



# The FOAMLINE

VOL. 23, #4

FISHING OUTFITTERS ASSOCIATION OF MONTANA  
406.763.5436 info@foam-mt.org foam-mt.org

DECEMBER 2014

## OUTFITTER BOARD ADOPTS NEW RULES

### *Complete Rule Review Set For Mid-January Implementation*

A revised set of rules were adopted by the MBO on Friday, December 12, and, pending final processing by the Secretary of State's office, should be implemented by mid-January, 2015. Members can find the entire rule package on FOAM's website ([foam-mt.org/downloads/24-171-34pro-arm.pdf](http://foam-mt.org/downloads/24-171-34pro-arm.pdf)), and you can call the FOAM office (406.763.5436) if you have questions or want a brief explanation of any aspect of the new rules.

New rules eliminate the professional guide license, set outfitter assistant standards and outfitter requirements when using outfitter assistants, update conduct rules, simplify outfitter applications and client logs, clarify aspects of Net Client Hunting Use (NCHU), and explain successorship more clearly.

Client solicitation rules allow only outfitters to advertise to the general public when seeking clients and require an outfitter's registered business or personal name and outfitter license number in the ad. Guides may only advertise their services to outfitters, not the general public. When advertising to outfitters in public media (newspapers, magazines, websites, e-newsletters, Facebook, LinkedIn, Twitter, etc.), guides "shall include a clear and conspicuous disclaimer that advises the general public that the advertisement is for outfitters only, not the general public." And, a guide may only make agreements with clients concerning monetary consideration or services offered, or collect fees from clients, with the express consent of the supervising outfitter." (See the following article for updated information regarding FWP commercial rules and guide fee collection.)

Two new rules allow outfitters to "enter into an arrangement with a person whereby the clients are referred to the outfitter, but the outfitter is accountable to the board for the appearance and propriety of all such advertising and for all interactions between the other person and the clients and potential clients" and "to authorize any person to schedule trips, provide clients with information regarding refunds and services, receive client fees on behalf of the outfitter, secure a guide who is employed by of with whom the outfitter has an existing contractual relationship, and take other steps to establish contracts for services, as long as these activities are at the direction of the outfitter and as long as terms and conditions of the contracts are directly between the outfitter and the client."

These two rules attempt to clarify long-term business standards - third party client solicitation via advertising and so-called "booking agent" capabilities. FOAM believes clear advertising and client booking guidelines will encourage compliance, stop

guides advertising for - and illegally serving - clients not referred to them by outfitters, and curtail guide "outfitter shopping" - referring clients to the outfitter willing to pay the highest guide fee. At the same time, outfitters can authorize "any person" to book clients and assign guides, simplifying and streamlining good business while establishing a direct line of control starting with the outfitter.

Re unlicensed outfitter assistants (OA's), a new rule sets their conduct standards equivalent to those of a licensed guide, requires OA's using watercraft to display boat stickers showing the employing or contracting outfitter's license number, charges a \$25 fee for an OA application, and requires outfitters using OA's to include them in logs and inform clients that the OA is not licensed and whether or not the OA has first aid certification.

Outfitter logs need only include client names and Automated Licensing System (ALS) numbers - no addresses - and, for fishing outfitters, "water bodies, including section of a river or stream," while hunting outfitter log must include "species and sex of each big game animal . . . and whether it was taken on public or private land within the outfitter's operation plan" as well as the "category of NCHU applicable for each client."

Outfitter records, "including but not limited to operations plans," are confidential, as is an outfitter's number of NCHU and where "any outfitter is authorized to operate," though whether an outfitter has NCHU of a particular category" and total acreage of private lands where any outfitter is authorized to operate" is public information. Significantly, "all inquiries for outfitter records shall be reviewed and considered in relation to this rule and the competing interests between the public's right to know and the rights of privacy involved in the particular records requested." In short, an outfitter's records are mostly confidential and requests for specific information must face a "public right-to-know" versus "individual rights of privacy" test.

New fees include a \$25 fee for an OA application and a \$5 fee for each set of additional or replacement boat stickers. (More on possible boat sticker changes in the March FOAMLINe.)

First aid cards are required of all outfitters and guides "at all times *actively* licensed," in other words, not required when an outfitter's license is not active. And, "for initial licensure" (first-time licensing), "the board will only accept basic first aid certification that involves the direct, hands-on application of first aid materials and techniques." So, first-time guides and outfitters must submit first aid cards rendered by instructors of a hands-on course, NOT online course(s). Subsequent relicensing allows online course certification.

Outfitters exams are no longer formally scheduled four

times a year, but may be taken on most any date the examination proctor is available. Also, an applicant may only retake any failed portion of the test 30 days later rather than immediately.

Outfitter operations plans now consist of four components: 1) an affidavit that the “amount and kind of equipment owned, leased, or contracted for is sufficient and satisfactory for the services advertised or contemplated to be performed by the applicant.” 2) a written description of the “boundaries of the outfitter’s operation.” 3) the number of NCHU per category. 4) copies of leases and permits for public property where the outfitter is authorized to operate.

For fishing outfitters, “a written description of the boundaries of the outfitter’s operation” means either “all 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(ies),” or specific waters not requiring a permit by including detailed descriptions of those specific waters. This “all surface waters governed by the Stream Access Law” concept was pioneered by FOAM to replace our long-standing “Basins Plan” approach of listing all waters in a series of geocoded basins in Montana rather than listing each water body by name. FOAM also helped change the fishing outfitter “landowner approval” or L1 form required to access private land. Instead of listing the boundaries of a ranch including some public or private water, we need only provide “a description of private land, by name of ranch and county where located, over which access is allowed, recognizing fishing outfitters and guides don’t use all the ranch, but only a “path” to or along the water fished.

And, during license renewal, outfitters must attest that the private land info in their op plan is current and accurate, and if the outfitter gains permission for new private land, they must update their plan either before the end of the license year when use was authorized, or before they actually use the land.

FOAM also urged and gained a simplification for guide license signing: We now don’t have to designate the dates a guide will be used in advance (even in the now-standard “1-1 through 12-31” spread), but need only sign and date the guide’s license “before allowing the guide to accompany a client,” then indicate in client logs the actual dates the guide serviced clients.

## FWP COMMERCIAL RULES UPDATE

### *Guides Collection of Fees Allowed on FWP Ground*

In the June 2014 FOAMLINE, we talked about changing FWP Department Commercial Use Rules to allow guides to collect client fees on lands administered by FWP and the Parks Board.

FWP enforcement wanted to ban all cash payments, since they believe most unlicensed practice dodges a “paper trail” by encouraging cash for services.

Unfortunately, the rules were adopted by the Commission and the Parks Board in October without the requested change. Commission Chairman Dan Vermillion encouraged FWP to work out a solution that satisfied fishing outfitters and guides and FWP enforcement.

While negotiating with FWP’s head of enforcement, Jim Kropp, FOAM agreed with Kropp’s proposed compromise: rewrite the rule to allow a guide to collect client fees as long as 1) the guide has the expressed consent of the outfitter and 2) the fees are deposited only to the outfitter’s account. Kropp rightly argued that this approach would help to avoid confusion that might arise resulting from two different fee collection standards (FWP, MBO). And, we agreed with the Commission and board’s original proposal to allow a guide to receive a cash tip separate from the client fee.

This adjustment to the FWP and Park’s Board commercial use rules aligns well with the new MBO rules regarding who can do what with fee collection. Sometimes, it just takes a while to work out a “middle ground” that recognizes standard industry business practices while encouraging enforcement and successful prosecution of unlicensed practice.

## FOAM DIRECTOR ELECTION RESULTS

### *Regions 1, 3, 5, 8 Elect New or Retain Old Directors*

Because of director term limits or term completions, FOAM held director elections via Survey Monkey earlier this month. Members responded well in all regions. Here are the results: *Region 1 (Flathead)*: Matt DiPaulo, 1st term; *Region 3 (Missouri)*: Mark Raisler, 2nd term; *Region 5 (W. Y’stone, Ennis)*: Phil Sgamma, 1st term; *Region 8 (Bighorn)*: Matt McMeans, 1st term.

Thanks to all members participating in the election. Your regional directors represent your interests and concerns with our Board of Directors. Contact information for directors is listed below.

## FOAM ANNUAL MEETING SET FOR BZN

### *Join Us on Saturday, March 14 at the City Center Hotel*

The membership meeting will include speakers, presentations, MBO information updates, lunch, raffle, and the infamous happy hour, all for \$15. More details soon, so mark the date.

### BOARD of DIRECTORS

**Region 1** (Kootenai, Flathead)  
Matt DiPaulo  
837-0918

**Region 2** (Bitterroot, Clark Fork)  
Russell Parks  
546-6305

**Region 3** (Missouri)  
Mark Raisler  
459-8739

**Region 4** (Big Hole, B’head)  
Matt Greemore  
684-5639

**Region 5** (Madison )  
Phil Sgamma  
539-4239

**Region 6** (Gallatin)  
Dave McKee  
582-0980

**Region 7** (Yellowstone)  
Eric Adams  
223-2488

**Region 8** (Bighorn, Ft. Peck)  
Matt McMeans  
666-2326

**Guide-at-Large Director** Jason Brininstool 370-8029