. The department shall collect administrative fees on behalf of each board or department program and deposit the fees in the state special revenue fund in the appropriate account for each board or department program. Administrative service costs not related to a specific board or program area may be equitably distributed to board or program areas as determined by the department. Each board and department program shall maintain records sufficient to support the fees charged for each program area.

History: En. Sec. 1, Ch. 345, L. 1981; amd. Sec. 12, Ch. 467, L. 2005.

37-1-135. Licensing investigation and review -- record access. Any person, firm, corporation, or association that performs background reviews, complaint investigations, or peer reviews pursuant to an agreement or contract with a state professional or occupational licensing board shall make available to the board and the legislative auditor, upon request, any and all

records or other information gathered or compiled during the course of the background review, complaint investigation, or peer review.

History: En. Sec. 1, Ch. 242, L. 1981.

37-1-136. Disciplinary authority of boards -- injunctions. (1) Subject to 37-1-138, each licensing board allocated to the department has the authority, in addition to any other penalty or disciplinary action provided by law, to adopt rules specifying grounds for disciplinary action and rules providing for:

- (a) revocation of a license;
- (b) suspension of its judgment of revocation on terms and conditions determined by the board;
- (c) suspension of the right to practice for a period not exceeding 1 year;
- (d) placing a licensee on probation;
- (e) reprimand or censure of a licensee; or
- (f) taking any other action in relation to disciplining a licensee as the board in its discretion considers proper.

(2) Any disciplinary action by a board shall be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

(3) Notwithstanding any other provision of law, a board may maintain an action to enjoin a person from engaging in the practice of the occupation or profession regulated by the board until a license to practice is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court.

(4) An action may not be taken against a person who is in compliance with Title 50, chapter 46.

(5) Rules adopted under subsection (1) must provide for the provision of public notice as required by 37-1-311.

History: En. Sec. 1, Ch. 246, L. 1981; amd. Sec. 6, Ch. 271, L. 2003; amd. Sec. 10, I.M. No. 148, approved Nov. 2, 2004; amd. Sec. 3, Ch. 225, L. 2007.

37-1-137. Grounds for disciplinary action as grounds for license denial -- conditions to new licenses. (1) Unless otherwise provided by law, grounds for disciplinary action by a board allocated to the department of labor and industry against a holder of an occupational or professional license may be, under appropriate circumstances, grounds for either issuance of a probationary license for a period not to exceed 1 year or denial of a license to an applicant.

(2) The denial of a license or the issuance of a probationary license under subsection (1) must be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

History: En. Sec. 1, Ch. 273, L. 1985; amd. Sec. 109, Ch. 483, L. 2001.

37-1-138. Protection of professional licenses for activated military reservists -- rulemaking authority -- definitions. (1) For purposes of this section, the following definitions apply:

- (a) "Activated reservist" means a member of a reserve component who has received federal military orders to report for federal active duty for at least 90 consecutive days.
- (b) "License" has the meaning provided in 37-1-302.
- (c) "Reserve component" means the Montana national guard or the military reserves of the United States armed forces.

(2) An activated reservist who holds an occupational or professional license may report the reservist's activation to the appropriate professional licensing board or to the department of labor and industry if the licensing requirements are administered by the department. The report

must, at a minimum, include a copy of the reservist's orders to federal active duty. The report may request that the reservist's professional license revert to an inactive status.

(3) If an activated reservist has requested that the reservist's license revert to inactive status pursuant to subsection (2), then for the duration of the reservist's active duty service under the orders submitted, the department or licensing board may not:

(a) require the collection of professional licensing fees or continuing education fees from the activated reservist;

(b) require that the activated reservist take continuing education classes or file a report of continuing education classes completed; or

(c) revoke or suspend the activated reservist's professional license, require the license to be forfeited, or allow the license to lapse for failure to pay licensing fees or continuing education fees or for failure to take or report continuing education classes.

(4) (a) Upon release from federal active duty service, the reservist shall send a copy of the reservist's discharge documents to the appropriate professional licensing board or to the department.

(b) The board or department shall evaluate the discharge documents, consider the military position held by the reservist and the duties performed by the reservist during the active duty, and compare the position and duties to the licensing requirements for the profession. The board or department shall also consider the reservist's length of time on federal active duty.

(c) Based on the considerations pursuant to subsection (4)(b) and subject to subsection (5):

(i) the license must be fully restored;

(ii) conditions must be attached to the reservist's continued retention of the license; or

(iii) the license must be suspended or revoked.

(5) (a) A licensing board or the department may adopt rules concerning what conditions may be attached to a reservist's professional license pursuant to subsection (4)(c)(ii).

(b) If conditions are attached pursuant to subsection (4)(c)(ii) or the license is suspended or revoked pursuant to subsection (4)(c)(iii), the affected reservist may, within 90 days of the decision to take the action, request a hearing by writing a letter to the board or department. The board or department shall conduct a requested hearing within 30 days of receiving the written request.

History: En. Sec. 2, Ch. 271, L. 2003.

37-1-139 and 37-1-140 reserved.

37-1-141. License renewal -- lapse -- expiration -- termination. (1) The renewal date for a license must be set by department rule. The department shall provide notice prior to the renewal date.

(2) To renew a license, a licensee shall submit a completed renewal form, comply with all certification and continuing education requirements, and remit renewal fees before the end of the renewal period.

(3) A licensee may reactivate a lapsed license within 45 days after the renewal date by following the process in subsection (5) and complying with all certification and educational requirements.

(4) A licensee may reactivate an expired license within 2 years after the renewal date by following the process in subsection (5) and complying with all certification and education requirements that have accrued since the license was last granted or renewed as prescribed by board or department rule.

(5) To reactivate a lapsed license or an expired license, in addition to the respective requirements in subsections (3) and (4), a licensee shall:

(a) submit the completed renewal form;

(b) pay the late penalty fee provided for in subsection (7); and

(c) pay the current renewal fee as prescribed by the department or the board.

(6) (a) A licensee who practices with a lapsed license is not considered to be practicing without a license.

(b) A licensee who practices after a license has expired is considered to be practicing without a license.

(7) The department may assess a late penalty fee for each renewal period in which a license is not renewed. The late penalty fee need not be commensurate with the costs of assessing the fee.

(8) Unless otherwise provided by statute or rule, an occupational or professional license that is not renewed within 2 years of the most recent renewal date automatically terminates. The terminated license may not be reactivated, and a new original license must be obtained.

(9) The department or board responsible for licensing a licensee retains jurisdiction for disciplinary purposes over the licensee for a period of 2 years after the date on which the license lapsed.

(10) This section may not be interpreted to conflict with 37-1-138.

History: En. Sec. 1, Ch. 272, L. 1985; amd. Sec. 13, Ch. 467, L. 2005.

37-1-142. (Temporary) Review of licensing boards -- termination. (1) (a) The interim committee responsible for monitoring professional and occupational licensing boards shall in each interim review one-half of the licensing boards to determine whether the boards remain necessary for a public purpose and meet the criteria in subsection (2). A board that does not meet the criteria may be referred to the next legislature to be terminated on June 30 following the legislative session.

(b) The review in the first interim after May 5, 2011, must start with the oldest established boards. The review in the second interim after May 5, 2011, must include the remaining boards. This review process must be repeated in the subsequent two interims.

(2) The criteria to be used to determine if a board meets a public purpose includes information describing whether:

(a) the unregulated practice of the occupation or profession creates a direct, immediate hazard to the public health, safety, or welfare;

(b) the scope of practice is readily identifiable and distinguishable from the scope of practice of other professions and occupations;

(c) the occupation or profession requires a specialized skill or training for which nationally recognized standards of education and training exist;

(d) qualifications for licensure are justified;

(e) a public benefit is provided by licensure;

(f) licensure significantly increases the cost of service to the public; and

(g) public support exists for licensure.

(3) After a presentation and public comment during the review before the interim committee, the interim committee shall report to the legislature convening in the next odd-numbered year which boards, if any, fail to meet a majority of the criteria in subsection (2) and may recommend termination. The recommendation also must include information from the department regarding the board's ability to remain solvent or achieve fiscal solvency as provided in 37-1-101. (Terminates December 31, 2018--sec. 4, Ch. 330, L. 2011.)

History: En. Sec. 1, Ch. 330, L. 2011.

Part 2 Licensure of Criminal Offenders

37-1-201. Purpose. It is the public policy of the legislature of the state of Montana to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the assumption of the responsibilities of citizenship. The legislature finds that the public is best protected when offenders are given the opportunity to secure employment or to engage in a meaningful occupation, while licensure must be conferred with prudence to protect the interests of the public. The legislature finds that the process of licensure will be strengthened by instituting an effective mechanism for obtaining accurate public information regarding a license applicant's criminal background.

History: En. 66-4001 by Sec. 1, Ch. 490, L. 1975; R.C.M. 1947, 66-4001; amd. Sec. 1, Ch. 389, L. 2007.

37-1-202. Intent and policy. It is the intent of the legislature and the declared policy of the state that occupational licensure be granted or revoked as a police power of the state in its protection of the public health, safety, and welfare.

History: En. 66-4002 by Sec. 2, Ch. 490, L. 1975; R.C.M. 1947, 66-4002.

37-1-203. Conviction not a sole basis for denial. Criminal convictions shall not operate as an automatic bar to being licensed to enter any occupation in the state of Montana. No licensing authority shall refuse to license a person solely on the basis of a previous criminal conviction; provided, however, where a license applicant has been convicted of a criminal offense and such criminal offense relates to the public health, welfare, and safety as it applies to the occupation for which the license is sought, the licensing agency may, after investigation, find that the applicant so convicted has not been sufficiently rehabilitated as to warrant the public trust and deny the issuance of a license.

History: En. 66-4003 by Sec. 3, Ch. 490, L. 1975; R.C.M. 1947, 66-4003.

37-1-204. Statement of reasons for denial. When a licensing agency prohibits an applicant from being licensed wholly or partially on the basis of a criminal conviction, the agency shall state explicitly in writing the reasons for the decision.

History: En. 66-4004 by Sec. 4, Ch. 490, L. 1975; R.C.M. 1947, 66-4004.

37-1-205. Licensure on completion of supervision. Completion of probation or parole supervision without any subsequent criminal conviction is evidence of rehabilitation. However, the facts surrounding the situation that led to the probation or parole supervision may be considered as they relate to the occupation for which a license is sought, and this chapter may not be construed to prohibit licensure of a person while the person is under state supervision if the licensing agency finds insufficient evidence to preclude licensure.

History: En. 66-4005 by Sec. 5, Ch. 490, L. 1975; R.C.M. 1947, 66-4005; amd. Sec. 1349, Ch. 56, L. 2009.

Uniform Professional Licensing and Regulation Procedures Part 3

37-1-301. Purpose. The purpose of this part is to establish uniform guidelines for the licensing and regulation of professions and occupations under the jurisdiction of professional and occupational licensing boards governed by this part.

History: En. Sec. 1, Ch. 429, L. 1995.

37-1-302. Definitions. As used in this part, the following definitions apply:

(1) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

(2) "Complaint" means a written allegation filed with a board that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

(3) "Department" means the department of labor and industry.

(4) "Inspection" means the periodic examination of premises, equipment, or procedures or of a practitioner by the department to determine whether the practitioner's profession or occupation is being conducted in a manner consistent with the public health, safety, and welfare.

(5) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a written complaint or other information before a board, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the board;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether a board should seek an injunction.

(6) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation, regardless of the specific term used for the permission, including permit, certificate, recognition, or registration.

(7) "Profession" or "occupation" means a profession or occupation regulated by a board.

History: En. Sec. 2, Ch. 429, L. 1995; amd. Sec. 110, Ch. 483, L. 2001; amd. Sec. 14, Ch. 467, L. 2005; amd. Sec. 9, Ch. 502, L. 2007.

37-1-303. Scope. This part governs the licensure, the practice and unauthorized practice, and the discipline of professions and occupations governed by this title unless otherwise provided by statutes relating to a specific board and the profession or occupation it regulates. The provisions of this chapter must be construed to supplement the statutes relating to a specific board and the profession it regulates. The method for initiating and judging a disciplinary proceeding, specified in 37-1-307(1)(d), must be used by a board in all disciplinary proceedings involving licensed professionals.

History: En. Sec. 3, Ch. 429, L. 1995; amd. Sec. 40, Ch. 44, L. 2007.

37-1-304. Licensure of out-of-state applicants -- reciprocity. (1) A board may issue a license to practice without examination to a person licensed in another state if the board determines that:

(a) the other state's license standards at the time of application to this state are substantially equivalent to or greater than the standards in this state; and

(b) there is no reason to deny the license under the laws of this state governing the profession or occupation.

(2) The license may be issued if the applicant affirms or states in the application that the applicant has requested verification from the state or states in which the person is licensed that the person is currently licensed and is not subject to pending charges or final disciplinary action for unprofessional conduct or impairment. If the board or its screening panel finds reasonable cause to believe that the applicant falsely affirmed or stated that the applicant has requested verification from the other state or states, the board may summarily suspend the license pending further action to discipline or revoke the license.

(3) This section does not prevent a board from entering into a reciprocity agreement with the licensing authority of another state or jurisdiction. The agreement may not permit out-of-state licensees to obtain a license by reciprocity within this state if the license applicant has not met standards that are substantially equivalent to or greater than the standards required in this state as determined by the board on a case-by-case basis.

History: En. Sec. 4, Ch. 429, L. 1995; amd. Sec. 1, Ch. 210, L. 1997; amd. Sec. 1, Ch. 100, L. 2011.

37-1-305. Temporary practice permits. (1) A board may issue a temporary practice permit to a person licensed in another state that has licensing standards substantially equivalent to those of this state if the board determines that there is no reason to deny the license under the laws of this state governing the profession or occupation. The person may practice under the permit until a license is granted or until a notice of proposal to deny a license is issued. The permit may be issued in the board's discretion if the applicant verifies or states in the application that the applicant has requested verification from the state or states in which the person is licensed that the person is currently licensed and is not subject to pending charges or final disciplinary action for unprofessional conduct or impairment. If the board or its screening panel finds reasonable cause to believe that the applicant falsely affirmed or stated that the applicant has requested verification from the other state or states, the board may summarily suspend the license pending further action to discipline or revoke the license.

(2) A board may issue a temporary practice permit to a person seeking licensure in this state who has met all licensure requirements other than passage of the licensing examination. Except as provided in 37-68-311 and 37-69-306, a permit is valid until the person either fails the first license examination for which the person is eligible following issuance of the permit or passes the examination and is granted a license.

History: En. Sec. 5, Ch. 429, L. 1995; amd. Sec. 1, Ch. 203, L. 1999; amd. Sec. 2, Ch. 100, L. 2011.

37-1-306. Continuing education. A board or, for programs without a board, the department may require licensees to participate in flexible, cost-efficient, effective, and geographically accessible continuing education.

History: En. Sec. 6, Ch. 429, L. 1995; amd. Sec. 15, Ch. 467, L. 2005.

37-1-307. Board authority. (1) A board may:

(a) hold hearings as provided in this part;

(b) issue subpoenas requiring the attendance of witnesses or the production of documents and administer oaths in connection with investigations and disciplinary proceedings under this part. Subpoenas must be relevant to the complaint and must be signed by a member of the board. Subpoenas may be enforced as provided in 2-4-104.

(c) authorize depositions and other discovery procedures under the Montana Rules of Civil Procedure in connection with an investigation, hearing, or proceeding held under this part;

(d) establish a screening panel to determine whether there is reasonable cause to believe that a licensee has violated a particular statute, rule, or standard justifying disciplinary proceedings. A screening panel is an agency for purposes of summary suspensions under 2-4-631. A screening panel shall specify in writing the particular statute, rule, or standard that the panel believes may have been violated. The screening panel shall also state in writing the reasonable grounds that support the panel's finding that a violation may have occurred. The assigned board members may not subsequently participate in a hearing of the case. The final decision on the case must be made by a majority of the board members who did not serve on the screening panel for the case.

(e) grant or deny a license and, upon a finding of unprofessional conduct by an applicant or license holder, impose a sanction provided by this chapter.

(2) Each board is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information, as defined in 44-5-103, regarding the board's licensees and license applicants and regarding possible unlicensed practice, but the board may not record or retain any confidential criminal justice information without complying with the provisions of the Montana Criminal Justice Information Act of 1979, Title 44, chapter 5.

(3) A board may contact and request information from the department of justice, which is designated as a criminal justice agency within the meaning of 44-5-103, for the purpose of obtaining criminal history record information regarding the board's licensees and license applicants and regarding possible unlicensed practice.

(4) (a) A board that is statutorily authorized to obtain a criminal background check as a prerequisite to the issuance of a license shall require the applicant to submit fingerprints for the purpose of fingerprint checks by the Montana department of justice and the federal bureau of investigation.

(b) The applicant shall sign a release of information to the board and is responsible to the department of justice for the payment of all fees associated with the criminal background check.

(c) Upon completion of the criminal background check, the department of justice shall forward all criminal history record information, as defined in 44-5-103, in any jurisdiction to the board as authorized in 44-5-303.

(d) At the conclusion of any background check required by this section, the board must receive the criminal background check report but may not receive the fingerprint card of the applicant. Upon receipt of the criminal background check report, the department of justice shall promptly destroy the fingerprint card of the applicant.

[(5) Each board shall require a license applicant to provide the applicant's social security number as a part of the application. Each board shall keep the social security number from this source confidential, except that a board may provide the number to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(Bracketed language terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999.)

History: En. Sec. 7, Ch. 429, L. 1995; amd. Sec. 22, Ch. 552, L. 1997; amd. Sec. 2, Ch. 230, L. 1999; amd. Sec. 8, Ch. 492, L. 2001; amd. Sec. 16, Ch. 467, L. 2005; amd. Sec. 2, Ch. 389, L. 2007; amd. Sec. 3, Ch. 100, L. 2011.

37-1-308. Unprofessional conduct -- complaint -- investigation -- immunity -- exceptions. (1) Except as provided in subsections (4) and (5), a person, government, or private entity may submit a written complaint to the department charging a licensee or license applicant with a violation of this part and specifying the grounds for the complaint.

(2) If the department receives a written complaint or otherwise obtains information that a licensee or license applicant may have committed a violation of this part, the department may, with the concurrence of a member of the screening panel established in 37-1-307, investigate to determine whether there is reasonable cause to believe that the licensee or license applicant has committed the violation.

(3) A person or private entity, but not a government entity, filing a complaint under this section in good faith is immune from suit in a civil action related to the filing or contents of the complaint.

(4) A person under legal custody of a county detention center or incarcerated under legal custody of the department of corrections may not file a complaint under subsection (1) against a licensed or certified provider of health care or rehabilitative services for services that were provided to the person while detained or confined in a county detention center or

incarcerated under legal custody of the department of corrections unless the complaint is first reviewed by a correctional health care review team provided for in 37-1-331.

(5) A board member may file a complaint with the board on which the member serves or otherwise act in concert with a complainant in developing, authoring, or initiating a complaint to be filed with the board if the board member determines that there are reasonable grounds to believe that a particular statute, rule, or standard has been violated.

History: En. Sec. 8, Ch. 429, L. 1995; amd. Sec. 4, Ch. 475, L. 1997; amd. Sec. 1, Ch. 375, L. 1999; amd. Sec. 9, Ch. 492, L. 2001.

37-1-309. Notice -- request for hearing. (1) If a reasonable cause determination is made pursuant to 37-1-307 that a violation of this part has occurred, a notice must be prepared by department legal staff and served on the alleged violator. The notice may be served by certified mail to the current address on file with the board or by other means authorized by the Montana Rules of Civil Procedure. The notice may not allege a violation of a particular statute, rule, or standard unless the board or the board's screening panel, if one has been established, has made a written determination that there are reasonable grounds to believe that the particular statute, rule, or standard has been violated.

(2) A licensee or license applicant shall give the board the licensee's or applicant's current address and any change of address within 30 days of the change.

(3) The notice must state that the licensee or license applicant may request a hearing to contest the charge or charges. A request for a hearing must be in writing and received in the offices of the department within 20 days after the licensee's receipt of the notice. Failure to request a hearing constitutes a default on the charge or charges, and the board may enter a decision on the basis of the facts available to it.

History: En. Sec. 9, Ch. 429, L. 1995; amd. Sec. 10, Ch. 492, L. 2001.

37-1-310. Hearing -- adjudicative procedures. The procedures in Title 2, chapter 4, governing adjudicative proceedings before agencies; the Montana Rules of Civil Procedure; and the Montana Rules of Evidence govern a hearing under this part. A board has all the powers and duties granted by Title 2, chapter 4.

History: En. Sec. 10, Ch. 429, L. 1995.

37-1-311. Findings of fact -- order -- report. (1) If the board decides by a preponderance of the evidence, following a hearing or on default, that a violation of this part occurred, the department shall prepare and serve the board's findings of fact and an order as provided in Title 2, chapter 4. If the licensee or license applicant is found not to have violated this part, the department shall prepare and serve the board's findings of fact and an order of dismissal of the charges.

(2) (a) The department shall within a reasonable amount of time report to the public the issuance of a summary suspension, a notice under 37-1-309, an accepted stipulation, a hearing examiner's proposed decision, and a final order.

(b) In addition to any other means of notice, the department shall post the required information on a publicly available website.

(c) This subsection (2) may not be construed to require a meeting to be open or records to be disseminated when the demands of individual privacy clearly exceed the merits of public disclosure.

History: En. Sec. 11, Ch. 429, L. 1995; amd. Sec. 4, Ch. 225, L. 2007.

37-1-312. Sanctions -- stay -- costs -- stipulations. (1) Upon a decision that a licensee or license applicant has violated this part or is unable to practice with reasonable skill and safety due to a physical or mental condition or upon stipulation of the parties as provided in

subsection (3), the board may issue an order providing for one or any combination of the following sanctions:

- (a) revocation of the license;
- (b) suspension of the license for a fixed or indefinite term;
- (c) restriction or limitation of the practice;
- (d) satisfactory completion of a specific program of remedial education or treatment;
- (e) monitoring of the practice by a supervisor approved by the disciplining authority;
- (f) censure or reprimand, either public or private;
- (g) compliance with conditions of probation for a designated period of time;
- (h) payment of a fine not to exceed \$1,000 for each violation. Fines must be deposited

in the state general fund.

- (i) denial of a license application;
- (j) refund of costs and fees billed to and collected from a consumer.

(2) A sanction may be totally or partly stayed by the board. To determine which sanctions are appropriate, the board shall first consider the sanctions that are necessary to protect or compensate the public. Only after the determination has been made may the board consider and include in the order any requirements designed to rehabilitate the licensee or license applicant.

(3) The licensee or license applicant may enter into a stipulated agreement resolving potential or pending charges that includes one or more of the sanctions in this section. The stipulation is an informal disposition for the purposes of 2-4-603.

(4) A licensee shall surrender a suspended or revoked license to the board within 24 hours after receiving notification of the suspension or revocation by mailing it or delivering it personally to the board.

History: En. Sec. 12, Ch. 429, L. 1995.

37-1-313. Appeal. A person who is disciplined or denied a license may appeal the decision to the district court as provided in Title 2, chapter 4.

History: En. Sec. 13, Ch. 429, L. 1995.

37-1-314. Reinstatement. A licensee whose license has been suspended or revoked under this part may petition the board for reinstatement after an interval set by the board in the order. The board may hold a hearing on the petition and may deny the petition or order reinstatement and impose terms and conditions as provided in 37-1-312. The board may require the successful completion of an examination as a condition of reinstatement and may treat a licensee whose license has been revoked or suspended as a new applicant for purposes of establishing the requisite qualifications of licensure.

History: En. Sec. 14, Ch. 429, L. 1995.

37-1-315. Enforcement of fine. (1) If payment of a fine is included in an order and timely payment is not made as directed in the order, the board may enforce the order for payment in the district court of the first judicial district.

(2) In a proceeding for enforcement of an order of payment of a fine, the order is conclusive proof of the validity of the order of payment and the terms of payment.

History: En. Sec. 15, Ch. 429, L. 1995.

37-1-316. Unprofessional conduct. The following is unprofessional conduct for a licensee or license applicant governed by this part:

(1) conviction, including conviction following a plea of nolo contendere, of a crime relating to or committed during the course of the person's practice or involving violence, use or sale of drugs, fraud, deceit, or theft, whether or not an appeal is pending;

- (2) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;
- (3) fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;
- (4) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;
- (5) a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;
- (6) offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;
- (7) denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal, under judicial review, or has been satisfied;
- (8) failure to comply with a term, condition, or limitation of a license by final order of a board;
- (9) revealing confidential information obtained as the result of a professional relationship without the prior consent of the recipient of services, except as authorized or required by law;
- (10) use of alcohol, a habit-forming drug, or a controlled substance as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally in the performance of licensed professional duties;
- (11) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;
- (12) engaging in conduct in the course of one's practice while suffering from a contagious or infectious disease involving serious risk to public health or without taking adequate precautions, including but not limited to informed consent, protective gear, or cessation of practice;
- (13) misappropriating property or funds from a client or workplace or failing to comply with a board rule regarding the accounting and distribution of a client's property or funds;
- (14) interference with an investigation or disciplinary proceeding by willful misrepresentation of facts, by the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action, or by use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;
- (15) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice by use of the licensee's license;
- (16) failing to report the institution of or final action on a malpractice action, including a final decision on appeal, against the licensee or of an action against the licensee by a:
 - (a) peer review committee;
 - (b) professional association; or
 - (c) local, state, federal, territorial, provincial, or Indian tribal government;
- (17) failure of a health care provider, as defined in 27-6-103, to comply with a policy or practice implementing 28-10-103(3)(a);
- (18) conduct that does not meet the generally accepted standards of practice. A certified copy of a malpractice judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring during the scope and course of the practice is conclusive evidence of but is not needed to prove conduct that does not meet generally accepted standards.

(19) the sole use of any electronic means, including teleconferencing, to obtain the information required for the written certification and accompanying statements used to apply for a registry identification card pursuant to Title 50, chapter 46, part 3.

History: En. Sec. 16, Ch. 429, L. 1995; amd. Sec. 12, Ch. 109, L. 2009; amd. Sec. 2, Ch. 158, L. 2009; amd. Sec. 24, Ch. 419, L. 2011.

37-1-317. Practice without license -- investigation of complaint -- injunction -- penalties. (1) The department shall investigate complaints or other information received concerning practice by an unlicensed person of a profession or occupation for which a license is required by this title.

(2) (a) Unless otherwise provided by statute, a board may file an action to enjoin a person from practicing, without a license, a profession or occupation for which a license is required by this title. In addition to the penalty provided for in 37-1-318, a person violating an injunction issued pursuant to this section may be held in contempt of court.

(b) A person subject to an injunction for practicing without a license may also be subject to criminal prosecution. In a complaint for an injunction or in an affidavit, information, or indictment alleging that a person has engaged in unlicensed practice, it is sufficient to charge that the person engaged in the unlicensed practice of a licensed profession or occupation on a certain day in a certain county without averring further or more particular facts concerning the violation.

(3) Unless otherwise provided by statute, a person practicing a licensed profession or occupation in this state without complying with the licensing provisions of this title is guilty of a misdemeanor punishable by a fine of not less than \$250 or more than \$1,000, imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of this chapter constitutes a separate offense.

(4) The department may issue a citation to and collect a fine, as provided in 37-68-316 and 37-69-310, from a person at a job site who is performing plumbing or electrical work and who fails to display a license or proof of licensure at the request of an employee of the department who bears responsibility for compliance with licensure requirements.

History: En. Sec. 17, Ch. 429, L. 1995; amd. Sec. 3, Ch. 230, L. 1999; amd. Sec. 1, Ch. 402, L. 1999.

37-1-318. Violation of injunction -- penalty. A person who violates an injunction issued under 37-1-317 shall pay a civil penalty, as determined by the court, of not more than \$5,000. Fifty percent of the penalty must be deposited in the general fund of the county in which the injunction is issued, and 50% must be deposited in the state general fund.

History: En. Sec. 18, Ch. 429, L. 1995.

37-1-319. Rules. A board may adopt rules:

(1) under the guidelines of 37-1-306, regarding continuing education and establishing the number of hours required each year, the methods of obtaining education, education topics, and carrying over hours to subsequent years;

(2) regarding practice limitations for temporary practice permits issued under 37-1-305 and designed to ensure adequate supervision of the practice until all qualifications for licensure are met and a license is granted;

(3) regarding qualifications for inactive license status that may require compliance with stated continuing education requirements and may limit the number of years a person may remain on inactive status without having to reestablish qualifications for licensure;

(4) regarding maintenance and safeguarding of client funds or property possessed by a licensee and requiring the funds or property to be maintained separately from the licensee's funds and property; and

(5) defining acts of unprofessional conduct, in addition to those contained in 37-1-316, that constitute a threat to public health, safety, or welfare and that are inappropriate to the practice of the profession or occupation.

History: En. Sec. 19, Ch. 429, L. 1995.

37-1-320. Mental intent -- unprofessional conduct. A licensee may be found to have violated a provision of 37-1-316 or a rule of professional conduct enacted by a governing board without proof that the licensee acted purposefully, knowingly, or negligently.

History: En. Sec. 7, Ch. 492, L. 2001.

37-1-321 through 37-1-330 reserved.

37-1-331. Correctional health care review team. (1) There is a correctional health care review team process in the department. The purpose of a review team is to review complaints filed by an inmate against a licensed or certified provider of health care or rehabilitative services for services that were provided to the person while the person was detained or confined in a county detention center or incarcerated under legal custody of the department of corrections. The inmate may file a complaint directly with the correctional health care review team for review or, if a board receives a complaint that has not been reviewed, the board shall forward the complaint to the review team. If the review team has reason to believe that there has been a violation of this part arising out of health care or rehabilitative services provided to a person detained or confined in a county detention center, the review team shall report the possible violation to the department for appropriate action under 37-1-308.

(2) Each health care licensing board shall solicit and submit to the department a list of licensed or certified health care or rehabilitative service professionals who have correctional health care experience and who are interested in participating on a team. A current board member may not participate on a review team. The department shall solicit from the administrators of the county detention centers and from the department of corrections names of licensed or certified health care or rehabilitative service providers who have correctional health care or rehabilitative services experience and are interested in participating on a review team. Each member of a review team must have at least 2 years of experience in providing health care or rehabilitative services in a correctional facility or program.

(3) Each correctional health care review team is composed of three members who shall represent health care and rehabilitative service providers who have provided health care or rehabilitative services to incarcerated persons. Two members of the review team must be providers of the same discipline and scope of practice as the provider against whom a complaint was filed, and the third member may be a provider of any other health care or rehabilitative services discipline. The members must be willing to serve without compensation. If available, a correctional health care professional employed by the department of corrections and appointed by the director of the department of corrections may participate on the review team, except when the provider against whom the complaint was filed was employed by the department of corrections.

(4) The members of a review team are appointed by the department from the listing of health care and rehabilitative service providers with correctional experience who have been submitted by each respective board, a county detention center administrator, or the department of corrections as provided in subsection (2). A review team shall meet at least twice a year. Any travel, lodging, meal, or miscellaneous costs incurred by a review team may be recovered through a memorandum of understanding with the agencies who provide medical services to inmates or may be assessed to the licensing or certifying boards of health care and rehabilitative service providers.

(5) The review team shall review each complaint with regard to the health care or rehabilitative services provider's scope of practice. A decision on whether or not to forward the complaint must be made by the majority of the review team. The review team shall submit a written response regarding the decision to the inmate, the county detention center administrator or the department of corrections, and the health care or rehabilitative services provider. If the decision is to not forward the complaint for action under 37-1-308, a record of the complaint may not be forwarded to any licensing or certifying board, but must be retained by the department.

History: En. Sec. 2, Ch. 375, L. 1999.

BOARD OF OUTFITTERS

STATUTES

MONTANA CODE ANNOTATED

**TITLE 37
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**CHAPTER 47
OUTFITTERS AND GUIDES**

**General
Part 1**

37-47-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

- (1) "Accompany" means to go with or be together with a participant as an escort, companion, or other service provider, with an actual physical presence in the area where the activity is being conducted and within sight or sound of the participant at some time during the furnishing of service.
- (2) "Base of operations" means the primary physical location where an outfitter receives mail and telephone calls, conducts regular daily business, and bases livestock, equipment, and staff during the hunting season.
- (3) "Board" means the board of outfitters provided for in 2-15-1773.
- (4) "Camp" means each individual facility or group of facilities that an outfitter uses to lodge a client for a client's trip or uses to lodge a client in the operating area designated in the outfitter's operations plan, including a motel, campground, bed and breakfast, lodge, tent camp, cabin, camper, trailer, or house.
- (5) "Consideration" means something of value given or done in exchange for something of value given or done by another.
- (6) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.
- (7) "Guide" means a person who is employed by or who has contracted independently with a licensed outfitter and who accompanies a participant during outdoor recreational activities that are directly related to activities for which the outfitter is licensed.
- (8) "License year" means the period indicated on the face of the license for which the license is valid.
- (9) "Net client hunter use" or "NCHU" means the most actual clients served by an outfitter in any NCHU license category in any license year, as documented by verifiable client logs or other documents maintained by the board pursuant to 37-47-201.
- (10) "Nonresident" means a person other than a resident.
- (11) "Outfitter" means any person, except a person providing services on real property that the person owns for the primary pursuit of bona fide agricultural interests, who for consideration provides any saddle or pack animal; facilities; camping equipment; vehicle, watercraft, or other conveyance; or personal service for any person to hunt, trap, capture, take, kill, or pursue any game, including fish, and who accompanies that person, either part or all of the way, on an expedition for any of these purposes or supervises a licensed guide or professional guide in accompanying that person.
- (12) "Participant" means a person using the services offered by a licensed outfitter.
- (13) "Professional guide" means a guide who meets experience, training, and testing qualifications for designation as a professional guide, as set by board rule.

(14) "Resident" means a person who qualifies for a resident Montana hunting or fishing license under 87-2-102.

History: Ap. p. Sec. 1, Ch. 221, L. 1971; amd. Sec. 37, Ch. 511, L. 1973; amd. Sec. 17, Ch. 9, L. 1977; Sec. 26-908, R.C.M. 1947; Ap. p. Sec. 69, Ch. 173, L. 1917; re-en. Sec. 3748, R.C.M. 1921; re-en. Sec. 3748, R.C.M. 1935; amd. Sec. 4, Ch. 173, L. 1949; amd. Sec. 3, Ch. 184, L. 1951; amd. Sec. 2, Ch. 223, L. 1955; amd. Sec. 1, Ch. 541, L. 1975; amd. Sec. 16, Ch. 9, L. 1977; Sec. 26-904, R.C.M. 1947; R.C.M. 1947, 26-904(1), 26-908; amd. Sec. 1, Ch. 170, L. 1981; amd. Sec. 2, Ch. 545, L. 1981; amd. Sec. 1, Ch. 410, L. 1983; amd. Sec. 2, Ch. 528, L. 1987; Sec. 87-4-101, MCA 1985; redes. 37-47-101 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 1, Ch. 565, L. 1989; amd. Sec. 38, Ch. 16, L. 1991; amd. Sec. 1, Ch. 328, L. 1995; amd. Sec. 2, Ch. 543, L. 1999; amd. Sec. 142, Ch. 483, L. 2001; amd. Sec. 97, Ch. 467, L. 2005.

37-47-102. Repealed. Sec. 22, Ch. 328, L. 1995.

History: En. Sec. 69, Ch. 173, L. 1917; re-en. Sec. 3748, R.C.M. 1921; re-en. Sec. 3748, R.C.M. 1935; amd. Sec. 4, Ch. 173, L. 1949; amd. Sec. 3, Ch. 184, L. 1951; amd. Sec. 2, Ch. 223, L. 1955; amd. Sec. 1, Ch. 541, L. 1975; amd. Sec. 16, Ch. 9, L. 1977; R.C.M. 1947, 26-904(2); amd. Sec. 3, Ch. 545, L. 1981; amd. Sec. 3, Ch. 528, L. 1987; Sec. 87-4-102, MCA 1985; redes. 37-47-102 by Sec. 11, Ch. 528, L. 1987.

37-47-103. Publication of license information. (1) The department shall prepare and publish an information pamphlet that contains the names and addresses of all licensed outfitters.

(2) The pamphlet described in subsection (1) must be available for free distribution as early as possible each calendar year but not later than the second Friday in March of each year.

(3) The pamphlet must contain the names, license numbers, and addresses of only those outfitters who have a currently valid license.

History: En. Sec. 23, Ch. 502, L. 2007.

37-47-201. Powers and duties of board relating to outfitters, guides, and professional guides. The board shall:

(1) cooperate with the federal government in matters of mutual concern regarding the business of outfitting and guiding in Montana;

(2) enforce the provisions of this chapter and rules adopted pursuant to this chapter;

(3) establish outfitter standards, guide standards, and professional guide standards;

(4) adopt:

(a) rules to administer and enforce this chapter, including rules prescribing all requisite qualifications for licensure as an outfitter, guide, or professional guide. Qualifications for outfitters must include training, testing, experience in activities similar to the service to be provided, knowledge of rules of governmental bodies pertaining to outfitting and condition and type of gear and equipment, and the filing of an operations plan.

(b) any reasonable rules, not in conflict with this chapter, necessary for safeguarding the public health, safety, and welfare, including evidence of qualification and licensure under this chapter for any person practicing or offering to practice as an outfitter, guide, or professional guide;

(c) rules specifying standards for review and approval of proposed new operations plans involving hunting use. Approval is not required when part or all of an existing operations plan is transferred from one licensed outfitter to another licensed outfitter.

(d) rules establishing outfitter reporting requirements. The reports must be filed annually and report actual leased acreage actively used by clients during that year and actual leased acres unused by clients during that year, plus any other information designated by the board and developed in collaboration with the department of fish, wildlife, and parks or the review

committee established in 87-1-269 that is considered necessary to evaluate the effectiveness of the hunter management and hunting access enhancement programs.

(5) hold hearings and proceedings to suspend or revoke licenses of outfitters, guides, and professional guides for due cause;

(6) maintain records of actual clients served by all Montana outfitters that fulfill the requirements of subsection (4)(d);

(7) maintain records of net client hunter use.

History: En. Sec. 4, Ch. 221, L. 1971; amd. Sec. 38, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-911; amd. Sec. 1, Ch. 490, L. 1981; amd. Sec. 5, Ch. 545, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 4, Ch. 528, L. 1987; Sec. 87-4-104, MCA 1985; redes. 37-47-201 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 1, Ch. 220, L. 1993; amd. Sec. 3, Ch. 328, L. 1995; amd. Sec. 3, Ch. 543, L. 1999; amd. Sec. 98, Ch. 467, L. 2005; amd. Sec. 45, Ch. 44, L. 2007; amd. Sec. 2, Ch. 328, L. 2011.

37-47-202. Executive director. The department may hire an executive director to assist the board in carrying out its duties under this chapter.

History: En. Sec. 1, Ch. 183, L. 1993; amd. Sec. 32, Ch. 492, L. 2001; amd. Sec. 11, Ch. 100, L. 2011.

Licensing Part 3

37-47-301. License required -- services performed -- standards. (1) A person may not act as an outfitter, guide, or professional guide or advertise or otherwise represent to the public that the person is an outfitter, guide, or professional guide without first securing a license in accordance with the provisions of this part.

(2) Whenever an outfitter is engaged by a participant, the outfitter shall keep and submit records as required by the board.

(3) Outfitters and guides, professional guides, and other employees of an outfitter may not shoot, kill, or take big game animals for or in competition with those employing them while acting as outfitters, guides, professional guides, or employees of an outfitter.

(4) Outfitters utilizing lands under the control of the United States government shall obtain the proper permits required by the government office responsible for the area in which the outfitter intends to operate and shall comply with environmental protection standards established for these lands.

(5) Outfitters may not willfully and substantially misrepresent their facilities, prices, equipment, services, or hunting or fishing opportunities.

(6) Outfitters and their employees, agents, and representatives shall take every reasonable measure to provide their advertised services to their clients.

(7) An outfitter may not hire or retain a guide or professional guide who does not hold a current license as provided under this part.

History: En. Sec. 7, Ch. 221, L. 1971; amd. Sec. 20, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-914; amd. Sec. 8, Ch. 545, L. 1981; Sec. 87-4-121, MCA 1985; redes. 37-47-301 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 2, Ch. 565, L. 1989; amd. Sec. 2, Ch. 220, L. 1993; amd. Sec. 4, Ch. 328, L. 1995.

37-47-302. Outfitter's qualifications. An applicant for an outfitter's license or renewal of a license must meet the following qualifications:

(1) be 18 years of age or older, be physically capable and mentally competent to perform the duties of an outfitter, and meet experience, training, and testing requirements as prescribed by board rule;

(2) own, hold under written lease, or contract for or represent a company, corporation, or partnership who owns, holds under written lease, or contracts for the equipment and facilities that are necessary to provide the services advertised, contracted for, or agreed upon between the outfitter and the outfitter's clients (all equipment and facilities are subject to inspection at all reasonable times and places by the board or its designated agent); and

(3) have demonstrated a respect for and compliance with the laws of any state or of the United States and all rules promulgated under those laws related to fish and game, conservation of natural resources, and preservation of the natural ecosystem without pollution of the ecosystem.

History: En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(3)(a) thru (3)(k); amd. Sec. 9, Ch. 545, L. 1981; amd. Sec. 8, Ch. 239, L. 1983; amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-122, MCA 1985; redes. 37-47-302 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 3, Ch. 220, L. 1993; amd. Sec. 5, Ch. 328, L. 1995; amd. Sec. 39, Ch. 109, L. 2009; amd. Sec. 1, Ch. 179, L. 2011.

37-47-303. Guide's and professional guide's qualifications. (1) An applicant for a guide's or professional guide's license must meet the following qualifications:

(a) be 18 years of age or older and be physically capable and mentally competent to perform the duties of a guide or professional guide;

(b) be endorsed and recommended by an outfitter with a valid license, unless otherwise qualified under guide or professional guide standards established by the board pursuant to 37-47-201(4); and

(c) have been issued a valid wildlife conservation license.

(2) In addition to the requirements listed in subsection (1), an applicant for licensure as a professional guide must meet additional experience requirements, to be set by board rule, and may be required to show proof of training or pass a qualifying examination when required by board rule.

History: En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(4), (5); amd. Sec. 10, Ch. 545, L. 1981; Sec. 87-4-123, MCA 1985; redes. 37-47-303 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 4, Ch. 220, L. 1993; amd. Sec. 6, Ch. 328, L. 1995; amd. Sec. 1, Ch. 172, L. 2005.

37-47-304. Application. (1) Each applicant for an outfitter's, guide's, or professional guide's license shall apply for a license on a form furnished by the department.

(2) The application for an outfitter's license forms the basis for the outfitter's operations plan and must include:

(a) the applicant's full name, residence, address, conservation license number, driver's license number, birth date, physical description, and telephone number;

(b) the address of the applicant's principal place of business in the state of Montana;

(c) the amount and kind of property and equipment owned and used in the outfitting business of the applicant;

(d) the experience of the applicant, including:

(i) years of experience as an outfitter, guide, or professional guide;

(ii) the applicant's knowledge of areas in which the applicant has operated and intends to operate; and

(iii) the applicant's ability to cope with weather conditions and terrain;

(e) a signed statement of the licensed outfitter for each guide and professional guide to be employed or retained as an independent contractor, stating that the guide or professional

guide is to be employed by the outfitter and stating that the outfitter recommends the guide or professional guide for licensure;

(f) an affidavit by the outfitter to the board that the equipment listed on the application is in fact owned, leased, or contracted for by the applicant, is in good operating condition, and is sufficient and satisfactory for the services advertised or contemplated to be performed by the applicant;

(g) a statement of the maximum number of participants to be accompanied at any one time;

(h) the written approval of the appropriate agency or landowner on whose lands the applicant intends to provide services or establish hunting camps; and

(i) the boundaries of the proposed operation, stating when applicable:

(i) the name and portion of river;

(ii) the county of location;

(iii) the legal owner of the property;

(iv) the name of the ranch;

(v) the proposed service, including the type of game sought;

(vi) the name of the agency granting use authority; and

(vii) other means of identifying boundaries as established by board rule.

(3) An application for an outfitter's license must be in the name of an individual person only. An application involving corporations, proprietorships, or partnerships must be made by one individual person who qualifies under the provisions of this part. A license issued pursuant to this part must be in the name of that person. Any revocation or suspension of a license is binding upon the individual person and the corporation, proprietorship, or partnership for the use and benefit of which the license was originally issued.

(4) Application must be made to and filed with the board.

(5) Only one application for an outfitter's license may be made in any license year. If an application is denied, subsequent applications by the same applicant for the license year involved are void, except as provided in 37-47-308.

History: En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(1), (2), (13); amd. Sec. 11, Ch. 545, L. 1981; amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-124, MCA 1985; redes. 37-47-304 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 3, Ch. 565, L. 1989; amd. Sec. 5, Ch. 220, L. 1993; amd. Sec. 7, Ch. 328, L. 1995; amd. Sec. 2, Ch. 196, L. 2003; amd. Sec. 99, Ch. 467, L. 2005; amd. Sec. 2, Ch. 179, L. 2011.

37-47-305. Outfitter's examination. Each applicant for an outfitter's license, after meeting the experience and training specifications and other qualifications set by this chapter or rules adopted pursuant to this chapter, is entitled to take and must pass a standard examination administered by the board or its agent. The examination must require general and sufficient knowledge displaying and indicating ability to perform the services contemplated with efficiency and with safety to the health and welfare of participants. The examination must test the applicant's knowledge of subjects that apply to the type of license applied for and may include the following subjects:

(1) federal and state fish and game laws and regulations;

(2) practical woodsmanship;

(3) general knowledge of big game;

(4) field preparation of trophies;

(5) care of game meat;

(6) use of outfitter's gear as listed on the application;

(7) knowledge of area and terrain;

(8) knowledge of firearms;

- (9) federal and state regulations as applicable to outfitting;
- (10) first aid;
- (11) boat safety;
- (12) water safety;
- (13) care and safety of livestock.

History: En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(3)(l); amd. Sec. 12, Ch. 545, L. 1981; amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-125, MCA 1985; redes. 37-47-305 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 6, Ch. 220, L. 1993; amd. Sec. 8, Ch. 328, L. 1995.

37-47-306. Fees. (1) The board shall establish fees commensurate with costs as provided in 37-1-134.

(2) Applications must be accompanied by a license fee as specified by board rule.

(3) If a nonresident license applicant resides in a state that requires residents of the state of Montana to pay in excess of the amount established by the board for a similar license, then the fee for the nonresident outfitter's, guide's, or professional guide's license must be the same amount as the higher fee charged in the state where the nonresident license applicant resides. A nonresident hunting outfitter is subject to the same rules and regulations that apply to a resident hunting outfitter.

(4) The license fees must be deposited in the state special revenue fund and must be used by the board to investigate the applicant, to enforce this part, and for administrative costs, subject to 37-1-101(6).

History: Ap. p. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-915, R.C.M. 1947; Ap. p. Sec. 10, Ch. 221, L. 1971; amd. Sec. 23, Ch. 9, L. 1977; Sec. 26-917, R.C.M. 1947; R.C.M. 1947, 26-915(8) thru (11), 26-917; amd. Sec. 14, Ch. 545, L. 1981; amd. Sec. 4, Ch. 192, L. 1983; amd. Sec. 5, Ch. 528, L. 1987; Sec. 87-4-127, MCA 1985; redes. 37-47-306 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 9, Ch. 328, L. 1995; amd. Sec. 4, Ch. 543, L. 1999.

37-47-307. Investigation of applicant -- issuance or denial of license. (1) The department shall investigate each applicant for an outfitter's, guide's, or professional guide's license. The board shall determine the applicant's qualifications.

(2) The board may deny or refuse to issue any new license or to renew any previous license if the applicant does not meet the qualifications stated in this chapter or rules adopted pursuant to this chapter. In the event that any application for a license is denied or refused, the board shall immediately notify the applicant, setting forth in the notice the grounds upon which the denial or refusal is based.

(3) A licensee in good standing is entitled to a new license for the ensuing license year upon complying with the provisions of this chapter or rules adopted pursuant to this chapter and upon completing an application for license renewal on a form provided by the board.

(4) This section may not be interpreted to conflict with 37-1-138.

History: En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(12); amd. Sec. 15, Ch. 545, L. 1981; amd. Sec. 9, Ch. 239, L. 1983; amd. Sec. 6, Ch. 528, L. 1987; Sec. 87-4-128, MCA 1985; redes. 37-47-307 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 7, Ch. 220, L. 1993; amd. Sec. 10, Ch. 328, L. 1995; amd. Sec. 100, Ch. 429, L. 1995; amd. Sec. 46, Ch. 271, L. 2003.

37-47-308. Kinds of licenses. (1) When all the conditions of licensure have been satisfied, the board shall issue a license stating the outfitter or guide functions that the applicant is qualified and approved to perform.

(2) The license must be in the form prescribed and is valid for the licensing year in which issued.

(3) If the application is denied, the board shall notify the applicant in writing of the reasons for the denial, and if the reasons are corrected, a license must be issued upon reapplication.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(1); amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-129, MCA 1985; redes. 37-47-308 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 8, Ch. 220, L. 1993.

37-47-309. Repealed. Sec. 22, Ch. 328, L. 1995.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(2), (3); amd. Sec. 16, Ch. 545, L. 1981; Sec. 87-4-130, MCA 1985; redes. 37-47-309 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 4, Ch. 565, L. 1989; amd. Sec. 9, Ch. 220, L. 1993.

37-47-310. Transfer or amendment of outfitter's license -- transfer of river-use days to new owner of fishing outfitter business. (1) An outfitter's license may not be transferred.

(2) An individual person may, upon proper showing, have that person's outfitter's license amended to indicate that the license is being held for the use and benefit of a named proprietorship, partnership, or corporation.

(3) Subject to approval by the board, a person designated by the family of an outfitter who is deceased or incapacitated due to physical or mental disease or injury or who is unable to carry out the responsibilities of an outfitter due to the outfitter's status as an active member of the military may continue to provide outfitting services for the outfitter's unexpired license year, or until the family sells the outfitting business, until the designee obtains an outfitter license.

(4) When a fishing outfitter's business is sold or transferred in its entirety, any river-use days that have been allocated to that fishing outfitter through the fishing outfitter's historic use of or activities on restricted-use streams are transferable to the new owner of the fishing outfitter's business. Upon the sale or transfer of a fishing outfitter's business, the outfitter who sells or transfers the business shall notify the new owner that the use of any transferred river-use days is subject to change pursuant to rules adopted by the fish, wildlife, and parks commission and that a property right does not attach to the transferred river-use days.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(4); amd. Sec. 17, Ch. 545, L. 1981; amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-131, MCA 1985; redes. 37-47-310 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 10, Ch. 220, L. 1993; amd. Sec. 1, Ch. 91, L. 2003; amd. Sec. 1, Ch. 197, L. 2005; amd. Sec. 12, Ch. 100, L. 2011.

37-47-311. Limit one license. An individual may not hold more than one outfitter's license either for the individual's own benefit or for the use and benefit of a partnership, limited liability partnership, limited liability company, or corporation. However, the name of a partnership, limited liability partnership, limited liability company, or corporation may appear on more than one current outfitter's license and within more than one operation plan filed with the board.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(5); Sec. 87-4-132, MCA 1985; redes. 37-47-311 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 2, Ch. 197, L. 2005.

37-47-312. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(6); Sec. 87-4-133, MCA 1985; redes. 37-47-312 by Sec. 11, Ch. 528, L. 1987.

37-47-313. Shuttle and rental services -- exemption . (1) Nothing in this chapter prohibits the furnishing of shuttle or rental services as long as those services do not include in-field assistance to a customer.

(2) In-field assistance includes but is not limited to:

(a) setting up a camp;

(b) field instruction for the activity to be conducted by the customer; or

(c) other services considered to be services of an outfitter, as defined in 37-47-101.

History: En. Sec. 2, Ch. 328, L. 1995.

37-47-314. Terminated. Sec. 26, Ch. 328, L. 1995.

History: En. Sec. 11, Ch. 328, L. 1995.

37-47-315. Terminated. Sec. 6, Ch. 544, L. 1999.

History: En. Sec. 11, Ch. 459, L. 1995; amd. Sec. 1, Ch. 544, L. 1999.

37-47-316. Transfer of net client hunter use upon transfer of operations plan. The NCHU of an existing outfitting business transfers with the operations plan for that business unless the business has not been in operation for at least 3 years. Upon the expiration of 5 1/2 years after transfer, the client base must be adjusted to reflect the highest number of clients served in any category during the preceding 5 1/2 years, not to exceed the total authorized by the NCHU.

History: En. Sec. 5, Ch. 543, L. 1999; amd. Sec. 1, Ch. 393, L. 2001; amd. Sec. 3, Ch. 328, L. 2011.

37-47-317. Repealed. Sec. 5, Ch. 328, L. 2011.

History: En. Sec. 6, Ch. 543, L. 1999.

37-47-318. Fees in addition to annual license fee -- allocation. In addition to the fees required in 37-47-306 for an outfitter providing hunting services, an outfitter shall pay an annual fee of \$2 for each client served. The fee collected pursuant to this section must be expended by the board pursuant to the authority in 37-47-306 and by the department of fish, wildlife, and parks pursuant to the authority in 87-1-601 and used to fund administrative costs related to implementation of this chapter. Revenue generated by the fee must be split equally between the board and the department of fish, wildlife, and parks.

History: En. Sec. 7, Ch. 543, L. 1999; amd. Sec. 21, Ch. 502, L. 2007; amd. Sec. 4, Ch. 328, L. 2011.

37-47-319 through 37-47-340 reserved.

37-47-341. Grounds for denial, suspension, or revocation of license. A license or right to apply for and hold a license issued under this part may be denied, suspended, or revoked or other disciplinary conditions may be applied upon any of the following grounds:

(1) having ceased to meet all of the qualifications for holding a license, as required under this chapter and rules adopted pursuant to this chapter;

(2) fraud or deception in procuring a license;

- (3) fraudulent, untruthful, or misleading advertising;
- (4) having pleaded guilty to or been adjudged by a court guilty of a felony, including a case in which the sentence is suspended or imposition of the sentence is deferred, unless civil rights have been restored pursuant to law.
- (5) one conviction or bond forfeiture as to a violation of the fish and game or outfitting laws or regulations of any state or the United States;
- (6) a substantial breach of a contract with a participant provided that the breach is established as a matter of final judgment in a court of law;
- (7) the willful employment of or contracting with an unlicensed guide or professional guide by an outfitter;
- (8) negligence or misconduct while acting as an outfitter, guide, or professional guide that causes an accident or injury to the person or property of a participant;
- (9) misconduct as defined by board rule; or
- (10) any violation of this chapter or a rule adopted pursuant to this chapter.

History: En. Sec. 11, Ch. 221, L. 1971; amd. Sec. 5, Ch. 541, L. 1975; amd. Sec. 8, Ch. 417, L. 1977; R.C.M. 1947, 26-918; amd. Sec. 18, Ch. 545, L. 1981; Sec. 87-4-141, MCA 1985; redes. 37-47-341 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 5, Ch. 565, L. 1989; amd. Sec. 11, Ch. 220, L. 1993; amd. Sec. 12, Ch. 328, L. 1995; amd. Sec. 22, Ch. 502, L. 2007.

37-47-342. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 12, Ch. 221, L. 1971; amd. Sec. 6, Ch. 541, L. 1975; amd. Sec. 9, Ch. 417, L. 1977; R.C.M. 1947, 26-919; amd. Sec. 19, Ch. 545, L. 1981; amd. Sec. 7, Ch. 528, L. 1987; Sec. 87-4-142, MCA 1985; redes. 37-47-342 by Sec. 11, Ch. 528, L. 1987.

37-47-343. Appeal procedure. A person who feels aggrieved by a final order of the board denying issuance of a license or suspending or revoking a license as an outfitter, guide, or professional guide may petition for judicial review as provided in Title 2, chapter 4, part 7.

History: En. Sec. 13, Ch. 221, L. 1971; amd. Sec. 7, Ch. 541, L. 1975; amd. Sec. 10, Ch. 417, L. 1977; R.C.M. 1947, 26-920; amd. Sec. 20, Ch. 545, L. 1981; amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-143, MCA 1985; redes. 37-47-343 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 12, Ch. 220, L. 1993; amd. Sec. 13, Ch. 328, L. 1995.

37-47-344. Penalties -- disposition of fines. (1) A person who violates any provision of this chapter or rule adopted under this chapter is guilty of a misdemeanor and is punishable, unless otherwise specified, by a fine not exceeding \$500.

(2) Fifty percent of all fines paid under this section must be deposited in the general fund of the county in which the conviction is obtained, and 50% must be deposited in the state special revenue fund for the use of the board in enforcing this chapter. All investigation, preparation, and trial costs paid under this section must be deposited in the state special revenue fund for the use of the board in enforcing the provisions of this chapter. The board may reimburse other agencies for costs reasonably incurred in the enforcement of this chapter.

History: En. Sec. 8, Ch. 528, L. 1987; amd. Sec. 13, Ch. 220, L. 1993; amd. Sec. 2, Ch. 445, L. 2007.

37-47-345. Enforcement. Investigations and arrests for violations of this chapter or rules adopted pursuant to this chapter may be made by any peace officer; warden of the department of fish, wildlife, and parks; or federal agency enforcement personnel.

History: En. Sec. 9, Ch. 528, L. 1987; amd. Sec. 14, Ch. 328, L. 1995.

37-47-346. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 14, Ch. 220, L. 1993.

37-47-347 through 37-47-350 reserved.

37-47-351. Investigators. The department may hire investigators to assist the board in investigations and inspections authorized by this chapter.

History: En. Sec. 20, Ch. 328, L. 1995; amd. Sec. 13, Ch. 100, L. 2011.

Relative Duties of Outfitters, Guides, and Participants Part 4

37-47-401. Purpose. It is recognized that some activities conducted by outfitters, guides, and professional guides within the scope of their authorized services are inherently hazardous to participants regardless of all feasible safety measures that may be taken. It is the purpose of this part to define those areas of responsibility and affirmative acts or omissions for which outfitters, guides, and professional guides are liable for loss, damage, or injury and those risks for which the participant expressly assumes or is considered to have voluntarily assumed the risk of loss or damage.

History: En. Sec. 2, Ch. 170, L. 1981; Sec. 87-4-161, MCA 1985; redes. 37-47-401 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 15, Ch. 328, L. 1995.

37-47-402. Duties of outfitters, guides, and professional guides. An outfitter, guide, or professional guide offering professional services in this state shall:

- (1) act as would a reasonably prudent member of the profession while engaging in providing the services authorized to be performed by a licensed member of the profession;
- (2) comply with all standards adopted by board rule.

History: En. Sec. 3, Ch. 170, L. 1981; Sec. 87-4-162, MCA 1985; redes. 37-47-402 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 15, Ch. 220, L. 1993; amd. Sec. 16, Ch. 328, L. 1995.

37-47-403. Duties of participants. (1) A participant shall:

- (a) act as would a reasonably prudent person when engaging in the activities offered by a licensed outfitter, guide, or professional guide in this state;
- (b) receive permission from the outfitter, guide, or professional guide prior to embarking on any self-initiated activity and inform the outfitter, guide, or professional guide of the participant's plans and intentions upon receiving permission to engage in the self-initiated activity.

(2) A participant may not:

- (a) interfere with the running or operation of an outfitter's, guide's, or professional guide's activities when those activities conform to the standards of care set forth in 37-47-402;
- (b) use the outfitter's, guide's, or professional guide's equipment, facilities, or services unless the participant has requested and received permission from the outfitter, guide, or professional guide;
- (c) knowingly, purposely, or negligently engage in any type of conduct that contributes to or causes injury to the participant or any other person.

History: En. Sec. 4, Ch. 170, L. 1981; Sec. 87-4-163, MCA 1985; redes. 37-47-403 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 17, Ch. 328, L. 1995.

37-47-404. Responsibility for violations of law. (1) A person accompanying a hunting or fishing party as an outfitter, guide, or professional guide is equally responsible with any person or party engaging the person as an outfitter for any violation of fish and game laws unless the violation is reported to a peace officer by the outfitter, guide, or professional guide and the outfitter, guide, or professional guide was not an active participant. An outfitter, guide, or

professional guide who willfully fails or refuses to report any violation of fish and game laws is liable for the penalties provided in this chapter. If a guide or professional guide violates the laws or applicable regulations relating to fish and game, outfitting, or guiding with actual or implied knowledge of an outfitter engaging the guide or professional guide, the outfitter is legally responsible for the violation for all purposes under the laws or regulations if the outfitter fails to report the violation to the proper authority.

(2) An outfitter, guide, or professional guide shall report any violation or suspected violation of fish and game laws that the outfitter, guide, or professional guide knows or reasonably should have known has been committed by the employees, agents, representatives, clients, or participants in the outfitting or guiding activity. The violation or suspected violation must be reported to a peace officer at the earliest possible opportunity.

(3) A person may not hire or retain an outfitter unless the outfitter is currently licensed in accordance with the laws of the state of Montana. A person may not use the services of a guide or professional guide and a guide or professional guide may not offer services unless the services are obtained through an endorsing outfitter.

History: En. Sec. 71, Ch. 173, L. 1917; re-en. Sec. 3750, R.C.M. 1921; re-en. Sec. 3750, R.C.M. 1935; amd. Sec. 6, Ch. 173, L. 1949; amd. Sec. 5, Ch. 184, L. 1951; amd. Sec. 3, Ch. 223, L. 1955; amd. Sec. 2, Ch. 541, L. 1975; R.C.M. 1947, 26-906; amd. Sec. 4, Ch. 545, L. 1981; Sec. 87-4-103, MCA 1985; redes. 37-47-404 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 16, Ch. 220, L. 1993; amd. Sec. 18, Ch. 328, L. 1995; amd. Sec. 40, Ch. 109, L. 2009.

State of Montana
Department of Labor and Industry
Business Standards Division

ADMINISTRATIVE RULES OF MONTANA
RELATING TO OUTFITTERS



ISSUED BY:

MONTANA BOARD OF OUTFITTERS
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PO BOX 200513
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UPDATED JANUARY 2012

DEPARTMENT OF LABOR & INDUSTRY

ADMINISTRATIVE RULES OF MONTANA

DEPARTMENT OF LABOR AND INDUSTRY

CHAPTER 101

BUSINESS STANDARDS DIVISION

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Subchapter 3

General Provisions

24.101.301 ABATEMENT OF RENEWAL FEES (1) Pursuant to 17-2-302, MCA, state programs that charge a fee for services are generally not permitted to let their cash balance exceed twice the program's annual appropriation. However, despite the best projections of a program, there may be times when cash balances exceed the amount authorized by statute. This rule is intended to provide a process for a program that needs to reduce its cash balance with a standard methodology to do so, in fair and equitable manner. This rule provides for an abatement of certain fees when the cash balance is excessive.

(2) Except as provided by (3), a program that has an excessive cash balance may abate the renewal fees for the program's licensees or registrants for one or more renewal cycles until the program's cash balance does not exceed the allowable maximum.

(a) The abatement of renewal fees may be the total amount of the renewal fee, or only a specified portion of the renewal fee.

(b) If a program has more than one category of renewals, the abatement must be made on a roughly proportional basis to fairly, equitably, reasonably and economically distribute the abatement among the program's licensees or registrants. The program may, for good cause, completely abate the renewal fee for certain classes of licensees or registrants and not for other classes, if the administrative cost of processing a reduced renewal fee for all classes is disproportionately high. In such a case, the program must attempt in any future abatements to equitably treat those classes of renewals which have borne a relatively higher proportion of renewal fees.

(c) The fact that the renewal fee is abated for any given renewal cycle does not excuse the licensee or registrant from otherwise fulfilling the renewal requirements, including submission of a renewal application and/or continuing education documentation. A program, to the extent it so provides by rule, may impose a late fee on untimely submissions of renewal applications or other required documentation.

(3) This rule does not apply to programs for which an exception to 17-2-302, MCA, exists and is applicable. As an example, a program with a three-year renewal cycle will have an apparent excess cash balance during the first year of the renewal cycle, based on a collection of three year's worth of fees for operations expenses.

(4) This rule does not relieve a program from the duty to establish fees at a level commensurate with costs.

(5) A licensing board attached to the department for administrative purposes may adopt the procedures specified in this rule by incorporating this rule by reference. Such an adoption of this rule authorizes the department to make such abatements as are appropriate, without further vote or action by the board. Incorporation by reference of this rule does not relieve the board of its obligations to set fees in a manner commensurate with costs. This rule does not relieve a board from its duty to undertake appropriate rulemaking to modify its fee structure when there are recurrent instances of cash balances in excess of the amount allowed by statute. (History: 37-1-101, MCA; IMP, 17-2-302, 17-2-303, 37-1-101, 37-1-134, MCA; NEW, 2004 MAR p. 2286, Eff. 9/24/04.)

Subchapter 4

Standardized Rules for Boards and Programs

24.101.401 PURPOSE (1) The purpose of this subchapter is to standardize similar functions and processes within the division and administratively attached boards, including, but not limited to:

- (a) setting standardized fees;
- (b) standardizing forms;
- (c) eliminating the need for a licensing board to issue routine licenses; and
- (d) setting uniform standards for license renewal. (History: 37-1-101, MCA; IMP, 37-1-101, 37-1-104, MCA; NEW, 2006 MAR p. 1583, Eff. 7/1/06.)

24.101.402 DEFINITIONS As used in conjunction with Title 37, MCA, the following definitions apply:

(1) "Active status" means the license holder is afforded the rights and privileges to practice under the license while complying with the requirements as set by the licensing entity.

(2) "Administrative fees" means a fee charged for products or services provided by the division.

(3) "Department" means the Department of Labor and Industry.

(4) "Disciplinary action" means the procedure by which unprofessional conduct is addressed by the licensing entity pursuant to the contested case hearing provisions of the Montana Administrative Procedure Act (MAPA).

(5) "Division" means the Business Standards Division of the Department of Labor and Industry.

(6) "Expired license" means a license for which the renewal requirements have not been met within 45 days to two years after the license renewal date. An expired license may be reactivated anytime within these two years.

(7) "Inactive status" means an option provided by some licensing entities in which a licensee may retain a license but the licensee does not intend to practice, nor will the licensee engage in licensed activities at any time during the duration of the inactive status license. The licensee may wish to reactivate the inactive status license in the future. An inactive license must be renewed as prescribed by the licensing entity.

(8) "Lapsed license" means a license that has not been renewed by the license renewal date. A lapsed license may be reactivated at anytime within 45 days following the license renewal date.

(9) "Late penalty fee" means the fee that is required to be paid by a licensee upon renewal of a license if the licensee failed to renew the license by the renewal date.

(10) "License history" means the progression of the license record from original licensure to the current status of the license provided to any requestor.

(11) "License verification" means the documentation provided to another licensing entity that may include information supplied for original licensure or the license history information.

(12) "New original license" means a license issued to an individual whose previous original license terminated and was not reinstated. In order to receive a new original license, all current requirements for obtaining an original license must be met including, but not limited to, submitting required application materials, successfully passing the required examinations as applicable, and paying the appropriate fees. The new original license number will remain the same as the original license number.

(13) "Nonroutine application" means an application submitted to the division in which the application is defined as nonroutine either by the specific licensing entity's rules or by these rules. In conflicts between the specific licensing entity's rules and these rules, the specific licensing entity's rules govern.

(a) A nonroutine application means that the applicant has one or more of the following:

(i) has pending or completed disciplinary action in this state, or pending or completed disciplinary action in another state, territory, or jurisdiction;

(ii) is restricted by the terms and conditions of a final order in a disciplinary matter;

(iii) is required to submit materials that require professional evaluation by another licensee or licensing entity;

(iv) has loss of documentation due to natural disaster or national emergency; or

(v) is foreign-educated, except for those foreign-educated applicants applying for licensure from the following:

(A) Board of Medical Examiners;

(B) Board of Professional Engineers and Professional Land Surveyors; or

(C) Board of Realty Regulation.

(14) "Original license" means the initial license issued to a licensee by the department after successfully fulfilling all licensure requirements for the first time.

(15) "Probationary license" means a license, that due to discipline taken against the licensee, signifies the license holder is afforded the rights and privileges to practice under the license while complying with the terms and conditions of a final order as issued by the licensing entity.

(16) "Reactivated license" means a lapsed or expired license that is renewed between the renewal date and two years following the renewal date. In order to reactivate a license, all renewal requirements must be met.

(17) "Reactivation of license" means activating a lapsed or expired license.

(18) "Renewal date" means the date by which an existing license must be renewed as listed in ARM 24.101.413. Renewal information must be submitted on or before the renewal date in order for a license to be renewed without the assessment of the late penalty fee.

(19) "Routine application" means an application submitted to the division in which the application is defined as routine either by the specific licensing entity's rules or by these rules. In conflicts between the specific licensing entity's rules and these rules, the specific licensing entity's rules govern.

(a) A routine application means that the applicant does not have one or more of the following:

(i) pending or completed disciplinary action in this state, or pending or completed disciplinary action in another state, territory, or jurisdiction;

(ii) is not restricted by the terms and conditions of a final order in a disciplinary matter;

(iii) is not required to submit materials that require professional evaluation by another licensee or licensing entity;

(iv) loss of documentation due to natural disaster or national emergency; or

(v) is foreign-educated, except for those foreign-educated applicants applying for licensure from the following:

(A) Board of Medical Examiners;

(B) Board of Professional Engineers and Professional Land Surveyors; or

(C) Board of Realty Regulation.

(20) "Standardized fee" means an administrative fee for a common product or service that is charged to division customers.

(21) "Suspended license" means a license, that due to discipline taken against the licensee, signifies the license holder is no longer afforded the rights and privileges to practice under the license for a period of time specified by the final order issued by the licensing entity.

(22) "Terminated license" means a license that has not been renewed or reactivated within two years of the renewal deadline. A terminated license may not be reactivated.

(History: 37-1-101, MCA; IMP, 37-1-130, 37-1-131, 37-1-141, MCA; NEW, 2006 MAR p. 1583, Eff. 7/1/06.)

24.101.403 FEES (1) Standardized fees, in addition to those fees charged by a specific licensing entity are as follows:

(a) duplicate license	\$ 5
(b) licensee lists or rosters	20
(c) photocopies per page (in excess of 20 pages)	
.25	
(d) certified copies per page (in excess of ten pages)	
.50	
(e) license history	20
(f) duplicate wall certificate	20

- (g) returned check fee, including but not limited to, checks issued with nonsufficient funds, stop payment requests, or missing signatures 30
- (h) license verification 20
- (i) the license verification fee is waived for any licensing entity with a signed reciprocal agreement with another licensing entity and the licensing entities have agreed that no fees are to be charged;
- (i) status change fee from inactive to active during the licensure period is the difference between the cost of an inactive license and an active license renewal fee;
- (j) renewal fee for a suspended license is 50 percent of the renewal fee; and
- (k) renewal fee for a probationary license is the same as the renewal fee.
- (2) The late penalty fee for each renewal period a license has not been renewed shall be 100 percent of the renewal fee. The penalty fee is in addition to the renewal fee and must be paid for each renewal period that the license has not been renewed. If the license has not been renewed on or before the date set by ARM 24.101.413, the late penalty fee must be paid.
- (a) In the event a renewal fee has been abated, the late penalty fee still applies. The late penalty fee that must be paid is 100 percent of the renewal fee that would have been charged had the renewal fee not been abated.
- (3) There is no late fee for licensed guides under the jurisdiction of the Board of Outfitters.
- (4) When converting an inactive status license to an active status license, the difference between the inactive status fee and the active status fee must be paid for the remainder of the current renewal period.
- (5) When a military reservist renews a professional or occupational license after being discharged from active duty, the renewal fee will be the current renewal fee. No past fees accrued while the reservist was on active duty will be charged pursuant to 37-1-138, MCA.
- (6) All fees are nonrefundable. (History: 37-1-101, MCA; IMP, 27-1-717, 37-1-130, 37-1-134, 37-1-138, MCA; NEW, 2006 MAR p. 1583, Eff. 7/1/06; AMD, 2010 MAR p. 2384, Eff. 10/15/10.)

24.101.404 POSTING DISCIPLINARY ORDERS ON LICENSEE LOOKUP

DATABASE (1) Unless the exceptions in (2) and (3) are applicable, any final order imposing a sanction against a professional or occupational license holder that is based on competence to practice issues or based on an allegation that generally or specifically is a violation of law or regulation, is a "disciplinary action" that must be published and noted on the licensee lookup.

(2) If a final order is based only upon a failure to file or complete in a timely manner a minor administrative requirement that is in rule or law, the order affecting the licensee is not a "disciplinary action" for the purposes of publication and notice on the licensee lookup.

(3) A final order of license denial based solely upon an applicant's failure to meet minimum licensure qualifications and not based on competence to practice issues or involving the applicant's past disciplinary or legal actions is not a "disciplinary action" for the purposes of publication and notice on the licensee lookup. (History: 37-1-101, MCA; IMP: 37-1-311, 37-1-405, MCA; NEW, 2009 MAR p. 1167, Eff. 7/17/09.)

Rules 24.101.405 and 24.101.406 reserved

24.101.407 LICENSING (1) The department will issue all licenses to those routine applicants who meet the licensing requirements and pay the required fees.

(2) The department will issue all licenses as directed by the governing board to those nonroutine applicants who meet the licensing requirements and pay the required fees. A nonroutine applicant may be asked to appear before the board prior to the final board decision

regarding the granting of a nonroutine license. (History: 37-1-101, MCA; IMP, 37-1-101, 37-1-130, MCA; NEW, 2006 MAR p. 1583, Eff. 7/1/06.)

24.101.408 RENEWED, LAPSED, EXPIRED, OR TERMINATED LICENSES (1)

All licenses must be renewed on or before the renewal date as listed in, and in accordance with ARM 24.101.413. Late renewals must be accompanied by the fees as specified in ARM 24.101.403 and any other information required as if the renewal were submitted prior to the renewal date.

(a) A suspended license must be renewed in accordance with ARM 24.101.413 or the license will proceed to expire or terminate.

(2) If the license has not been renewed, the license shall be considered a lapsed, expired, or terminated license.

(a) A lapsed license may be reactivated within 45 days of the renewal date by submitting the required, completed renewal information and paying the required fees.

(b) Licenses not renewed within 45 days from the renewal date automatically expire. An expired license may be reactivated within two years of the renewal date by submitting the required, completed renewal information and paying the required fees.

(c) Licenses not renewed within two years from the renewal date automatically terminate. A terminated license may not be reactivated. A new original license must be obtained by completing the current requirements for a new application, including successfully passing the licensing examination if applicable.

(3) A licensee whose license has lapsed or expired, may not apply for a new license. A licensee must renew the license if it has lapsed or expired. All renewal requirements must be met and fees paid in order for a lapsed or expired license to be renewed. A new original license will be issued to a licensee whose license has terminated, provided all licensing requirements are met.

(4) A licensee who practices while a license is lapsed is not considered to be practicing without a license.

(5) A licensee who practices after a license has expired is considered to be practicing without a license and is subject to discipline provided by statute or rule.

(6) A former licensee who practices after a license is terminated is considered to be practicing without a license and is subject to cease and desist or a district court restraining order. (History: 37-1-101, 37-1-141, MCA; IMP, 37-1-101, 37-1-130, 37-1-141, MCA; NEW, 2006 MAR p. 1583, Eff. 7/1/06.)

Rules 24.101.409 through 24.101.412 reserved

24.101.413 RENEWAL DATES AND REQUIREMENTS

(1) Specific procedures and grace periods for renewal are set by department or board rule, or statute applicable to a particular profession, or 37-1-141, MCA. Such procedures shall take account of, and be based upon, the renewal dates in this rule. An existing license ends on the renewal date specified for each profession and occupation listed and must be renewed on or before this date.

(2) If a timely and sufficient application is submitted on or prior to such date, the applicant's continued practice is governed under 2-4-631, MCA. In order for an application to be timely and sufficient it must be:

(a) completed with truthful information;

(b) accompanied by other required information or documentation as applicable;

(c) accompanied by the appropriate fee; and

(d) submitted so that it bears a U.S. Postal Service post mark prior to or on the renewal date for the applicable profession; or

(e) submitted by using the online renewal service available on the department's website. Although the department strives to keep its website accessible at all times, licensees should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing the online renewal service do not excuse late renewals;

(i) online renewal transactions must be fully completed prior to midnight Mountain time on the renewal date.

(3) If the requirements of this rule are not met, a late penalty fee as specified in ARM 24.101.403 will be required in order to renew.

(4) The provisions of ARM 24.101.408 and 24.101.414 are applicable to all license renewals.

(5) The following are renewal dates for the professions and occupations listed:

	BOARD OR PROGRAM JURISDICTION	LICENSE CATEGORY	FREQUENCY	RENEWAL DATE
(a)	Alternative Health Care	Naturopathic Physician	Annually	April 30
		Naturopathic Physician - Childbirth	Annually	April 30
		Direct-entry Midwife	Annually	April 30
		Direct-entry Midwife Apprentice	Annually	April 30
(b)	Architects	Architects	Annually	June 30

	BOARD OR PROGRAM JURISDICTION	LICENSE CATEGORY	FREQUENCY	RENEWAL DATE
(c)	Athletics	Boxer, Club	Nonrenewable, must reapply. License expires June 30.	
		Boxer, Professional	Nonrenewable, must reapply. License expires June 30.	
		Boxer, Semi-Professional	Nonrenewable, must reapply. License expires June 30.	
		Cornerperson/Second	Nonrenewable, must reapply. License expires June 30.	
		Judge	Nonrenewable, must reapply. License expires June 30.	
		Kickboxer	Nonrenewable, must reapply. License expires June 30.	

		Knockdown Judge	Nonrenewable, must reapply. License expires June 30.	
		Manager/Trainer	Nonrenewable, must reapply. License expires June 30.	
		Minimum Kicking Requirements Official	Nonrenewable, must reapply. License expires June 30.	
		Promoter/Matchmaker	Nonrenewable, must reapply. License expires June 30.	
		Referee	Nonrenewable, must reapply. License expires June 30.	
		Wrestler, Professional	Nonrenewable, must reapply. License expires June 30.	
		Wrestler, Semi-Professional	Nonrenewable, must reapply. License expires June 30.	
(d)	Athletic Trainers	Athletic Trainers	Annually	August 31

	BOARD OR PROGRAM JURISDICTION	LICENSE CATEGORY	FREQUENCY	RENEWAL DATE
(e)	Barbers and Cosmetologists	Barber	Biennially	March 1
		Barber Shop	Annually	July 1
		Barber School or College	Annually	March 1
		Barbering Instructor	Biennially	March 1
		Booth Rental	Annually	July 1
		Cosmetologist	Biennially	March 1
		Electrologist	Biennially	March 1
		Esthetician	Biennially	March 1
		Instructor	Biennially	March 1
		Manicurist	Biennially	March 1
		Salon	Annually	July 1
(f)	Boiler Operating Engineers	Agriculture Class Boiler Engineer	Annually	April 1
		First Class Boiler	Annually	April 1

		Engineer		
		Low Pressure Boiler Engineer	Annually	April 1
		Second Class Boiler Engineer	Annually	April 1
		Third Class Boiler Engineer	Annually	April 1
		Traction Boiler Engineer	Annually	April 1
(g)	Chiropractors	Chiropractors	Annually	September 1

h)	Clinical Laboratory Science Practitioners	Clinical Laboratory Scientist	Annually	May 1
		Clinical Laboratory Specialist	Annually	May 1
		Clinical Laboratory Technician	Annually	May 1
i)	Construction Blasters	Construction Blasters	Annually	January 1
j)	Crane and Hoisting Operating Engineers	First Class Crane Operators	Annually	Anniversary Date of License
		Second Class Crane Operators	Annually	Anniversary Date of License
		Third Class Crane Oiler	Annually	Anniversary Date of License
k)	Dentistry	Dental Hygienist	Annually	March 1
		Dentist	Annually	March 1
		Denturist	Annually	March 1
		General Anesthesia Administration Permit	Annually	March 1
		Volunteer Licensees	Annually	March 1
l)	Elevator Program	Contractor	Biennially	April 1
		Inspector	Biennially	April 1
		Mechanic	Biennially	April 1
m	Fire Prevention and Investigation and Fireworks Wholesalers Program	Company Hiring Entity (Sell, Install and Service)	Annually	May 31
		Individual Endorsement (Sell, Install and Service)	Annually	May 31
		Fireworks Wholesaler	Nonrenewable	

	BOARD OR PROGRAM JURISDICTION	LICENSE CATEGORY	FREQUENCY	RENEWAL DATE
(n)	Funeral Service	Crematory	Annually	July 1
		Crematory Operator	Annually	July 1
		Crematory Technician	Annually	July 1
		Mortician	Annually	July 1
		Mortuary	Annually	July 1
		Mortuary Branch Facility	Annually	July 1
(o)	Hearing Aid Dispenser	Hearing Aid Dispenser	Annually	June 30
(p)	Landscape Architects	Landscape Architects	Annually	June 30
(q)	Licensed Addiction Counselors	Licensed Addiction Counselor	Annually	June 30
(r)	Massage Therapy	Licensed Massage Therapist	Annually	August 31
(s)	Medical Examiners	Acupuncturist	Biennially	October 31
		Emergency Medical Technician	Biennially	March 31
		Nutritionist	Biennially	October 31
		Physician	Biennially	March 31
		Physician Assistant	Biennially	October 31
		Podiatrist	Biennially	October 31
		Telemedicine Practitioners	Biennially	March 31

	BOARD OR PROGRAM JURISDICTION	LICENSE CATEGORY	FREQUENCY	RENEWAL DATE
(t)	Nursing	Clinical Nurse Specialist	Biennially, Even Numbered Years	December 31
		Nurse Anesthetist	Biennially, Even Numbered Years	December 31
		Nurse Midwife	Biennially, Even Numbered Years	December 31
		Nurse Practitioner	Biennially, Even Numbered Years	December 31
		APRN Prescriptive Authority	Biennially, Even Numbered Years	December 31

		Practical Nurse - Licensed	Biennially, Even Numbered Years	December 31
		Professional Nurse - Registered	Biennially, Even Numbered Years	December 31
		Medication Aide	Annually	March 31
(u)	Nursing Home Administrators	Nursing Home Administrator	Annually	December 31
(v)	Occupational Therapy Practice	Occupational Therapist	Annually	June 15
		Occupational Therapist Assistant	Annually	June 15
(w)	Optometry	Optometrist	Annually	July 2
(x)	Outfitters	Outfitter	Annually	December 31
		Professional Guide	Annually	December 31
		Guide (including provisional guide)	Annually	December 31

	BOARD OR PROGRAM JURISDICTION	LICENSE CATEGORY	FREQUENCY	RENEWAL DATE
(y)	Pharmacy	Dangerous Drug License	Annually	November 30
		Mail Order Pharmacy	Annually	November 30
		Pharmacist	Annually	June 30
		Pharmacy	Annually	November 30
		Pharmacy Technician	Annually	June 30
		Pharmacy Technician in Training	Nonrenewable	
		Pharmacy Technician Utilization Plan	Annually	November 30
		Telepharmacies	Annually	November 30
		Wholesale Drug Distributor	Annually	November 30
(z)	Physical Therapy Examiners	Physical Therapist	Annually	April 1
		Physical Therapist Assistant	Annually	April 1
		Journeyman Plumber	Annually	September 1
(aa)	Plumbers	Master Plumber	Annually	September 1
		Medical Gas Endorsement	Annually	September 1

	BOARD OR PROGRAM JURISDICTION	LICENSE CATEGORY	FREQUENCY	RENEWAL DATE
(ab)	Private Alternative Adolescent	Program	Annually	June 30

	Residential or Outdoor Programs			
(ac)	Private Security Patrol Officers and Investigators	Contract Security Company	Annually	March 1
		Electronic Security Company	Annually	March 1
		Proprietary Security Organization	Annually	March 1
		Branch Office	Annually	March 1
		Private Investigator	Annually	March 1
		Private Investigator Trainee	Annually	March 1
		Resident Manager	Annually	March 1
		Qualifying Agent	Annually	March 1
		Security Guard	Annually	March 1
		Alarm Installer	Annually	March 1
		Alarm Response Runner	Annually	March 1
		Firearms Instructor	Annually	March 1
		Armed Status	Annually	

	BOARD OR PROGRAM JURISDICTION	LICENSE CATEGORY	FREQUENCY	RENEWAL DATE
(ad)	Professional Engineers and Professional Land Surveyors	Certificate of Authorization	Annually	October 1
		Emeritus Status		
		Engineer Intern	Indefinite	
		Land Surveyor Intern	None, Indefinite	
		Professional Engineer	Biennially, Even Numbered Years	June 30
		Professional Engineer by Comity	Biennially, Even Numbered Years	June 30
		Professional Land Surveyor	Biennially, Even Numbered Years	June 30
		Professional Land Surveyor by Comity	Biennially, Even Numbered Years	June 30
(ae)	Psychologists	Psychologist	Annually	December 31
(af)	Public Accountants	Certified Public Accountant	Annually	December 31

		Licensed Public Accountant	Annually	December 31
(ag)	Radiologic Technologists	Limited Permit X-Ray Procedures	Annually	February 1
		Radiologic Technologists	Annually	February 1

	BOARD OR PROGRAM JURISDICTION	LICENSE CATEGORY	FREQUENCY	RENEWAL DATE
(ah)	Real Estate Appraisers	General Appraiser, Certified	Annually	March 31
		General Appraiser, Certified (Out-of-State)	Annually	March 31
		Licensed Appraiser	Annually	March 31
		Mentor		
		Residential Appraiser, Certified	Annually	March 31
		Residential Appraiser, Certified (Out-of-State)	Annually	March 31
		Trainee	Annually	March 31
(ai)	Realty Regulation	Property Manager	Annually	October 31
		Real Estate Broker	Annually	October 31
		Real Estate Salesperson	Annually	October 31
		Timeshare Salesperson	Annually	October 31
(aj)	Respiratory Care Practitioners	Respiratory Care Practitioners	Annually	May 1
(ak)	Sanitarians	Sanitarians	Annually	June 30
(al)	Social Workers and Professional Counselors	Professional Counselor - Clinical	Annually	December 31
		Social Worker - Clinical	Annually	December 31

	BOARD OR PROGRAM JURISDICTION	LICENSE CATEGORY	FREQUENCY	RENEWAL DATE
(am)	Speech-Language Pathologists and Audiologists	Audiologist	Annually	February 1
		Audiologist Aide*	Annually* Aides are not license type and do not renew, but must be registered by supervising licensee.	October 31
		Speech-Language	Annually	February 1

		Pathologist		
		Speech-Language Pathologist Aide*	Annually* Aides are not license type and do not renew, but must be registered by supervising licensee.	October 31
		Active Temporary Speech Pathologist or Audiologist	Nonrenewable Two-year license	
(an)	State Electrical Board	Electrical Contractor	Nonrenewable, must reapply. License expires July 15.	
		Journeyman Electrician	Biennially, Even Numbered Years	July 15
		Master Electrician	Biennially, Even Numbered Years	July 15
		Residential Electrician	Biennially, Even Numbered Years	July 15

	BOARD OR PROGRAM JURISDICTION	LICENSE CATEGORY	FREQUENCY	RENEWAL DATE
(ao)	Veterinary Medicine	Euthanasia Agency	Annually	May 30
		Embryo Transfer Technician	Annually	November 1
		Euthanasia Technician	Annually	May 30
		Veterinarian	Annually	November 1

(6) The following are nonrenewable licenses:

(a) temporary licenses issued by a licensing entity unless that licensing entity's rules provide otherwise;

(b) fireworks wholesalers;

(c) real estate appraiser mentors;

(d) pharmacy technicians in training;

(e) active temporary speech pathologists and audiologists;

(f) land surveyor intern, engineer intern, emeritus status license issued by the Board of Professional Engineers and Professional Land Surveyors;

(g) all licenses issued by the Board of Athletics end on June 30 of each year and the licensee must reapply; and

(h) electrical contractor licenses issued by the State Electrical Board end on July 15 biennially and the licensee must reapply.

(7) The specific date by which each individual licensee is required to renew by can be obtained by contacting the licensing entity's office or by using the licensee lookup system available on the department's web site.

History: 37-1-101, 37-1-141, MCA; IMP, 37-1-101, 37-1-141, MCA; NEW, 1995 MAR p. 2140, Eff. 10/13/95; AMD, 1996 MAR p. 1373, Eff. 5/24/96; AMD, 1999 MAR p. 274, Eff. 2/12/99; AMD, 1999 MAR p. 2435, Eff. 10/22/99; AMD, 2006 MAR p. 1277, Eff. 5/19/06; TRANS, from Commerce & AMD, 2006 MAR p. 1583, Eff. 7/1/06; AMD, 2007 MAR p. 505, Eff.

4/27/07; AMD, 2007 MAR p. 1327, Eff. 9/7/07; AMD, 2007 MAR p. 1329, Eff. 9/7/07; AMD, 2007 MAR p. 1447, Eff. 9/21/07; AMD, 2008 MAR p. 949, Eff. 5/9/08; AMD, 2008 MAR p. 1031, Eff. 5/23/08; AMD, 2008 MAR p. 1705, Eff. 8/15/08; AMD, 2010 MAR p. 532, Eff. 2/26/10; AMD, 2010 MAR p. 746, Eff. 3/26/10; AMD, 2010 MAR p. 1078, Eff. 4/30/10; AMD, 2010 MAR p. 1187, Eff. 5/14/10; AMD, 2010 MAR p. 2384, Eff. 10/15/10; AMD, 2011 MAR p. 576, Eff. 4/15/11; AMD, 2011 MAR p. 1683, Eff. 8/26/11.

24.101.414 RENEWAL NOTIFICATION (1) The department shall send renewal notices to all licensees. Renewal notices shall be sent to the last known address in the division's records. It is the responsibility of the licensee to keep the division timely informed of the licensee's current mailing address. Failure to receive notice for renewal in no way releases the licensee from the obligation to renew in a timely manner, and shall not constitute a defense to practicing without a license. (History: 37-1-101, 37-1-141, MCA; IMP, 37-1-101, 37-1-130, 37-1-141, MCA; NEW, 2006 MAR p. 1583, Eff. 7/1/06.)

BOARD OF OUTFITTERS

ADMINISTRATIVE RULES OF MONTANA

DEPARTMENT OF LABOR AND INDUSTRY

CHAPTER 171

OUTFITTERS

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Subchapter 1

Organizational Rule

24.171.101 BOARD ORGANIZATION (1) The Board of Outfitters hereby adopts and incorporates the organizational rules of the Department of Labor and Industry listed at chapter 1 of this title of the Administrative Rules of Montana.

(2) It is the policy, intent, and purpose of the Board of Outfitters to provide quality regulatory functions and services to the profession it regulates and the public in order to promote, maintain, and preserve an ever-improving high degree of competence in the profession, satisfaction in the public, and an everlasting environment in which the profession operates. (History: 2-4-201, MCA; IMP, 2-4-201, MCA; NEW, 1988 MAR p. 46, Eff. 1/15/88; AMD, 1988 MAR p. 1666, Eff. 7/29/88; TRANS, from Commerce, 2006 MAR p. 324.)

Subchapter 2

Procedural Rules

24.171.201 PROCEDURAL RULES (1) The Board of Outfitters hereby adopts and incorporates the procedural rules of the Department of Labor and Industry as listed in chapter 2 of this title of the Administrative Rules of Montana. (History: 2-4-201, 37-47-201, MCA; IMP, 2-4-201, 37-47-201, MCA; NEW, 1988 MAR p. 46, Eff. 1/15/88; AMD, 1988 MAR p. 1666, Eff. 7/29/88; TRANS, from Commerce, 2006 MAR p. 324.)

24.171.202 PUBLIC PARTICIPATION RULES (1) The Board of Outfitters hereby adopts and incorporates the citizen participation rules of the Department of Commerce as listed in chapter 2 of Title 8.

(2) Dates, times, and places for meetings and other activities of the Board of Outfitters may be obtained by contacting the board office.

(3) Communications to the Board of Outfitters may be made to: Board of Outfitters, Department of Labor and Industry, 301 S. Park, P.O. Box 200513, Helena, Montana 59620-0513.

(4) In addition to any other means provided by law or rule, a person wanting to receive notice of board activities of significant interest to that person may contact the board office, in writing, and request that his or her name, address, and phone number be placed on the board's "mailing list" and designate those activities of interest. The request shall be effective until January 1 of the following year, at which time it may be renewed by written request annually. (History: 2-3-103, 37-47-201, MCA; IMP, 2-3-103, 37-47-201, MCA; NEW, 1988 MAR p. 46, Eff. 1/15/88; AMD, 1988 MAR p. 1666, Eff. 7/29/88; AMD, 1996 MAR p. 668, Eff. 3/8/96; TRANS, from Commerce, 2006 MAR p. 324.)

Subchapter 3 reserved

Subchapter 4

General Provisions

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

(a) New outfitter application and license.	\$1300
This fee includes the following costs, but does not include fees related to operations plan.	
(i) application processing	350
(ii) examination	150
(iii) investigation	400
(iv) license	400
(b) Application for amendment to outfitter license.	450
This fee includes the following costs:	
(i) application processing	300
(ii) examination	150
(c) Renewal of outfitter license	
(i) outfitter annual license	375
(ii) outfitter inactive status	200
(d) New operations plan	
(i) review and processing	125
(ii) equipment inspection	375
(e) Fee per hunting client served per year	2
(f) Guide license	
(i) initial and renewal guide license	150
(ii) initial processing of inactive guide license	50
(iii) activation of inactive guide license	100
(iv) renewal of inactive guide license	50
(g) Professional guide license	
(i) initial license (inclusive of application processing)	250

(ii) renewal of license	150
(h) Fee for transfer of NCHU from each outfitter involved in the transfer	50
(i) Fee for replacement watercraft identification	5
(j) Fee for audit of river-use days	50
(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
(iv) activating inactive guide license	125
(l) Additional standardized fees are specified in ARM 24.101.403. (History: 37-1-131, 37-1-134, 37-1-319, 37-47-201, 37-47-306, MCA; <u>IMP</u> , 37-1-134, 37-1-141, 37-1-319, 37-47-304, 37-47-306, 37-47-307, 37-47-308, 37-47-310, 37-47-316, 37-47-318, MCA; <u>NEVV</u> , 1988 MAR p. 1666, Eff. 7/29/88; <u>AMD</u> , 1994 MAR p. 2823, Eff. 10/28/94; <u>AMD</u> , 1995 MAR p. 2388, Eff. 11/10/95; <u>AMD</u> , 1996 MAR p. 909, Eff. 3/8/96; <u>AMD</u> , 1997 MAR p. 1178, Eff. 7/8/97; <u>AMD</u> , 1998 MAR p. 2560, Eff. 9/25/98; <u>AMD</u> , 2000 MAR p. 730, Eff. 3/17/00; <u>AMD</u> , 2001 MAR p. 843, Eff. 5/25/01; <u>TRANS</u> , from Commerce, & <u>AMD</u> , 2006 MAR p. 324, Eff. 2/10/06; <u>AMD</u> , 2006 MAR p. 1583, Eff. 7/1/06; <u>AMD</u> , 2007 MAR p. 298, Eff. 3/9/07; <u>AMD</u> , 2008 MAR p. 2055, Eff. 9/26/08; <u>AMD</u> , 2009 MAR p. 1406, Eff. 8/14/09; <u>AMD</u> , 2010 MAR p. 1889, Eff. 8/27/10; <u>AMD</u> , 2010 MAR p. 2384, Eff. 10/15/10; <u>AMD</u> , 2011 MAR p. 2149, Eff. 10/14/11.)	

24.171.402 EFFECT OF FEE FOR EXPANSION OF NET CLIENT HUNTER USE

(1) Upon approval by the board of an expansion on net client hunter use, the expansion will not become effective until the date payment is received pursuant to the provisions of 37-47-318, MCA. (History: 37-1-131, 37-47-201, MCA; IMP, 37-1-131, 37-47-201, 37-47-316, MCA; NEW, 2003 MAR p. 1193, Eff. 6/13/03; TRANS, from Commerce, 2006 MAR p. 324.)

Rules 24.171.403 through 24.171.406 reserved

24.171.407 INSPECTION (1) Inspections of outfitter, 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. (History: 37-47-201, MCA; IMP, 37-47-301, 37-47-302, MCA; NEW, 1996 MAR p. 668, Eff. 3/8/96; TRANS, from Commerce, 2006 MAR p. 324.)

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, 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.

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

- (a) names and addresses of clients, except that fishing outfitters may omit client addresses;
- (b) dates of service to clients;
- (c) game animals, except fish, taken by clients;
- (d) clients' hunting or fishing license numbers;
- (e) districts hunted and rivers and lakes fished by clients;

(f) the actual leased acreage actively used by clients during that year;
(g) the actual leased acreage unused by clients during that year;
(h) tally sheets reflecting the number of clients served per NCHU category as defined in ARM 24.171.701 each year shall be maintained and submitted to the board during the renewal of the license or when the outfitter's license is lapsed; and

(i) the name and license number of the guide who accompanied the client.

(3) Submitted outfitter client records 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 the purpose of furthering investigation of criminal activities. (History: 37-1-131, 37-47-201, MCA; IMP, 37-47-301, MCA; NEW, 1988 MAR p. 1666, Eff. 7/29/88; AMD, 1989 MAR p. 1192, Eff. 8/18/89; AMD, 2000 MAR p. 730, Eff. 3/17/00; TRANS, from Commerce, & AMD, 2006 MAR p. 324, Eff. 2/10/06; AMD, 2011 MAR p. 2149, Eff. 10/14/11.)

24.171.409 GUIDE TO HUNTER RATIO (1) When a licensed outfitter is providing guiding services to clients that hold outfitter-sponsored B-10 or B-11 licenses, the outfitter shall not exceed a ratio of one guide to four hunters. (History: 37-1-131, 37-47-201, MCA; IMP, 37-1-131, 37-47-201, 37-47-402, MCA; NEW, 2010 MAR p. 651, Eff. 3/12/10.)

Rules 24.171.410 and 24.171.411 reserved

24.171.412 SAFETY PROVISIONS (1) Outfitters are required to hold a current basic first aid card at all times licensed.

(2) 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 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) Whenever guests are present, each watercraft; vessel; vehicle; primary, secondary, and temporary base of operations must possess a serviceable basic first aid kit.

(5) Each watercraft or vessel shall contain a serviceable U.S. Coast Guard approved personal floatation device for each person onboard. Children under 12 are required to wear a personal floatation device. Watercraft 16 feet and longer are required to be equipped with a throwable Type IV floatation device.

(6) All watercraft or vessels are required to carry onboard a supplementary means of power, such as an extra motor or extra oar that will adequately motivate the craft. (History: 37-47-201, MCA; IMP, 37-47-201, MCA; NEW, 1992 MAR p. 439, Eff. 3/13/92; AMD, 1996 MAR p. 668, Eff. 3/8/96; AMD, 1999 MAR p. 809, Eff. 4/23/99; AMD, 2000 MAR p. 730, Eff. 3/17/00; TRANS, from Commerce, & AMD, 2006 MAR p. 324, Eff. 2/10/06; AMD, 2010 MAR p. 1889, Eff. 8/27/10; AMD, 2011 MAR p. 2149, Eff. 10/14/11.)

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 a Montana Board of Outfitters 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) The tag shall be effective for one calendar year.
- (4) The tag shall be affixed to either side of the bow or at the oarlock or stern of the watercraft and be of a size so that it may be easily seen from another watercraft or from shore.
- (5) The tag shall be affixed to the watercraft 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.
- (6) Requests for watercraft identification shall be made as part of the annual license and renewal application.
- (7) Improper use of watercraft identification shall be considered misconduct under ARM 24.171.2301.
- (8) Licensees shall be provided with one set of watercraft identification at the time of application for licensure or renewal. A fee will be assessed for any replacement or additional sets of identification needed, in accordance with ARM 24.171.401. (History: 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; NEW, 1998 MAR p. 740, Eff. 3/27/98; TRANS, from Commerce, & AMD, 2006 MAR p. 324, Eff. 2/10/06.)

Subchapter 5

Outfitter Licensing

24.171.501 APPLICATION FOR OUTFITTER LICENSE (1) The license issued shall designate, and thereby authorize the outfitter to conduct those functions of an outfitter that the applicant has qualified for. Functions of an outfitter to be indicated on the license application and license issued, if qualified for, shall be one or more of the following:

- (a) hunting services (big game);
- (b) hunting services (upland game birds, waterfowl, and non-big game);
- (c) fishing services; and
- (d) if applicable to the services provided in (1)(a) through (c), and qualified for, one or more of the following:

- (i) saddle or pack animal; or
- (ii) boat or other floating craft, or motorized watercraft.

(2) An outfitter license shall be issued to an applicant who has demonstrated to the board that he or she has:

(a) met the qualifications to provide those services of an outfitter indicated on the license application;

(b) successfully passed the required examinations pertaining to those categories described in ARM 24.171.507;

- (c) filed an operations plan that has been approved by the board;
- (d) filed a completed outfitter license application with the board office;
- (e) received an approved equipment inspection; and
- (f) if applicable, filed a NCHU application that has been approved by the board.

(History: 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; NEW, 1988 MAR p. 1666, Eff. 7/29/88; AMD, 2000 MAR p. 730, Eff. 3/17/00; TRANS, from Commerce, & AMD, 2006 MAR p. 324, Eff. 2/10/06.)

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) 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 (hunting or fishing), subject to approval by the board; and

(c) the qualifications to provide all services and use all equipment necessary to provide the functions of an outfitter that the license will authorize the outfitter to provide.

(2) For purposes of this rule, verified experience includes:

(a) an affidavit by the outfitter attesting to the guiding experience claimed by the applicant and subject to confirmation by the outfitter client logs;

(b) client logs submitted by the applicant, signed by the sponsoring outfitter for whom services were provided;

(c) outfitter log book entries; or

(d) sources of information with board acceptable guarantees of reliability which may include, but are not limited to, federal land agency records, client affidavits or letters.

(3) Three days of experience may be waived by the board for every day of training completed by the applicant at an outfitter or guide school approved by the board provided that the training was in the category of licensure being sought (e.g., hunting or fishing). The maximum number of days of experience that may be waived is 30. All experience waivers shall be contingent upon the applicant completing the board's one-day education program at the time specified by the board.

(4) The board may waive up to 50 days of experience for an applicant purchasing an existing outfitter operation provided that:

(a) the applicant receives preapproval from the board for a training and instruction plan documenting how and in what capacity the applicant will work with the licensed outfitter from whom the business is obtained;

(b) the applicant has entered into a sales agreement with the selling outfitter for the purchase of the operation and the sales agreement provides supervision of the applicant by the selling outfitter during the 12-month period following board approval of the application;

(c) the selling outfitter has a current, approved operations plan on file with the board;

(d) the applicant files an operations plan that is approved by the board; and

(e) the applicant has completed the board's one-day education program.

History: 37-1-131, 37-47-201, MCA; IMP, 37-47-201, 37-47-302, 37-47-304, 37-47-307, 37-47-308, MCA; NEW, 1988 MAR p. 1666, Eff. 7/29/88; AMD, 1991 MAR p. 999, Eff. 6/28/91; AMD, 1992 MAR p. 2376, Eff. 10/30/92; AMD, 1996 MAR p. 668, Eff. 3/8/96; AMD, 2000 MAR p. 730, Eff. 3/17/00; TRANS, from Commerce, & AMD, 2006 MAR p. 324, Eff. 2/10/06; AMD, 2009 MAR p. 1406, Eff. 8/14/09.)

24.171.503 OUTFITTER APPLICATION (1) Application for an outfitter license shall be on a form provided by the board and shall be accompanied by the required fee.

(2) Application shall consist of three parts:

(a) a license application form which shall require information the board needs in order to determine the basic abilities and qualifications of the applicant and to verify those functions of an outfitter the applicant is applying for;

(b) an operations plan application form which shall be considered under the guidelines of 37-47-304, MCA, and ARM 24.171.701; and

(c) a NCHU application which shall be considered under the guidelines of 37-47-316, 37-47-317 and 37-47-318, MCA, if operating on land or property other than federal land that regulates hunter use.

(3) An applicant who receives approval of a proposed operations plan and license application must take and pass the licensing examination prior to licensure. (History: 37-1-131, 37-47-201, MCA; IMP, 37-47-201, 37-47-304, 37-47-307, MCA; NEW, 1988 MAR p. 1666, Eff. 7/29/88; AMD, 1996 MAR p. 668, Eff. 3/8/96; AMD, 1998 MAR p. 2560, Eff. 9/25/98; TRANS, from Commerce, & AMD, 2006 MAR p. 324, Eff. 2/10/06.)

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. (History: 37-1-131, 37-47-201, MCA; IMP, 37-1-131, 37-47-310, MCA; NEW, 2011 MAR p. 2149, Eff. 10/14/11.)

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), 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), MCA. A copy of the 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. (History: 37-1-131, 37-47-201, MCA; IMP, 37-47-304, MCA; NEW, 2009 MAR p. 1406, Eff. 8/14/09.)

Rule 24.171.506 reserved

24.171.507 OUTFITTER EXAMINATION (1) Application to take the outfitter examination shall be by completed license application accompanied by the required fee no later than 30 days prior to the examination date.

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

(3) 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:

- (a) general knowledge of outfitting and guiding;
- (b) hunting;
- (c) fishing; and
- (d) packing.

(4) All applicants must obtain a passing score of 75 percent or more on each examination category taken.

(5) An applicant who fails the written examination may, within 15 days of notification of failure, review his or her examination at the board office. During this review, the applicant may review only questions answered incorrectly. Correct answers to those questions will be furnished to the applicant. No representative of the board shall discuss the substance of the examination with the applicant. The applicant will not be allowed to record any information from examination during the review.

(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. (History: 37-1-131, 37-47-201, MCA; IMP, 37-47-201, 37-47-305, MCA; NEW, 1988 MAR p. 1666, Eff. 7/29/88; AMD, 1991 MAR p. 999, Eff. 6/28/91; AMD, 1993 MAR p. 343, Eff. 3/12/93; AMD, 2000 MAR p. 730, Eff. 3/17/00; TRANS, from Commerce, & AMD, 2006 MAR p. 324, Eff. 2/10/06.)

Rule 24.171.508 reserved

24.171.509 INSURANCE FOR OUTFITTERS (1) An outfitter, other than an outfitter licensed on inactive status, shall have liability insurance, as a named insured, in effect at all times during the license year, and shall submit proof of such insurance with an application for renewal. Minimum amounts of liability insurance shall be \$10,000 for property damage, \$100,000 for personal injury to one person and a total of \$300,000 for personal injury to more than one person. (History: 37-47-201, MCA; IMP, 37-47-201, 37-47-304, MCA; NEW, 1996 MAR p. 668, Eff. 3/8/96; TRANS, from Commerce, & AMD, 2006 MAR p. 324, Eff. 2/10/06.)

Rules 24.171.510 and 24.171.511 reserved

24.171.512 INACTIVE LICENSE (1) An outfitter may submit a written request to have the outfitter's license placed on inactive status at the time of renewal. Such request must be submitted with a completed application for renewal and all required renewal fees.

(2) Outfitters whose licenses are inactive more than three years and who choose to become active must take the parts of the outfitter test related to outfitter laws and rules and fish and game laws and rules. An inactive outfitter who wishes to reactivate his or her license must update their operation plan.

(3) Outfitters on inactive status may not book or serve clients, and are subject to all requirements applicable to outfitters licensed on active status, other than those relating to insurance and current basic first aid card. (History: 37-1-319, MCA; IMP, 37-1-319, MCA; NEW, 1996 MAR p. 668, Eff. 3/8/96; AMD, 1997 MAR p. 1178, Eff. 7/8/97; AMD, 2000 MAR p. 730, Eff. 3/17/00; TRANS, from Commerce, 2006 MAR p. 324; AMD, 2007 MAR p. 298, Eff. 3/9/07; AMD, 2011 MAR p. 2149, Eff. 10/14/11.)

24.171.513 OUTFITTER ACTING AS GUIDE (1) A licensee holding a current and valid outfitter's license may act as a guide without a guide's license if such licensee:

- (a) possesses the qualifications of a guide under these rules;
- (b) works for only one outfitter at any given time;
- (c) acts as a guide only within the services and area of operation of this particular outfitter; and
- (d) is reported as a guide in the client logs of the outfitter whose clients are being served. (History: 37-1-131, 37-47-201, MCA; IMP, 37-47-301, 37-47-302, 37-47-303, MCA; NEW, 1996 MAR p. 668, Eff. 3/8/96; AMD, 2000 MAR p. 730, Eff. 3/17/00; TRANS, from Commerce, & AMD, 2006 MAR p. 324, Eff. 2/10/06.)

Rules 24.171.514 through 24.171.519 reserved

24.171.520 AMENDMENT TO OPERATIONS PLAN (1) An outfitter may apply for an amendment to the outfitter's operations plan by stating in writing the proposed changes and submitting it to the board.

(2) All amendments will be considered by the board using the same criteria as new applicants, including being required to take those parts of the outfitter examination that apply to the proposed amendment, if an outfitter is applying to add the following to the operations plan:

- (a) hunting;
- (b) fishing;
- (c) watercraft used for fishing or hunting;
- (d) upland game bird;
- (e) waterfowl; or

(f) saddle or pack animal use. (History: 37-1-131, 37-47-201, MCA; IMP, 37-47-201, MCA; NEW, 1988 MAR p. 1666, Eff. 7/29/88; AMD, 2000 MAR p. 730, Eff. 3/17/00; TRANS, from Commerce, & AMD, 2006 MAR p. 324, Eff. 2/10/06.)

Subchapter 6

Guide Licensing

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

(a) not less than one season of experience of hunting or fishing for the type of game for which the applicant will guide or have worked for the outfitter that signs the license for a period of at least six weeks and in the area to be guided in, or have successfully completed a school licensed by a state, approved by the board, and that trains persons to be a guide or professional guide;

(b) knowledge of hunting and fishing techniques to provide the particular services contracted to the client by the endorsing outfitter; and

(c) knowledge of equipment, terrain and hazards to competently provide a safe experience for those persons he or she guides.

(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) An outfitter whose license is currently suspended or revoked is not qualified for a guide or professional guide license. (History: 37-1-131, 37-47-201, MCA; IMP, 37-47-101, 37-47-201, 37-47-303, 37-47-307, MCA; NEW, 1988 MAR p. 1666, Eff. 7/29/88; AMD, 1996 MAR p. 668, Eff. 3/8/96; AMD, 1998 MAR p. 2560, Eff. 9/25/98; TRANS, from Commerce, & AMD, 2006 MAR p. 324, Eff. 2/10/06.)

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, 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) Each outfitter who uses the services of the guide during the license year shall sign the guide's license, 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) 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. (History: 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; NEW, 2006 MAR p. 324, Eff. 2/10/06; AMD, 2010 MAR p. 651, Eff. 3/12/10; AMD, 2011 MAR p. 2149, Eff. 10/14/11.)

Rule 24.171.603 reserved

24.171.604 EMERGENCY GUIDE LICENSE (REPEALED) (History: 37-1-131, 37-47-201, MCA; IMP, 37-47-201, 37-47-301, 37-47-303, 37-47-307, MCA; NEW, 2006 MAR p. 324, Eff. 2/10/06; AMD, 2008 MAR p. 2055, Eff. 9/26/08; AMD, 2010 MAR p. 651, Eff. 3/12/10; REP, 2010 MAR p. 1889, Eff. 8/27/10.)

24.171.605 PROVISIONAL GUIDE LICENSE (1) An outfitter may endorse up to three additional guides each license year who are designated by the outfitter on the application form as "inactive guides" under this rule.

(2) An inactive guide license must be issued to the outfitter on behalf of a guide if the application is complete, routine, and accompanied by all supporting documentation required by the application, along with the initial processing or renewal fee for an inactive guide license. An inactive guide license will not be issued if the application is incomplete, nonroutine, or not accompanied by all supporting documentation required by the application, along with the initial processing or renewal fee.

(3) An inactive guide license is active only after the guide and the outfitter sign and date the guide license. The fee for activation of an inactive guide license must be sent to the board office within ten days of activation.

(4) An inactive license may be renewed under this process.

(5) Each inactive guide license issued by the board to an outfitter shall be either activated or returned to the board office on or before December 31 of the license year. (History: 37-1-131, 37-1-319, 37-47-201, MCA; IMP, 37-1-131, 37-1-319, 37-47-201, 37-47-301, 37-47-303, 37-47-307, MCA; NEW, 2010 MAR p. 1889, Eff. 8/27/10.)

Subchapter 7

Net Client Hunter Use and River-Use Days

24.171.701 NCHU CATEGORIES, TRANSFERS, AND RECORDS (1) NCHU categories are as follows:

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

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

(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.

(5) An outfitter transferring NCHU to another outfitter must do so by completing a form prescribed by the board. 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) The records of the board comprise the official records of NCHU and each purported transfer of NCHU is invalid and void, unless and until the date that the proper and completed form is received by the board office.

(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 1, 2013, shall have up to and including December 1, 2013, 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. (History: 37-1-131, 37-47-201, MCA; IMP, 37-1-131, 37-47-201, 37-47-316, MCA; NEW, 1996 MAR p. 145, Eff. 3/15/96; AMD, 1998 MAR p. 2267, Eff. 8/28/98; AMD, 2000 MAR p. 730, Eff. 3/17/00; AMD, 2003 MAR p. 1193, Eff. 6/13/03; TRANS, from Commerce, 2006 MAR p. 324; AMD, 2011 MAR p. 2149, Eff. 10/14/11.)

24.171.702 TRANSFER OF RIVER-USE DAYS (1) If requested by either the outfitter-owner transferring the river-use days or the prospective new owner receiving them, board staff shall determine the outfitter-owner's record of river-use days to ensure accuracy of the allocation of river-use days to be transferred.

(2) When board staff conducts such an audit, all expenses for the audit shall be billed to the outfitter who is transferring the river-use days. The fee for the audit has been established by the board and set forth in ARM 24.171.401. (History: 37-1-131, 37-47-201, MCA; IMP, 37-47-201, 37-47-310, MCA; NEW, 2006 MAR p. 324, Eff. 2/10/06; AMD, 2007 MAR p. 298, Eff. 3/9/07.)

Subchapters 8 through 20 reserved

Subchapter 21

Renewal

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 and shall be accompanied by:

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

(3) 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) Outfitters who provide services during the late hunt seasons may submit amended client logs and statistical use level sheets reflecting services from December 1st through December 31st separately as long as they are received by the board no later than January 31st of the following year.

(5) License renewal applications for guides and professional guides shall be made on forms provided by the board and shall be accompanied by the required fee. (History: 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; NEW, 1988 MAR p. 1666, Eff. 7/29/88; AMD, 1992 MAR p. 2376, Eff. 10/30/92; AMD, 1996 MAR p. 668, Eff. 3/8/96; AMD, 1999 MAR p. 809, Eff. 4/23/99; AMD, 2000 MAR p. 730, Eff. 3/17/00; TRANS, from Commerce, & AMD, 2006 MAR p. 324, Eff. 2/10/06; AMD, 2006 MAR p. 1583, Eff. 7/1/06; AMD, 2011 MAR p. 2149, Eff. 10/14/11.)

Rules 24.171.2102 and 24.171.2103 reserved

24.171.2104 ACTIVE DUTY STATUS FOR LICENSEES IN THE MILITARY

(1) The board recognizes that the nation relies on members of the National Guard and the reserve branches of the armed forces for the nation's security, and that the members of the National Guard and reserve forces are subject to call to active duty on short notice. In consideration of that service to the nation, the board finds that it is appropriate to defer the licensing renewal obligations of such individuals called to active duty status, provided that the individual is not required by the armed forces to maintain current professional or occupational licensing as a condition of serving in the armed forces.

(2) An activated reservist, as defined in 37-1-138, MCA, upon submission of appropriate evidence, is entitled to the following privileges:

(a) The activated reservist is not required to timely pay a renewal fee for license renewal that comes due while the person is in active duty status. The renewal fee is payable within six months following the activated reservist's discharge from active duty status. Unless otherwise relieved from the renewal application requirements, the activated reservist must timely apply for license renewal.

(b) If the activated reservist provides proof to the board of the reservist's active duty status before the reservist's license expires, the reservist is relieved from having to timely submit a renewal application and any related documents or information during the period while the reservist is on active duty status. The reservist has six months following discharge from active duty status to submit to the board such renewal applications and any related documents or information that came due during the period of the reservist's active duty status.

(3) In order to gain the benefits of this rule, the activated reservist must provide the board with proof of active duty status, including the date upon which the reservist was called to active duty status. The board may require the activated reservist to periodically provide information to the board regarding the reservist's active duty status or the date of the reservist's discharge from active duty status.

(4) A license that has not lapsed continues in the same status as existed the day before the reservist was called to active duty status, and remains in that status until the reservist renews the license or six months have elapsed from the reservist's discharge from active duty status, whichever comes first. (History: 37-1-131, 37-1-138, 37-47-201, MCA; IMP, 37-1-138, 37-47-307, MCA; NEW, 2006 MAR p. 324, Eff. 2/10/06.)

Subchapter 22 reserved

Subchapter 23

Unprofessional Conduct

24.171.2301 UNPROFESSIONAL CONDUCT AND MISCONDUCT (1) A violation of (1)(a) through (p) or (3)(a) through (o) by an outfitter, or (2)(a) through (d) or (3)(a) through (o) 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) 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) 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) not interfere, by solicitation or otherwise, with a contract between another outfitter and client, including certifications for game license or permits, when it is known or reasonably should be known that a contract to provide services exists between that other outfitter and a client;

(f) furnish each client with a current and complete rate schedule, which shall include all charges, a deposit policy, and deposit refund policy, all in writing, for services offered;

(g) specify in writing, when offering services to a nonresident hunting client, the refund policy for failure by the prospective client to draw a license required to participate in the service offered;

(h) not change the rates and/or policies from those published without the written consent of the client after the outfitter receives and accepts the deposit from the client;

(i) set all terms and conditions with clients;

(j) personally collect, or designate an agent to collect, all fees from clients. The outfitter is solely responsible for complying with the outfitter's deposit and deposit refund policy;

(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;

(m) obtain and maintain a reasonable degree of supervision over the guide or professional 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) not exceed the licensee's NCHU;

(p) not use a guide prior to ensuring that the guide license is fully signed and dated;

(q) not use a guide with an inactive license, unless the proper fee is mailed within the time provided by rule; or

(r) not fail to return any inactive guide license that is not activated during the license year.

(2) A guide and professional guide shall:

(a) not advertise outfitting services;

(b) not make agreements with clients concerning monetary consideration or services offered, or collect fees from clients, without the express consent of the supervising outfitter;

(c) not provide services to clients who have not been specifically referred to the guide or professional guide from the endorsing outfitter;

(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) 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) All licensees shall:

(a) provide services with respect for the rights of others, private and public property, and provide for the health, safety, and well-being of their clients, employees, and the general public;

(b) provide services on public land in a manner such that they do not interfere with the general public access to public land or waterways or access to wildlife on public land;

(c) provide their services in such a manner as not to be detrimental to the wildlife or the environment where they operate;

(d) report to the board office, at their earliest opportunity, any violation of fish and game laws or outfitter and guide laws of which they have knowledge;

(e) not use alcohol to the extent that the use impairs the user physically or mentally, while engaged by a client;

(f) not charge any fee for certifying or aiding or assisting any nonresident in procuring or attempting to procure a hunting license;

(g) not harass, assault, or abuse clients, employees, outfitters, guides, or professional guides, or members of the general public, verbally or otherwise;

(h) not abuse livestock;

(i) produce their current license at the request of a representative of the board;

- (j) clearly designate who the responsible outfitter is in any advertisement of outfitting, guiding, or professional guiding services;
- (k) carry the licensee's current license at all times when providing services;
- (l) not have hunting or fishing privileges suspended, revoked, placed on probation, or voluntarily surrendered in the state of Montana or any other jurisdiction;
- (m) 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) not offer for use by an unlicensed individual any watercraft identification identifying another licensee as the occupant of the watercraft;
- (p) not intentionally misrepresent board laws or rules;
- (q) not fail to respond to board inquiries and requests; or
- (r) not remit a "nonsufficient fund check" or a check on a closed account for board fees or fines. (History: 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; NEW, 1996 MAR p. 668, Eff. 3/8/96; AMD, 1999 MAR p. 809, Eff. 4/23/99; AMD, 2000 MAR p. 730, Eff. 3/17/00; TRANS, from Commerce, & AMD, 2006 MAR p. 324, Eff. 2/10/06; AMD, 2007 MAR p. 347, Eff. 3/9/07; AMD, 2008 MAR p. 2055, Eff. 9/26/08; AMD, 2010 MAR p. 651, Eff. 3/12/10; AMD, 2010 MAR p. 1889, Eff. 8/27/10.)

Rules 24.171.2302 through 24.171.2304 reserved

24.171.2305 WEB SITE POSTING OF LICENSE DISCIPLINE (1) For purposes of ARM 24.101.404, each first-time violation of the following acts constitutes a failure to file or complete in a timely manner a minor administrative requirement that is in rule or law:

- (a) lack of first aid card if no client is served during the lapse;
- (b) an outfitter's failure to ensure that a guide has a first aid card if no client is served during the lapse;
- (c) failure to display required information on a water vessel;
- (d) incomplete or faulty log book entries;
- (e) failure to maintain insurance if no client is served during the lapse;
- (f) use of a nonsufficient funds check;
- (g) failure to carry current guide or outfitter license while providing services;
- (h) failure to carry a current fishing license; and
- (i) failure to have a current conservation license.

(2) No conduct is a failure to file or complete in a timely manner a minor administrative requirement that is in rule or law if the board determines that the conduct constitutes fraud, dishonesty, or a careless or intentional disregard for the rules, statutes, or standards applicable to the licensee.

(3) If an applicant is denied a license only because of an incomplete application or because the applicant lacks the required days of verified experience, a first aid card, an ALS number, the proper amount of fees, or other similar item or requirement, then the denial is based solely on the applicant's failure to meet minimum licensure qualifications, and not based on competence to practice issues.

(4) No license denial is based solely on the applicant's failure to meet minimum licensure qualifications, and not based on competence to practice issues if the board determines the application involves the applicant's fraud, dishonesty, or a careless or intentional disregard for the rules, statutes, or standards applicable to the applicant. (History: 37-1-131, 37-47-201, MCA; IMP, 37-1-131, 37-1-311, MCA; NEW, 2011 MAR p. 2149, Eff. 10/14/11.)

TABLE A

**Economic Impact of Hunter Expenditures
Under Management Alternatives for Brewer Property
(1989 dollars)**

	DFWP Plan	No Purchase Alternative
Total hunting expenditure on Brewer's 34,342 acres	87,196	15,743
Total hunting expenditure on final easement area of 88,000 acres	223,000	40,000
Nonresident expenditure on 88,000 acre project	211,000	39,600
Total economic impact on state of Montana	527,500	99,000

Note: assumes multiplier of 2.5 used by Taylor and Reilly (1986).

TABLE B

**Region 7 Deer and Antelope Hunting - Montana
Relative Hunter Density and Expenditures
Block Management versus Fee Hunting**

	hunters per sq. mile	sq. mile per hunter	expenditure per hunter (dollars)	expenditure per sq. mile (dollars)
Fee hunting	.15	6.7	1968	295
Block management	3.51	.28	430	1509
Region 7 Average	.98	1.02	185	181

Notes: Fee hunter density based on outfitters in Broadus area. Block management based on average for 11 landowners in Broadus area. Regional average for hunter density is ten year historical average. Expenditure data derived from Brooks (1988) and Loomis (1988) and is updated to 1989 price levels. Fee hunting expenditure is per guided hunter and includes spending by one landowner exception for every two guided hunters. All expenditures assume one trip per hunter. Expenditure for Region 7 average is based on 73 percent deer hunters and 27 percent antelope hunters and 17.7 percent of deer hunters being nonresidents and 25.3 percent of antelope hunters being nonresidents.



Votes Cast FOR and AGAINST I-161 By House District

Montana Secretary of State Linda McCulloch

Elections and Government Services

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House District	Votes FOR I-161	Votes AGAINST I-161
53	1,594	898
54	1,530	779
55	2,498	1,486
56	2,781	1,601
57	3,368	1,827
58	2,403	1,132
59	2,327	1,965
60	2,064	2,005
61	1,599	3,042
62	1,806	1,639
63	2,895	2,169
64	2,035	1,422
65	1,119	744
66	1,721	1,084
67	2,412	1,995
68	2,463	2,276
69	2,564	2,398
70	2,402	2,141
71	2,108	2,644
72	1,502	2,193
73	1,713	1,244
74	2,016	1,565
75	1,691	1,149
76	1,247	894
77	2,665	2,004
78	1,919	1,419
79	2,251	1,633
80	2,201	1,547
81	1,835	1,282
82	2,200	1,671
83	2,272	2,056
84	2,239	2,126
85	1,333	929
86	1,975	1,603
87	1,921	2,744
88	1,816	1,975
89	1,995	2,613
90	1,897	2,128
91	1,607	1,652
92	1,949	2,295
93	1,870	1,579
94	1,835	1,625
95	1,704	1,532
96	1,595	1,373
97	1,836	1,408
98	1,950	1,813
99	1,786	1,592
100	1,750	1,717
Totals	187,870	161,201



Votes Cast FOR and AGAINST I-161 By House District

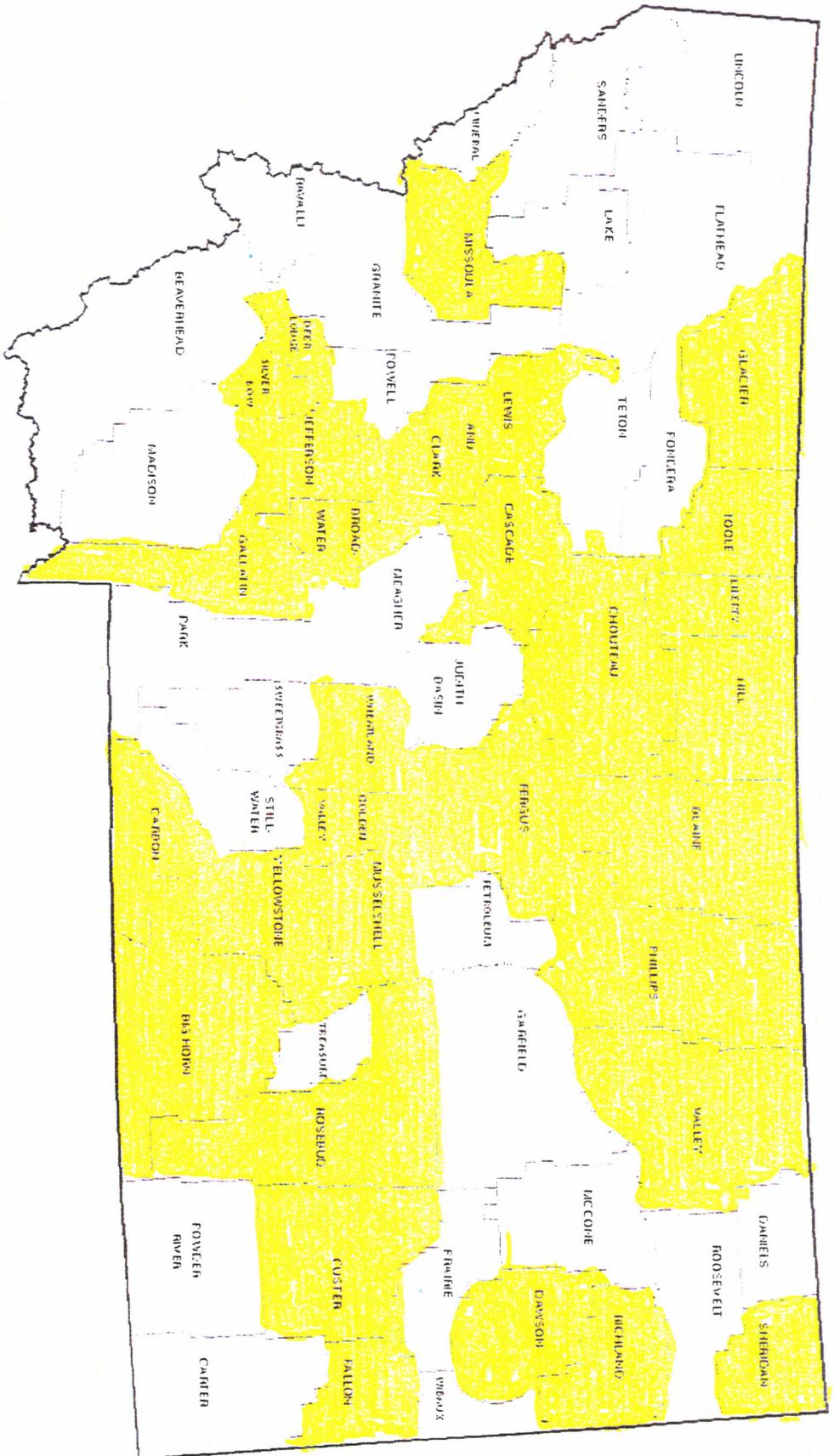
Montana Secretary of State Linda McCulloch

Elections and Government Services

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House District	Votes FOR I-161	Votes AGAINST I-161
1	1,401	1,643
2	1,828	2,137
3	1,535	1,735
4	1,877	1,753
5	2,016	2,398
6	2,129	2,532
7	1,494	1,595
8	1,338	1,325
9	1,991	2,633
10	1,976	2,374
11	2,020	2,170
12	1,510	1,849
13	2,139	2,583
14	1,832	2,241
15	1,108	1,209
16	821	755
17	1,391	2,205
18	2,313	1,812
19	2,037	1,549
20	1,524	1,064
21	1,697	1,118
22	1,291	878
23	1,212	825
24	870	553
25	2,426	1,495
26	1,696	1,046
27	1,451	1,531
28	1,988	1,589
29	1,906	1,970
30	2,109	2,143
31	1,359	815
32	933	1,007
33	1,801	1,085
34	1,584	1,153
35	1,986	1,855
36	1,820	1,777
37	2,064	1,446
38	2,066	1,420
39	1,736	2,277
40	1,725	1,105
41	998	907
42	1,452	1,282
43	2,228	1,478
44	2,128	943
45	2,141	1,554
46	3,468	1,815
47	2,510	1,334
48	1,983	976
49	1,588	924
50	2,199	1,209
51	1,194	670
52	1,722	851

Passed I 761





MONTANA SECRETARY OF STATE LINDA MCCULLOCH
2010 STATEWIDE GENERAL ELECTION CANVASS

INITIATIVE NO. 161	
FOR	AGAINST
1,502	2,193
1,502	1,755
2,006	803
927	1,186
1,332	1,186
2,537	2,137
224	451
15,066	10,340
1,228	974
2,214	1,708
388	435
2,098	1,410
2,108	1,181
551	465
2,590	2,335
14,104	16,030
16,562	13,220
193	449
1,325	1,219
196	188
593	815
3,056	1,955
2,971	2,326
412	619
4,529	5,041
10,830	10,567
476	389
3,229	2,780
1,502	2,055
411	420
359	448
819	956
18,741	17,697
1,081	761
3,012	3,703
114	129
793	977
941	1,059
244	611
558	1,184
289	293
7,629	9,460
2,029	1,466
1,504	1,143
2,300	1,074
793	2,724
6,667	4,852
8,667	1,945
486	1,208
1,103	1,546
806	758
1,750	1,473
526	432
196	247
32,453	17,330
187,870	161,201



Conservation

Tourism

Service

Hunter/Angler Access Defense Fund Outfitters Defending Nationwide Right to Hunt and Fish in Montana

"In a civilized and cultivated country, wild animals only continue to exist at all when preserved by sportsmen. The excellent people who protest against all hunting and consider sportsmen as enemies of wildlife are ignorant of the fact that in reality the genuine sportsman is by all odds, the most important factor in keeping the larger and more valuable wild creatures from total extinction."

- Theodore Roosevelt

The MOGA Hunter/Angler Defense Fund (MHADF) was established to ensure that non-resident sportsmen will continue to have the opportunity to hunt and fish in Montana.

Trophy hunting and sport fishing, particularly by non-residents, is under increasing pressure in Montana from radical groups both within the state and animal rights activists outside of the state. Although these groups differ in their composition and tactics they both seek the same outcome; reduced hunting and fishing opportunity. The in-state contingent, who purport to be "sportsmen" seek to fracture the hunting and angling community along lines of residence and then significantly restrict non-resident hunting and fishing opportunity. The anti-hunting group just seeks to reduce hunting opportunity and will take what gains they can. In both cases, success is measured by a net loss in opportunity in Montana. Unfortunately they are both making gains.

The anti-hunting pressure from the "anti-everything" organizations is strong and well organized. They have unlimited resources and are using new strategies and building alliances to lobby their agendas. Their relentless efforts to prevent delisting of wolves and grizzly bears and thwart effective and professional management for these species are but one example.

Fringe groups, led by the Montana Wildlife Federation, believe that outfitting services equate to the commercialization of wildlife and profess it to be the same as the outlawed practice of market hunting of years ago. They claim that fees paid for Outfitter services, leasing of land for quality hunting and fishing access, and the purchase of outfitters services for fishing constitute a breach of the Public Trust and that jeopardizes the public's opportunity to enjoy the natural bounty of Montana.

They see reducing the guided non-resident opportunity as a means to enhance their personal opportunity at the expense of others. They ignore the huge contribution to Montana's wildlife and fisheries management system that non-residents make and the vital economic contribution they sustain. Their tactics of misinformation and fear mongering fracture and weaken the overall hunting community; jeopardizing funding for effective management of natural resources in Montana.

Unfortunately, much of the public are misinformed or under informed. As hunters and anglers, we must be vigilant and diligent about relaying the benefits of hunting and fishing to the 70% of people who sit "in the middle". MOGA will continue to take the lead in supporting sound, scientifically based resource management, and our members will continue to serve as active stewards of Montana's natural and cultural heritage.

MOGA is the only organization within Montana that is dedicated to preserving sporting opportunities for nonresidents, including the opportunities for guided hunts, floats, and fishing trips.

If we want hunting to be around for future generations we must have our story told; that hunters and anglers, regardless of where they live, are the true conservationists

Big Hearts Program

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2012 HONDA FOREMAN
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MOGA recognizes our
members that GIVE BACK!

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In The Spotlight

Hunter/Angler Access
Defense Fund Outfitters
Defending Nationwide Right
to Hunt and Fish in Montana

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- placed a cap on non-resident bird licenses
- fought to preserve the non-resident Outfitter Sponsored license
- provided a full time lobbyist during legislative sessions to maintain and extend non-resident opportunities in Montana.

In recent legislative sessions MOGA sponsored and supported legislation that will:

- protect outfitter businesses from frivolous lawsuits through the passage of legislation that recognized inherent risk and waivers of liability in Montana
- created a First Responders program that placed HIGHLY experienced legal council in my corner should my business suffer as serious accident
- allow non-residents to participate in a preference point system; useful in making hunting plans to Montana far more predictable
- split off a portion of the combination licenses for a refund should they be unsuccessful in special permit drawings
- provided greater opportunity for non-resident youth hunter
- reduced significantly the workers compensation payments required by small businesses like mine resulting in a direct savings to me
- reduced the tax burden on business equipment; another direct savings for me as a small business operator

In recent FWP Commission Action MOGA successfully argued for:

- Liberalized black bear seasons
- Extended wolf hunting opportunity
- Adoption of a hybrid (permit/quota) system in Region 2
- Increased limited archery elk permits in the Breaks and outside the Breaks

MOGA Member Call to Action

- Obtain signed letters of Commitment
 - from 100% of the seated Board Members
 - from 100 active MOGA members

The Outfitting industry in Montana generates nearly \$2 million in sustainable tourism each year and provides over \$11 million in state and local taxes as well as millions to the state of Montana for license and tag fees. Help us advocate for your rights by supporting the MOGA Hunter/Angler Defense Fund.

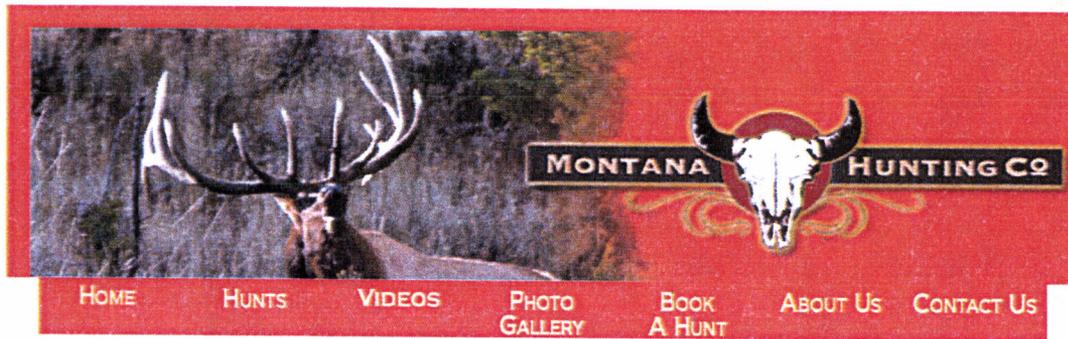
Past Articles

[MOGA Member Call to Action](#)

[Delivering the Best in Service to Our Members](#)

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Rocky Mountain Elk

Our over arching management goal is to help each Ranch achieve its potential in game management; be it diversity of game animals, size of males or optimum sex and age ratios. We do this by keeping harvest records that include cementum analysis of age, Boone and Crockett scores and phenotypical data. In some instances, we also collect fall age and sex data along with winter population data.

All of this information is analyzed annually to determine harvest strategies for the coming season. We believe that animals should be mature when they are hunted and harvested, regardless of Boone and Crockett scores.

Rocky Mountain Elk hunts are for rifle or archery hunters. We have several high quality Montana ranches that are professionally managed for trophy elk. The Flying D is our premier elk ranch which boasts a herd of 2500 elk. The average bull elk taken on the Flying D Ranch is 9 years old and will gross score 330 or more Boone & Crockett points. Elk hunter success annually is 90 - 95%. Our other ranches are managed for trophies with hunter success being equally as high.

States: Montana

Dates: September through November.

Ranches and Pricing for 2012 Season:

*Pricing will change for the 2013 season

The Flying D Ranch - \$14,000 - 1x1 - Archery

Rifle - \$10,000 with \$4,000 trophy fee if an elk is harvested or wounded.

The Flying D Ranch is our premier elk hunting destination and is owned by **Turner Enterprises Incorporated**. The ranch contains 113,600 deeded acres located in the foothills of the Spanish Peak Mountains about 25 miles southwest of Bozeman, Montana. Elevations on the ranch range from 5,000 to 7,000 feet. Our southern boundary joins the Gallatin National Forest and the Lee Metcalf Wilderness area. This is great game country! The herd of 2,500 head of elk has a 2-to-1.5 cow-to-bull ratio or 100 cows to 75 bulls, with a large number of trophy bulls available.

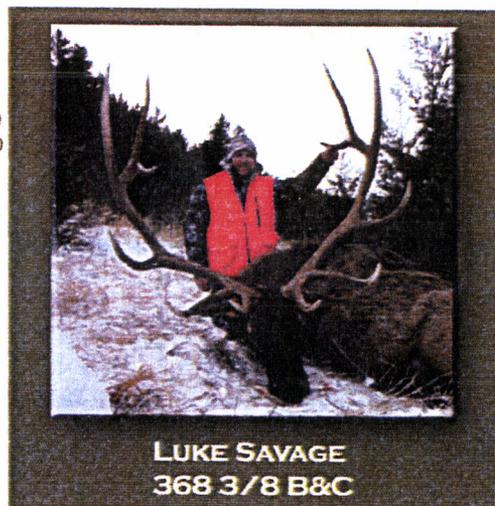
In 2011, our 24th annual Flying D Ranch hunt produced some outstanding trophies. Our 31 rifle hunters harvested 25 elk and our 8 archery hunters harvested 1 elk. These bulls were all large horned animals with at least six points per side and had an average gross Boone & Crockett score of 341 5/8 for rifle season and 350 3/8 for archery. Two trophy whitetails were harvested as well.

Whitetail Deer Trophy Fee: \$2,250

Mule Deer Trophy Fee: \$3,500

Antelope Trophy Fee: \$500

Management Whitetail or Mule Deer: \$1,250



The Bar None Ranch - \$14,000 -1x1 or \$16,000 -1x1 - Archery**Rifle - \$10,000 with \$4,000 trophy fee if an elk is harvested or wounded.**

The Bar None Ranch is another premier elk hunting destination in Montana. This Turner Enterprises Incorporated property contains 22,000 deeded acres. The Bar None Ranch extends into Broadwater and Gallatin counties and is geographically located in the foothill region at the southern end of the Belt Mountains. Townsend, Montana in twenty miles away from Ranch headquarters.

Topography is varied from arid foothill regions to rock cliffs on the south facing slopes of Sixteen Mile Creek. Generally, the property gains in elevation toward the east with Six Mile Mountain being the high point at 7,655 feet. This is a very rugged piece of property. A fire went through the property in 2000. This had made the Ranch great for hunting. The herd of 500 head of elk has a 2 cow to 1 bull ratio with a large number of trophy bulls available.

The Bar None Ranch has been professionally managed since 1987 for trophy animals. In 2011, we took 2 trophy elk during the rifle season and 3 of the 5 archery hunters took an elk. These bulls were large horned animals with at least 6 points per side and had an average B&C score of 330.

Whitetail Deer Trophy Fee: \$2,250**Mule Deer Trophy Fee: \$3,500****Management Whitetail or Mule Deer: \$1,250****The Biggs Ranch -\$4,250 -2x1 - Rifle - Cook on your own**

This 8,000 acre ranch is in Gallatin County, Montana is just 30 minutes north of Bozeman. The ranch terrain is mostly high foot hill regions with Douglas fir trees, big sage brush and grasslands. Water sources are from springs and dirt stock tanks. It is prime elk and mule deer habitat.

Most hunters kill 5-6 point bull elk and 3-4 point mule deer bucks. The average bull would be a small 6 point with the largest animals scoring 300-350 gross B&C. 6 out 8 hunters usually kill their elk.

The Parrott Creek Ranch -\$7,500 -2x1 Archery Only

This 12,000 acre ranch lies in central Montana 13 miles east of Roundup, Montana in the Bull Mountains. Roundup is 50 miles north of Billings, MT. The terrain of this scenic property is rolling ponderosa pine covered hill country. Grassy hills and small open valleys are typical of this area. There is no live water on the property but there are several developed springs and open water tanks constructed of dirt.

This Ranch is prime elk and mule deer habitat. The wildlife has been professionally managed for several years by a private lands biologist. This game unit in Montana is an archery only area for elk and is open rifle season for mule deer. The elk herd is mature with most hunters either seeing or killing older age class bulls. The average elk killed is around 285 gross B&C. The largest bulls have scored in the 360's. The average hunter will get 1-3 good archery shots at elk.

Mornings are spent with your guide calling elk to you and the afternoons are spent over water holes, in ground blinds or tree stands. Mule deer average 140-170 class.

Mule Deer Trophy Fee: \$750**Cooks can be arranged at an additional charge*

[Click here](#) for information on how to book a hunt.
[Click here](#) to view photos of Rocky Mountain Elk from prior seasons

TABLE A

Economic Impact of Hunter Expenditures
Under Management Alternatives for Brewer Property
(1989 dollars)

	DFWP Plan	No Purchase Alternative
Total hunting expenditure on Brewer's 34,342 acres	87,196	15,743
Total hunting expenditure on final easement area of 88,000 acres	223,000	40,000
Nonresident expenditure on 88,000 acre project	211,000	39,600
Total economic impact on state of Montana	527,500	99,000

Note: assumes multiplier of 2.5 used by Taylor and Reilly (1986).

TABLE B

Region 7 Deer and Antelope Hunting - Montana
Relative Hunter Density and Expenditures
Block Management versus Fee Hunting

	hunters per sq. mile	sq. mile per hunter	expenditure per hunter (dollars)	expenditure per sq. mile (dollars)
Fee hunting	.15	6.7	1968	295
Block management	3.51	.28	430	1509
Region 7 Average	.98	1.02	185	181

Notes: Fee hunter density based on outfitters in Broadus area. Block management based on average for 11 landowners in Broadus area. Regional average for hunter density is ten year historical average. Expenditure data derived from Brooks (1988) and Loomis (1988) and is updated to 1989 price levels. Fee hunting expenditure is per guided hunter and includes spending by one landowner exception for every two guided hunters. All expenditures assume one trip per hunter. Expenditure for Region 7 average is based on 73 percent deer hunters and 27 percent antelope hunters and 17.7 percent of deer hunters being nonresidents and 25.3 percent of antelope hunters being nonresidents.

Report for Montana Department
of Fish, Wildlife and Parks

EXECUTIVE SUMMARY

**BREWER PROPERTY ACQUISITION
SOCIAL AND ECONOMIC IMPACT ASSESSMENT**

John Duffield
June 1989

MAJOR FINDINGS

- No unfavorable changes in taxable valuation or tax revenues to local county governments
- Annual expenditures resulting from DFWP plan estimated at \$223,000 versus \$40,000 for no purchase alternative
- Total annual economic impact on the state of Montana is \$527,500 for the DFWP plan and \$99,000 for the no purchase alternative
- Present value of net social benefits associated with the DFWP plan are estimated at \$2.3 to \$3.2 million compared to the DFWP cost of \$1.2 million
- Proposed purchase by DFWP appears to be in the public interest

ACKNOWLEDGEMENTS

Many people contributed time and energy to this study. I am especially grateful to the individuals most directly impacted by this project, including the Brewer family, adjacent landowners, outfitters and local merchants, for sharing their views with me. A number of Montana Department of Fish, Wildlife and Parks personnel also contributed materially to this project, including Rob Brooks, Candy Post, Greg Risdahl, Neal Martin and Gary Hammond. Bruce Bugbee and Jan Konigsberg provided useful background information on conservation easements. Michael Reilly and Terry Anderson at Montana State University kindly provided copies of studies concerning outfitting and fee hunting. John Widdoss provided additional interpretation of his property appraisal. None of these individuals is in any way responsible for the interpretation and analysis made here.

EXECUTIVE SUMMARY

The Montana Department of Fish, Wildlife and Parks (DFWP) has proposed to purchase the 34,342 acre Brewer Ranch near Broadus for purposes of protecting and enhancing wildlife habitat. DFWP intends to place a conservation easement on this property to ensure protection of the sagebrush-grassland habitat and to provide open access to hunters. The easement encumbered property will be traded back into private ownership for conservation easements on adjoining property. The likely final project size will be on the order of 90,000 acres. This report provides a social and economic impact assessment of the purchase as required by HB 720 (1989 Montana State Legislature).

On financial grounds and from the viewpoint of DFWP, the cost of the proposed Brewer property purchase is around \$1.2 million. There are expected to be no unfavorable changes in taxable valuation or tax revenue to local county governments. This is because agricultural land in Montana is taxed on a production basis. Unless the state legislature changes the tax law for agricultural land to a market value basis, a decline in market value due to a conservation easement will not be reflected in assessed valuation. During the interim period of DFWP ownership, the Montana code (sec.87 -1-603) is unambiguous as to DFWP's obligation to make payments to counties in lieu of taxes.

The likely alternative to the DFWP plan is sale of the Brewer ranch on the open market to a private party. It is conceivable that a new owner-operator of the Brewer property would purchase haying equipment subject to county tax. However, this possibility holds equally for an owner-operator who gains control of the property through an exchange for conservation easements. The dominant use of the ranch will continue to be as a livestock operation; this use is unchanged across management alternatives.

Except for the open access provision, all of the key terms in the conservation easement are oriented to protect habitat: no sodbusting, limit sagebrush control, no commercial development, institution of a rest rotation grazing system and range monitoring. With

regard to habitat protection, the difference between the DFWP plan and the no purchase alternative (except for rest rotation) is one of degree. The easement protects the habitat with virtual certainty for perpetuity. The alternative of no purchase entails a possibility of habitat degradation: sod-busting, sagebrush control, and possibly overgrazing. The likelihood and extent of this degradation is difficult to quantify. A major clear difference in the two alternatives with regard to habitat protection has to do with the rest-rotation system. It appears that this should be regarded as a promising experiment as far as presently quantifiable differences for this specific habitat and species mix.

There are no obvious direct use changes associated with preservation of the wildlife habitat per se, though the implications for indirect benefits are significant, as developed below. The main immediate difference between the DFWP plan and the no purchase alternative has to do with the management of hunting on the land. Following the Widdoss appraisal of the highest and best use of the land, it is assumed that "no purchase" by DFWP will lead to fee hunting on the property. This seems reasonable since land currently leased for hunting adjoins the Brewer property.

Annual hunter expenditures associated with the DFWP plan amount to \$223,000 compared to \$40,000 for the no purchase alternative (Table A). The majority of these expenditures for both alternatives are by nonresidents, amounting to \$211,000 per year and \$39,600 per year respectively. The total economic impact on the state of Montana is \$527,500 for the DFWP plan and \$99,000 under the no purchase alternative. The significantly higher expenditures (and associated economic impacts) for the DFWP plan are somewhat surprising and are explained by two factors. The first is that current use on the Brewer property, which appears to be typical of block management in Region 7, is at a fairly high hunter density of 3.78 hunters per square mile over the big game season.

TABLE A
Economic Impact of Hunter Expenditures
Under Management Alternatives for Brewer Property
(1989 dollars)

	DFWP Plan	No Purchase Alternative
Total hunting expenditure on Brewer's 34,342 acres	87,196	15,743
Total hunting expenditure on final easement area of 88,000 acres	223,000	40,000
Nonresident expenditure on 88,000 acre project	211,000	39,600
Total economic impact on state of Montana	527,500	99,000

Note: assumes multiplier of 2.5 used by Taylor and Reilly (1986).

This is almost four times as high as the historic average density (deer and antelope hunters combined) for Region 7 (Table B). By contrast, guided hunting (particularly for exceptional trophy animals) is very land intensive; the largest outfitter in the Broadus area averages .128 guided hunters per square mile. This is about one eighth the regional average and about 25 times as low a density as on block management units. A total of 203 hunters used the Brewer property under the 1988 block management program. At a guided hunter density of .15, this 53 square mile ranch would support 8 guided hunters. In short, the expenditure difference in part reflects the very differing number of hunters under a hunting lease arrangement compared to block management.

The second reason expenditures are surprisingly high for block management is the unexpectedly high share of nonresidents. The historic Region 7 average is for about 20 percent nonresident hunters for both deer and antelope. Permission slip records for Region 7 block management indicate that nonresidents make up 68 percent of total hunters, or over three times the regional average. It appears that nonresident use is concentrated on block management because of information availability and assured access. Unguided nonresident expenditures per hunting trip (averaging about \$598 for the property) are about ten times higher than resident expenditures (\$72) per trip. Accordingly the nonresident hunter share is an important factor in showing block management related hunting expenditures being much higher than a similar sized area under lease hunting. It may be noted that average expenditure per guided hunter (including landowner exceptions at a ratio of one for every guided hunter) for the property are \$1968 per trip.

The influence of both hunter density and relative expenditures per hunter are summarized in Table B. Fee hunting in the Broadus area with low hunter density but high expenditure per hunter generates about \$295 in hunter expenditure per square mile

TABLE B

Region 7 Deer and Antelope Hunting - Montana
 Relative Hunter Density and Expenditures
 Block Management versus Fee Hunting

	hunters per sq. mile	sq. mile per hunter	expenditure per hunter (dollars)	expenditure per sq. mile (dollars)
Fee hunting	.15	6.7	1968	295
Block management	3.51	.28	430	1509
Region 7 Average	.98	1.02	185	181

Notes: Fee hunter density based on outfitters in Broadus area. Block management based on average for 11 landowners in Broadus area. Regional average for hunter density is ten year historical average. Expenditure data derived from Brooks (1988) and Loomis (1988) and is updated to 1989 price levels. Fee hunting expenditure is per guided hunter and includes spending by one landowner exception for every two guided hunters. All expenditures assume one trip per hunter. Expenditure for Region 7 average is based on 73 percent deer hunters and 27 percent antelope hunters and 17.7 percent of deer hunters being nonresidents and 25.3 percent of antelope hunters being nonresidents.

leased. Block management in the Broadus area has lower expenditure per hunter, but supports many more hunters and generates \$1509 in hunter expenditure per square mile. The regional average is for intermediate hunter densities, but low expenditure per hunter (because only about 20 percent are nonresident hunters) and hunter expenditures per square mile of \$181. In the Broadus area, both fee hunting and block management are therefore more "productive" than the regional average as far as expenditure generated per square mile.

Net social benefits associated with the project are primarily in two categories: indirect values for habitat and wildlife preservation and direct use values. Indirect values refer to the desire of many individuals to protect valuable resources for their children, future generations, possibly their own future use, or just for the satisfaction that something valued is being protected. Indirect values associated with wildlife habitat preservation on the Brewer property are difficult to quantify but may lie in the range of \$750,000 to \$1.6 million (Table C). The lower end of the range is supported by the fact that The Nature Conservancy (TNC) showed considerable interest in purchasing the site to protect wildlife values. Since TNC funds all such purchases through voluntary donations, this is market evidence of indirect values associated with wildlife and wildlife habitat. The upper end of the estimate is based on economic survey studies that tend to show indirect values for recreational sites that are at least equivalent to the direct recreational use values. Such site-specific studies are the appropriate method for the problem of valuing indirect uses, but were beyond the scope of this particular project.

The present value of net social benefits associated with hunting under the DFWP plan is \$1.6 million (Table C). These values are based on detailed economic studies of Montana hunters using methodologies approved by the U.S. Water Resources Council for recreation valuation. The present value of net social benefits for the purchase alternative is \$419,000, including benefits to guided hunters and net income to landowners and outfitters. The net value used for guided hunts was adjusted upward by 30 percent (compared to the values used for the DFWP plan) to reflect higher success ratios, strong

Table C

**Summary of Annual and Present Net Values
Net Social Benefits Associated with
Management Alternatives on Total 88,000 Acre Project
(1989 dollars)**

	DFWP Plan	No Purchase Alternative
A. Net Social Benefits- Annual		
Wildlife habitat protection	49,000 to 103,000	none
Hunting use	103,000	27,000
	<hr/>	<hr/>
Total	152,000 to 206,000	27,000
B. Net Social Benefits - Present Value		
Wildlife habitat Protection	750,000 to 1,588,000	none
Hunting use	1,588,000	419,000
	<hr/>	<hr/>
Total	2,338,000 to 3,176,000	419,000

Notes: Present value derived based on the annual benefits into perpetuity and with a capitalization rate of .065 based on Widdoss (1988). Considerable uncertainty is associated with the wildlife habitat protection values, as indicated by the range of values.

preferences for hunting, and typically higher income associated with this group of hunters.

Taken together, the value of wildlife habitat protection and open access hunting suggest total net social benefits in the \$2.3 to \$3.2 million range (Table C). Since the cost to DFWP is around \$1.2 million, these estimates indicate a favorable benefit/cost ratio for the proposed purchase. Given that there are negligible negative impacts on the local community, this project appears to be in the public interest.

From a distributive standpoint, it was found that the major beneficiaries of the proposed project are likely to be nonresident hunters. This may be viewed as an equitable arrangement in that most of the funds in the DFWP habitat acquisition budget come from increased nonresident license fees. Of the total approximately 6000 hunters using block management in this region in 1988, about 68 percent were nonresidents.

Much of the controversy related to the Brewer property acquisition seemed to have little to do with the kind of factual issues summarized above. Many individuals seemed to base their views of the issue on political principles or views of what is right. One principle often expressed was that individuals (including Bud Brewer) have "the right to sell to whoever they want". The opposing principle was that "the government shouldn't be buying up private land". There is little an economist can contribute to a discussion on this level, as the issues are more in the judicial or ethical realm.

The considerable controversy concerning the Brewer property also seems to reflect public concern with a more tractable but still complex general problem - that of managing hunting opportunities in Eastern Montana. Many seem to view the situation as one of inevitable conflict between fee hunting and open access. However, from the standpoint of economic theory, it appears that block management and fee hunting may be complementary approaches. The implication of this perspective for the allocation of hunting opportunities in Region 7 can be briefly outlined.

A fundamental economic problem arises when game is publicly owned (and managed) while land is private. This disparity in property rights leads to a situation where landowners are not compensated for costs they bear related to policing trespass, property damage and the general costs of dealing with hunters. When hunting pressure is very high, as it has occasionally been in Region 7 as a whole, the costs to the landowner may outweigh any benefits such as reduced game damage or the satisfaction of positive and long-standing landowner sportsmen relationships. Additionally, the landowner has no financial incentive to improve or protect wildlife habitat.

Both block management and fee hunting compensate the landowner. They differ in that block management typically compensates the landowner through a personal services contract for managing the hunters (policing trespass and giving permission and information). The hunting lease generally places responsibility for dealing with hunters on the outfitter, and more or less removes the landowner from contact with sportsmen. Additionally, the compensation under lease hunting is essentially for the right of access. However, the biggest difference between the two systems probably has to do with the hunting experience. Guided hunters have a higher probability of bagging trophy animals, are catered to in the field, experience much lower congestion, and are in an arms-length market relationship with the land owner. From the standpoint of economic theory, what is being observed is product differentiation, with block management and fee hunting serving somewhat different clients. It appears that more or less separate markets for at least two distinctly different types of hunts have emerged. If this is true, it is likely that the total social benefits associated with hunting in Region 7 would be maximized by a mix of the two management approaches.

This perspective raises the interesting allocative question of the optimal share of Region 7 land that should be in fee hunting versus block management. (Posing the question in this way is of course a simplification in that a third type of hunting is going on as well and that is the traditional situation where individuals hunt on private land with

permission of the owner and often in a relatively uncongested setting. It also implies that currently closed land and publicly available lands are assumed to be a fixed constraint to the problem.) Although it is beyond the scope of this study to investigate this problem in detail, one can look at the statistics for the Brewer property to indicate what is happening at the margin. It appears that the demand for block management is so high that the expenditure and associated net social benefits far outweigh those for fee hunting on a typical property. This implies that it is socially beneficial to expand the block management program.

It is likely that the total demand for block management type hunting in Region 7 is more or less stable, being dominated by the spatial location of population centers vis-a-vis SE Montana and by the economics of travel and hunter participation rates. Accordingly, if more lands were included in the program, hunter densities would drop. This would also tend to raise the overall quality of the experience and perhaps tend to disperse nonresidents more broadly and entice greater resident hunter participation. Since hunter density and nonresident share are the key factors that effect the economic comparison of block management and fee hunting, eventually a breakeven point would be reached where the social returns to each were equal. At this point an approximately optimal allocation would hold. For example, with the average hunter expenditure levels used in this report, suppose that the nonresident share of hunters using block management declined from 68 percent to the regional average of around 20 percent. At this nonresident share, hunter expenditures are equal per square mile (or for a given ranch) if hunter density on block management drops to 1.6 hunter per square mile. It is considerably beyond the scope of this report to identify the amount of block management land needed for this situation to occur.

The points noted in this executive summary are developed in greater detail in the main report. A table of contents for the latter is provided in Appendix A.

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