



MONTANA  
ADMINISTRATIVE  
REGISTER



DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

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NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-91.1

**Summary**

Adoption of NEW RULES 1 through 10 and repeal of ARM 36.25.143, 36.25.144, 36.25.145, 36.25.146, 36.25.149, 36.25.150, 36.25.152, 36.25.153, 36.25.154, 36.25.155, 36.25.156, 36.25.157, 36.25.161, 36.25.162, 36.25.163, 36.25.164, 36.25.165, 36.25.166, and 36.25.167 pertaining to recreational use of state trust land

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**Hearing Date and Time**

Friday, August 8, 2025, at 9:00 a.m.

**Hearing Information**

A public hearing will be held at the Department of Natural Resources and Conservation Building, Montana Conference Room, first floor, located at 1539 Eleventh Avenue, Helena, Montana.

**Virtual Hearing Information**

Interested parties may access the remote conferencing platform in the following ways:

Join Zoom Meeting:

1) <https://mt-gov.zoom.us/j/83577012731?pwd=jWchah4QdK0d5wIHAI0Cca4LJaxp5C.1>, Meeting ID: 835 7701 2731, Password: 124737; or

2) Dial by telephone: +1 646 558 8656, Meeting ID: 835 7701 2731; Password: 124737

Find your local number: <https://mt-gov.zoom.us/j/83577012731?pwd=jWchah4QdK0d5wIHAI0Cca4LJaxp5C.1>

## **Comments**

Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the contact information listed below. Comments must be received by Friday, August 8, 2025, at 5:00 p.m.

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## **Accommodations**

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Friday, August 1, 2025, at 5:00 p.m.

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## **Contact**

Jamie Price, Rules Coordinator  
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Montana Relay 711

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## **General Reasonable Necessity Statement**

In support of the Governor's Red Tape Relief Initiative, the Department of Natural Resources and Conservation (department) is conducting a comprehensive review of the administrative rules for recreational use of state trust land. This review focuses on updating rules to current standards and procedures; eliminating unnecessary or redundant regulations; replacing out-of-date terminology; eliminating reference to the expired Recreational Use Advisory Committee; and restructuring the rules for consistency, simplicity, and ease of use for the public and staff. Following consideration of the department's suggested changes, the Board of Land Commissioners determined it is reasonably necessary to repeal 19 rules and adopt ten new rules to align with the Red Tape Relief Initiative. The simplified rules will increase department efficiency by standardizing the procedures used statewide and improve customer service by making the rules easier to find and understand. If an additional specific basis for a proposed action exists, the department will identify the reason immediately following the specific rule.

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## **Rulemaking Actions**

### **ADOPT**

The rules proposed to be adopted are as follows:

**NEW RULE 1 (36.25.1201) OVERVIEW**

- (1) [NEW RULE 1 through NEW RULE 10] regulate the recreational use of state trust land managed by the Department of Natural Resources and Conservation. These lands appear in light blue on most land status maps.
- (2) The Board of Land Commissioners has the duty and authority to manage state trust land under Article X, section 4 of the Montana Constitution. Under 77-1-301, MCA, the Department of Natural Resources and Conservation manages state trust lands under the direction of the board.
- (3) State trust land is open to recreational use subject to legal access, closures, and restrictions in accordance with 77-1-203(3), MCA.
- (4) The purpose of [NEW RULE 1 through NEW RULE 10] is to provide for reasonable recreational use of legally accessible state trust land while also considering the needs of state trust land lessees. These rules should be interpreted to accomplish this purpose.
- (5) These rules regulate general recreational use and special recreational use, as defined in [NEW RULE 2]. Special recreational use requires additional licensing as described under [NEW RULE 9].
- (6) The following state lands are not subject to [NEW RULE 1 through NEW RULE 10]:
  - (a) lands subject to a lease, license, or easement from the department to a government entity for a public park or fishing access site;
  - (b) the surface, beds, and banks of lakes, rivers, and streams that are open to the general public for recreational purposes under the stream access law;
  - (c) highways and highway rights-of-way;
  - (d) department administrative sites;
  - (e) campus grounds, experiment station grounds, and other lands owned by the university system;
  - (f) lands administered by the Department of Corrections; and
  - (g) any lands where the department or the board does not own the surface.
- (7) Whenever in [NEW RULE 1 through NEW RULE 10], the submission of a document or petition is required to be filed at an area or unit office, it must be submitted to the area or unit office that administers the applicable state trust land.
- (8) Whenever in [NEW RULE 1 through NEW RULE 10], a hearing is required to be held in an “area,” the term “area” refers to the department area in which the subject

land is located. The hearing may be held, at the department's discretion, at any location within that area.

**Authorizing statute(s):** 77-1-209, 77-1-804, 77-1-806, MCA

**Implementing statute(s):** 77-1-801, 77-1-802, 77-1-803, 77-1-804, 77-1-805, 77-1-806, 77-1-807, 77-1-808, 77-1-809, 77-1-810, MCA

### **Reasonable Necessity Statement**

This rule change is reasonably necessary to simplify rule language and to renumber recreational use rules. The proposed rule consolidates and simplifies language from original ARM 36.25.143 and 36.25.144 related to intent and applicability, while retaining the intent of the original rules.

### **NEW RULE 2 (36.25.1202) DEFINITIONS**

Wherever used in [NEW RULE 1 through NEW RULE 10], unless a different meaning clearly appears from the context:

- (1) "Board" means the Board of Land Commissioners, as described in the Montana Constitution.
- (2) "Closure" means prohibition of all general recreational use.
- (3) "Customary access point" means each outer gate and each normal point of access to the land, including both sides of a water body crossing the land where the water body intersects an outer boundary line.
- (4) "Dedicated county road" means a county road that has been created by means of donation of a landowner and acceptance by a county under statutory or common law dedication procedures.
- (5) "Department" means the Department of Natural Resources and Conservation.
- (6) "Director" means the director of the Department of Natural Resources and Conservation.
- (7) "Drop box" means a container in which a person using state trust land for recreation may leave notice when required to do so under these rules.
- (8) "Emergency" means a situation that:

- (a) poses an imminent threat of personal harm, property damage, or significant environmental harm;
  - (b) would be substantially lessened or alleviated by a recreational use closure; and
  - (c) requires faster action than the normal closure procedure.
- (9) "General recreational use" means non-concentrated, non-commercial recreational activity.
  - (a) The term does not include:
    - (i) taking or disturbing archaeological, historical, or paleontological items;
    - (ii) mineral exploration or mining;
    - (iii) taking or disturbing valuable rocks or minerals;
    - (iv) cutting or gathering firewood, standing trees, or downed trees;
    - (v) trapping; or
    - (vi) special recreational use.
- (10) "Growing crop" means plants grown for harvest, between planting and harvest time. The term does not include grass used for grazing or trees.
- (11) "Lease" means a lease or land use license, other than a recreational use or special recreational use license, allowing use of state trust land. The term does not include a mineral lease unless it is preceded by the word "mineral."
- (12) "Legally accessible" means state trust land that can be reached by open road, public right-of-way, or public easement; public waters, including streams open to the public for recreational purposes under the stream access law; adjacent public land open to public use; or adjacent private land if permission to cross the land has been secured from the landowner. Accessibility by aircraft does not render lands legally accessible under this definition.
- (13) "Lessee" means a person who holds a lease.
- (14) "Livestock" means cattle, sheep, swine, goats, privately owned bison and elk, horses, llamas, mules, donkeys, and other animals used for the protection of such animals.
- (15) "Motorized vehicle" means a vehicle powered by a motor, including but not limited to cars, trucks, motorcycles, mopeds, and all-terrain vehicles. The term does not include snowmobiles.
- (16) "Open road" means a road usable by the public under state or federal law. This includes federal roads, state roads, dedicated county roads, and other roads on

state trust land that have been designated by the department as open for motorized use.

- (17) "Recreational use license" means a license authorizing general recreational use of state trust land.
- (18) "Restriction" means a limitation on recreational use activities.
- (19) "Special recreational use" means:
  - (a) commercial or concentrated recreational activity, including any recreational use that is organized, developed, or coordinated, whether for profit or otherwise; or
  - (b) other recreational activity that will result in unique impacts as determined by the department or that would conflict with a restriction described under [NEW RULE 4].
- (20) "Trust land administration account" means the account established by 77-1-108, MCA, from which expenses of the recreational use program are paid.

**Authorizing statute(s):** 77-1-209, 77-1-804, 77-1-806, MCA

**Implementing statute(s):** 77-1-101, 77-1-801, 77-1-802, 77-1-804, 77-1-805, 77-1-806, MCA

### **Reasonable Necessity Statement**

This rule change is reasonably necessary to simplify rule language and to renumber recreational use rules. The proposed rule updates and simplifies language from original ARM 36.25.145 related to definitions, while retaining the intent of the original rules. These changes also clarify the different types of special recreational use.

### **NEW RULE 3 (36.25.1203) LICENSE REQUIREMENTS FOR GENERAL RECREATION**

- (1) A recreational use license is required by any person 12 years of age or older for general recreational use of state trust land. Whether there is an agreement between the department and the Department of Fish, Wildlife and Parks pursuant to 77-1-815, MCA, will determine which of the following two licenses are required:
  - (a) a "conservation license" is required if the department and the Department of Fish, Wildlife and Parks consent to and sign an agreement for general recreational use pursuant to 77-1-815, MCA; or

- (b) a “state lands recreational use license” is required if the department and the Department of Fish, Wildlife and Parks do not have an agreement for general recreational use pursuant to 77-1-815, MCA.
- (2) If a state lands recreational use license is required:
  - (a) The license is issued for a 12-month period beginning on March 1 of each year and expiring on the last day of February of the next year.
  - (b) The cost is:
    - (i) \$5 for persons 17 years of age or younger or 60 years of age or older.
    - (ii) \$10 for persons who are older than 17 and younger than 60.
    - (iii) \$20 for a family living within the same household.
  - (c) A person may purchase the license for a relative.

**Authorizing statute(s):** 77-1-106, 77-1-209, 77-1-802, 77-1-804, MCA

**Implementing statute(s):** 77-1-106, 77-1-801, 77-1-802, 77-1-804, 77-6-210, MCA

### **Reasonable Necessity Statement**

This rule change is reasonably necessary to simplify rule language and to renumber recreational use rules. The proposed rule simplifies language from original ARM 36.25.146 related to license requirements, while retaining the intent of the original rule.

### **NEW RULE 4 (36.25.1204) GENERAL RECREATION RULES AND RESTRICTIONS**

The following provisions apply to persons engaging in general recreational use of state trust land:

- (1) A recreational use license as described in [NEW RULE 3] is required by any person 12 years of age or older.
- (2) A recreationist must present their license upon request by a Montana game warden or department employee.
- (3) For motorized vehicle use:
  - (a) Recreational motorized vehicle use is restricted to open roads.

- (b) A person holding a "permit to hunt from vehicle" issued by the Department of Fish, Wildlife and Parks may drive on any road that is not closed by the department by sign or barrier.
  - (c) Parking is allowed on open roads in accordance with applicable traffic regulations, and within 50 feet of a customary access point that is accessible by open road. A parked vehicle must not block vehicle access or gates, or cause damage to the land or improvements.
- (4) For snowmobile use:
  - (a) Snowmobile use is allowed on open roads where permitted by applicable traffic regulations.
  - (b) Off-road snowmobile use is only allowed on unleased land. It is not allowed where expressly prohibited by the department.
- (5) For firearm use:
  - (a) A person may not use a firearm negligently as defined in 45-2-101, MCA.
  - (b) A recreationist may not discharge a firearm on state trust land within 1/4 mile of an inhabited dwelling or an outbuilding in close proximity to an inhabited dwelling without permission of an inhabitant. Temporary absences of inhabitants do not render a dwelling uninhabited.
- (6) Campfires are prohibited on leased or licensed land unless in a designated campground.
- (7) Fireworks are prohibited.
- (8) For overnight use:
  - (a) Overnight use of leased or licensed land must be within 200 feet of a customary access point or public waters such as a stream open to the public for recreational purposes pursuant to the stream access law under 23-2-302, MCA.
  - (b) Motorized vehicles and camping trailers must be parked according to the requirements described in (3)(c).
  - (c) Overnight use may not exceed the following time limits:
    - (i) In a designated campground, the maximum stay is 16 days in a 30-day period.
    - (ii) For dispersed camping outside of a designated campground, the maximum stay is:
      - (A) two consecutive days on leased or licensed land; or

- (B) 16 days in a 30-day period on land that is not leased or licensed.
- (d) A recreationist may keep horses on state trust land overnight, subject to the following restrictions:
  - (i) horses must not be allowed to remain in stream riparian zones for more than one hour;
  - (ii) only certified noxious weed seed free forage may be brought onto state trust land; and
  - (iii) horses must be restrained to minimize impacts to vegetation.
- (9) Pets must be kept on a leash or otherwise controlled to prevent harassment of livestock or wildlife.
- (10) Food storage requirements under ARM 12.12.109(1)(a), (b), and (c) apply from March 1 to December 1, or for an extended period of time if posted on site, on state trust land:
  - (a) located in any county west of the Continental Divide; or
  - (b) in Glacier, Toole, Pondera, Teton, Lewis and Clark, Cascade, Jefferson, Broadwater, Meagher, Beaverhead, Madison, Gallatin, Park, Sweet Grass, Stillwater, Carbon, Liberty, Blaine, Hill, Chouteau, Fergus, Judith Basin, Wheatland, or Golden Valley Counties.
- (11) Littering is prohibited.
- (12) A recreationist may not interfere with the legitimate lease management activities of lessees or their agents.
- (13) A recreationist may not interfere with a person making lawful recreational use of state trust land.
- (14) The department may impose additional restrictions pursuant to 77-1-804(6)(h), MCA, to protect public safety, property, or the environment. A recreationist may not violate site specific restrictions.
- (15) The department may close specific state trust land to recreational use pursuant to [NEW RULE 6]. A recreationist may not violate a closure.
- (16) State trust land enrolled within a wildlife management area or a block management area are subject to the management area rules set by the Department of Fish, Wildlife and Parks. A recreationist may not violate the rules applicable to state trust land enrolled in a wildlife management area or block management area.
- (17) Recreationists are responsible for determining whether state trust land is legally accessible.

- (18) A recreationist may not trespass onto private lands, regardless of the absence of fencing or signage.
- (19) A person who violates a recreational use rule is subject to penalties described in [NEW RULE 10].

**Authorizing statute(s):** 77-1-209, 77-1-804, MCA

**Implementing statute(s):** 77-1-804, 77-1-806, MCA

### **Reasonable Necessity Statement**

This rule change is reasonably necessary to simplify rule language and to renumber recreational use rules. The proposed rule consolidates and simplifies language from original ARM 36.25.149, 36.25.146(5), and 36.25.161(1) and (3) related to general recreational use and restrictions, while retaining the intent of the original rules.

### **NEW RULE 5 (36.25.1205) NOTICE TO LESSEES PRIOR TO ENTRY**

- (1) If a lessee wishes to be notified before a recreationist enters the leased land for general recreational use, the lessee shall:
  - (a) post signs, or duplicates of signs, provided by the department at all customary access points with directions to the appropriate drop box; and
  - (b) provide a clearly marked drop box at a customary access point for each tract. A lessee of two or more contiguous tracts may provide one drop box if it is placed in a location convenient to each of the tracts.
- (2) If there is uncertainty about the location of a customary access point or its convenience, the area manager will decide and the lessee shall install drop boxes in accordance with that determination.
- (3) If a lessee has installed signs and a drop box in accordance with (1), a recreationist shall leave a notice in the drop box prior to entering the leased land.
  - (a) The notice must include:
    - (i) the recreationist's name, address, and conservation license number;
    - (ii) the names, addresses, and recreational use license numbers of each person in the party; and
    - (iii) the dates of use.

- (b) The recreationist is responsible for providing paper and a writing utensil to leave the notice.
- (c) The notice is valid for up to three consecutive days or until the end of any continuous general recreational use that makes additional notice impractical, such as a back country hunting or fishing trip.
- (4) A lessee may not interfere with a person making lawful recreational use of state trust land.

**Authorizing statute(s):** 77-1-209, 77-1-804, 77-1-806, MCA

**Implementing statute(s):** 77-1-804, 77-1-806, MCA

### **Reasonable Necessity Statement**

This rule change is reasonably necessary to simplify rule language and to renumber recreational use rules. The proposed rule consolidates and simplifies language from original ARM 36.25.155 and 36.25.156 related to lessee notification prior to recreational use, and ARM 36.25.146(5) regarding lessee interference with a person making lawful recreational use. The rule change simplifies the signage and notification requirements and consolidate rules related to lessee interactions with recreationists.

### **NEW RULE 6 (36.25.1207) CLOSURE OF STATE TRUST LAND TO RECREATIONAL USE**

- (1) The following state trust land is categorically closed to general recreational use:
  - (a) land leased for cabin sites or home sites;
  - (b) agriculture lease areas with growing crop;
  - (c) land leased for military use while military activities are taking place;
  - (d) land leased for commercial use; and
  - (e) land under extreme wildfire threat as proclaimed by the department or Governor.
- (2) Any person, corporation, organization, or government agency may petition to exclude a specific tract from a categorical closure by following the process described in (7).
- (3) The department may close specific tracts of state trust land to recreational use through the process described in (7) for any of the following reasons:

- (a) damage attributable to recreational use diminishes the income generating potential of the state trust land;
  - (b) damage to surface improvements of lessee or mineral lessee;
  - (c) the presence of threatened, endangered, or sensitive species or plant communities;
  - (d) the presence of unique or special natural or cultural features;
  - (e) wildlife protection;
  - (f) noxious weed control;
  - (g) the presence of buildings, structures, or facilities;
  - (h) protection of public safety;
  - (i) prevention of significant environmental impact;
  - (j) disruption of calving, lambing, or shipping activities or substantial disruption of livestock use;
  - (k) an imminent threat, caused by potential substantial public use, of immediate, irreparable property damage or bodily injury on the state tract or adjacent land; or
  - (l) comparable private land has been made available for public general recreational use through an exchange described in (4).
- (4) Any person may request an emergency closure by submitting a written request describing the situation with the area or unit office. The area manager or designee will grant or deny the request no later than five days after it is received.
- (a) An emergency closure must be for a specific period of time but may be extended as necessary until the emergency is over.
  - (b) Upon request of any person, the director or designee will review any emergency closure in effect for longer than five days. The director or designee will approve, modify, or terminate the closure in writing.
  - (c) The department will attempt to contact the underlying lessee prior to any emergency closure.
  - (d) The department may, on its own initiative, close state trust land in an emergency.
- (5) The department may, after following the process described in (7), enter into a written agreement with a landowner whereby a tract of state trust land is closed in exchange for the landowner's agreement to open private land to general recreational use if all of the following requirements are met:

- (a) The private land:
    - (i) is in the same general area;
    - (ii) is of equal or greater recreational value to the state tract;
    - (iii) has equal or greater public access as the state tract; and
    - (iv) is not normally available for general recreational use upon request by the public.
  - (b) The private landowner agrees to:
    - (i) allow general recreational use under restrictions no more stringent than those contained in [NEW RULE 4];
    - (ii) post department-approved signs at customary access points on the closed state trust land to notify the public of the closure and give directions to the private tract;
    - (iii) post signs on the private tract advising the public which portion of the tract is open for general recreational use by the public subject to the recreational use license requirement;
    - (iv) allow access to the private land for employees of the department and Department of Fish, Wildlife and Parks;
    - (v) not claim funds pursuant to ARM 36.25.158 or 36.25.159;
    - (vi) hold the department and state harmless from all claims, including those for property damage or personal injury, relating from the acts or omissions of the landowner; and
    - (vii) meet any other requirements deemed necessary by the department.
  - (c) The exchange agreement may be canceled by either party with 60-day written notice.
- (6) A lessee may create a temporary management closure or restriction on their leased or licensed state trust land.
- (a) One of the following situations must exist:
    - (i) Livestock activities such as calving, lambing, gathering or moving, specialized or intensive breeding, supplemental winter feeding, weaning, or shipping are occurring;
    - (ii) Weed control treatment is occurring or has recently occurred;
    - (iii) The land is being irrigated. However, state trust land may not be closed to foot traffic during hunting season under this provision; or

- (iv) Recreational use would occur in close proximity to lessee's dwellings or structures. However, the right to enter or exit state trust land may not be denied under this provision.
- (b) Temporary management closures and restrictions do not become effective until 24 hours after the following requirements are met:
  - (i) The lessee notifies the area or unit office of:
    - (A) the nature of the qualifying situation that exists;
    - (B) the affected area;
    - (C) the terms of the closure or restriction; and
    - (D) the duration.
  - (ii) The lessee posts all customary access points with signs or duplicates of signs provided by the department. The signs must include the lessee's name, address, phone number, the closure or restriction imposed, the reason for the closure or restriction, the area to which it applies, effective date, and duration.
- (c) Any person may object to a temporary management closure or restriction by notifying the area or unit office in writing that:
  - (i) there is no valid basis for the closure;
  - (ii) the area of closure is larger than necessary; or
  - (iii) the duration of the closure is longer than necessary.
- (d) The department may object to a temporary management closure.
- (e) If an objection is made:
  - (i) The area manager or designee shall investigate the closure within two working days of receiving the objection.
  - (ii) The area manager or designee may modify or terminate the temporary closure or restriction after notifying the lessee and objector of the decision.
  - (iii) The lessee or objector may appeal the area manager's decision to the director by filing a written appeal to the area office within five business days of receipt of notice.
  - (iv) The director's decision is binding on the parties. Failure to comply with the director's decision subjects the violator to penalties pursuant to [NEW RULE 10].

- (f) The following are general guidelines the department shall use for determining whether the term of a management closure or restriction is reasonable:
  - (i) for calving or lambing, 60 days;
  - (ii) for breeding, 30 days;
  - (iii) for gathering or moving, 1 day;
  - (iv) for weed treatment, 5 days; and
  - (v) for livestock concentrated for weaning or shipping:
    - (A) if fewer than 200 animal units per section are concentrated, 5 days.
    - (B) if 200 or more animal units per section for weaning and shipping, 30 days.
- (g) The department may deviate from the general guidelines in (f) as management circumstances dictate.
- (7) Any person, corporation, organization, or government agency may petition the department to close a specific tract of land for a reason listed in (3) or exclude a specific tract of land from a categorical closure.
  - (a) The petition must be submitted in writing to the area or unit office in which the applicable state trust land is located. To be considered during a calendar year, the petition must be submitted by April 1 of that year, be signed by the petitioner, and must contain the following information:
    - (i) name, mailing address, and phone number of petitioner;
    - (ii) description of lands to which the petition applies by legal description, lease number, or other description of the location;
    - (iii) the reason for the requested action;
    - (iv) the period for which the requested action is sought; and
    - (v) supporting documentation.
  - (b) The department may summarily dismiss a petition with a brief statement of the reasons for dismissal whenever:
    - (i) the petition is for a closure and is not based on a reason provided in (2);
    - (ii) the petition is not supported by specific factual allegations, data, or documentation; or

- (iii) a petition requesting essentially the same action has been denied in the preceding 365 days unless changed conditions are alleged and documented.
- (c) By May 1, the department shall post notice of any valid petitions it has received or initiated at the county courthouse, area offices, and department's main office, and notify any underlying lessees. The notice must:
  - (i) contain the name of the petitioner, location of the land, and reasons for the proposed action; and
  - (ii) give the public an opportunity to object to the petition and the objector and the petitioner an opportunity to request, on or before May 20, a public hearing on the proposed action.
- (d) An objection must contain the reasons why the petition should not be granted and supporting documentation. An objection may not be considered if it does not.
- (e) If a hearing is requested by an objector or petitioner, the department shall hold the hearing in the area of the proposed action as follows:
  - (i) By June 5, the department shall post public notice of the hearing and notify the petitioner and the affected lessee. The notice must contain the name of the petitioner, location of the land, reason for proposed action and reasons that the hearing has been requested.
  - (ii) By June 20, an open public hearing must be held in the area of the proposed action. Any interested party may give comments and submit information at the hearing.
- (f) The area manager or designee may conduct further investigation.
- (g) By July 1, the department shall prepare a written decision and provide a copy to the lessee, petitioner, and any person who filed an objection. The decision shall grant, modify, or deny the petition and state the reasons for the decision.
- (h) The petitioner or an objector may appeal the decision to the director by filing a written appeal with the area office within 15 days of receipt of the decision.
- (i) If an appeal is received:
  - (i) The department will notify the opposing party of the appeal and provide an opportunity to respond, including the right to appear at any appellate hearing.
  - (ii) The appeal may, at the discretion of the director or designee, proceed by written argument, oral argument, or both, at a location designated by the director.

- (iii) No party may submit evidence or information that was not submitted at the informal hearing.
  - (iv) By September 1, the director or designee shall issue a written decision affirming, reversing, or modifying the department's decision.
  - (j) If a petition is granted, the lessee or department shall post all applicable customary access points with signs provided by the department or duplicated from signs provided by the department.
- (8) The department shall maintain a list of closures and restrictions on the department's public website and at the department's main office in Helena.
- (9) Except for categorical closures under (1), the department shall review closures at expiration or renewal of the lease for leased tracts and at least every 10 years for unleased tracts. The department may review closures more frequently. After public notice, notice to the lessee, and an opportunity for public comment and hearing, the department may terminate a closure it determines is no longer necessary.

**Authorizing statute(s):** 77-1-209, 77-1-804, MCA

**Implementing statute(s):** 77-1-804, MCA

### **Reasonable Necessity Statement**

This rule change is reasonably necessary to simplify rule language and to renumber recreational use rules. The proposed rule consolidates and simplifies language from original ARM 36.25.150, 36.25.152, 36.25.153, and 36.25.154(3) related to recreational use closures while retaining the intent of the original rules.

### **NEW RULE 7 (36.25.1208) ROADS**

- (1) Before designating a road on leased state trust land as open for recreational motorized use, the department shall notify the lessee.

**Authorizing statute(s):** 77-1-209, 77-1-804, MCA

**Implementing statute(s):** 77-1-804, 77-1-806, MCA

## **Reasonable Necessity Statement**

This rule change is reasonably necessary to simplify rule language and to renumber recreational use rules. The proposed rule simplifies and clarifies language from original ARM 36.25.161(4) related to open roads, while retaining the intent of the original rules.

## **NEW RULE 8 (36.25.1209) INTERAGENCY LAND MANAGEMENT AGREEMENTS**

- (1) State trust land may be enrolled in a block management area or wildlife management area established by the Department of Fish, Wildlife and Parks pursuant to a written agreement executed by the department. No state trust land is included in a management area unless a written agreement is executed by the department.
- (2) The department may enroll state trust land into a block management area only if it finds that:
  - (a) enrollment is in the best interest of the public and the trust;
  - (b) inclusion would not result in damage to the land;
  - (c) the proposed block management area contains private land;
  - (d) the state trust land is contiguous to other land included within the proposed block management area; and
  - (e) the proposed block management agreement does not conflict with the rights of holders of leases, licenses, or easements.
- (3) To request enrollment of state trust land into a block management area, the Department of Fish, Wildlife and Parks must submit a proposal to the department that includes:
  - (a) a legal description of the affected state trust land;
  - (b) a description of legal access;
  - (c) the terms, conditions, and restrictions to be applied to the lands enrolled in the proposed block management area; and
  - (d) a map of the proposed block management area that identifies state trust land, adjoining public land, and open roads.
- (4) A public review process is required only if the proposed block management agreement:
  - (a) would impose restrictions on recreational use that are more stringent than those contained in [NEW RULE 4]; and

- (b) contains state trust land that is:
    - (i) accessible by open road, public right of way or easement, public waters, or contiguous government-owned land that is open for public use; or
    - (ii) contiguous at some point to land that is not included within the proposed block management area.
- (5) If a public review process is required pursuant to (4):
  - (a) the department and the Department of Fish, Wildlife and Parks shall give public notice in the newspaper in the area of the proposed block management area and provide a 21-day public comment period;
  - (b) the department will review and prepare written responses to all substantive comments and shall provide copies to each person who submitted a substantive comment; and
  - (c) the department may, at its discretion, hold a public hearing in the area of the proposed block management area if it finds that a public comment or a request for a hearing raised a significant question as to whether the proposal is in the best interest of the public or the trust.
- (6) A block management agreement that includes state trust land must contain the following provisions:
  - (a) A recreational use license pursuant to [NEW RULE 3] is required for general recreation.
  - (b) Motorized vehicle use on state trust land is restricted in accordance with 77-1-804(6)(c), MCA.
  - (c) If the state trust land meets the criteria in (4), the Department of Fish, Wildlife and Parks shall post signs on state trust land at customary access points that include information about special block management restrictions on recreational use and how access may be obtained.
  - (d) If a complaint is not resolved to the satisfaction of the department, the department may withdraw state trust land from the block management area.
- (7) The department may agree to renew a block management agreement if the agreement continues to meet the criteria in (2) and contain the provisions in (6).
- (8) Renewal requires the public review process under (5) only if:
  - (a) the department determines that a complaint received by Department of Fish, Wildlife and Parks has not been adequately resolved;
  - (b) public comments or complaints have been received by the Department of Fish, Wildlife and Parks that:

- (i) raise significant concern regarding compliance with the agreement; or
  - (ii) indicate that continued enrollment may not be in the best interest of the public or the trust; or
- (c) changes in the agreement impose more stringent restrictions than those contained in the existing agreement.

**Authorizing statute(s):** 77-1-804, MCA

**Implementing statute(s):** 77-1-804, MCA

### **Reasonable Necessity Statement**

This rule change is reasonably necessary to simplify rule language and to renumber recreational use rules. The proposed rule consolidates and simplifies language from original ARM 36.25.163, 36.25.164, 36.25.165, 36.25.166, and 36.25.167 related to block management agreements while retaining the intent of the original rules and clarifies enrollment of state trust land into a wildlife management area as contemplated in original ARM 36.25.149(1)(i).

### **NEW RULE 9 (36.25.1210) SPECIAL RECREATIONAL USE**

- (1) No special recreational use of state trust land may occur without a special recreational use license.
- (2) Special recreational use licenses are issued at department discretion.
- (3) The cost of the license is determined by the department based on the full market value of the use. The department may use a competitive bidding process to determine the full market value. If a competitive bid process is used, the department may set a minimum bid amount according to the best interest of the trust.
- (4) The department may reject a license application or a competitive bid if acceptance would not be in the best interest of the trust.
- (5) The department may grant a license that provides the exclusive authorization for a specific activity in an area. However, even if a license is exclusive, the department may grant other licenses for other types of activities on the same land.
- (6) To apply for a special recreational use license, a person must be 18 years of age or older and must submit an application to the area or unit office where the activity is

proposed to occur. Applications must include a description or map of the area proposed for use.

- (7) The department must attempt to notify an underlying lessee of a license application.
- (8) A license must include terms regulating motorized vehicle use and requiring that only certified weed seed free hay be used on the state trust land. The license may include other use restrictions.
- (9) The holder of the special recreational use license shall comply with all provisions of the license.
- (10) A license issued under this rule does not prohibit general recreational use of the licensed area.

**Authorizing statute(s):** 77-1-209, 77-1-804, MCA

**Implementing statute(s):** 77-1-804, MCA

### **Reasonable Necessity Statement**

This rule change is reasonably necessary to simplify rule language and to renumber recreational use rules. The proposed rule simplifies language from original ARM 36.25.162 related to special recreational use while retaining the intent of the original rule. These changes clarify that the department may reject applications or bids if they are not in the best interest of the trust.

### **NEW RULE 10 (36.25.1212) PENALTIES**

- (1) Pursuant to 77-1-804(8), MCA, if the department and the Department of Fish, Wildlife and Parks consent to and sign an agreement for general recreational use as provided in 77-1-815, MCA, a person who violates a department rule that governs general recreational use is guilty of a misdemeanor.
- (2) The department may assess a civil penalty of up to \$1,000 per day for a violation of [NEW RULE 1 through NEW RULE 9], unless a criminal penalty has been assessed for the violation.
  - (a) The department shall consider the following factors to determine the amount of a civil penalty:
    - (i) number of previous violations;
    - (ii) severity of the infraction; and

- (iii) whether the violation was intentional or unintentional.
- (b) The penalty may be waived for minor or technical violations.
- (c) Before assessing a penalty for a civil violation, the department will give the person cited a violation notice that describes the facts and circumstances alleged to have occurred.
- (d) The person has 15 days to respond in writing to the violation notice.
- (e) Upon receipt of the response or expiration of the response period, the department shall either withdraw the notice of violation or assess a penalty. The department shall provide notice of its decision by certified mail.
- (f) The person may request a hearing within 30 days of receiving the department's notice of penalty assessment. The request for hearing must state the reasons that the person is contesting assessment of the penalty.
- (g) If a hearing request is received by the department:
  - (i) The department shall hold a contested case hearing in accordance with the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA.
  - (ii) The hearing must be conducted by a hearing officer appointed by the director.
  - (iii) After the hearing, the department shall, within 60 days issue its findings of fact and conclusions of law and final order dismissing the violation or assessing a penalty.
- (h) A person shall pay an assessed penalty within 30 days of receipt of the notice of decision described under (2)(e), within 30 days of the final order if a hearing is requested, or within such additional time if granted by the department.
- (i) The assessment of civil penalty is appealable to district court pursuant to Title 2, chapter 4, part 7, MCA.

**Authorizing statute(s):** 77-1-209, 77-1-804, MCA

**Implementing statute(s):** 77-1-804, MCA

### **Reasonable Necessity Statement**

This rule change is reasonably necessary to simplify rule language and to renumber recreational use rules. The proposed rule simplifies language from original ARM 36.25.157 related to penalties, while retaining the intent of the original rules.

## **REPEAL**

The rules proposed to be repealed are as follows:

### **36.25.143 OVERVIEW OF RECREATIONAL USE RULES**

**Authorizing statute(s):** 77-1-209, 77-1-804, 77-1-806, MCA

**Implementing statute(s):** 77-1-801 through 77-1-810, MCA

### **36.25.144 ADMINISTRATION OF RECREATION ON STATE LANDS ADMINISTERED BY THE DEPARTMENT**

**Authorizing statute(s):** 77-1-209, 77-1-804, 77-1-806, MCA

**Implementing statute(s):** 77-1-801 through 77-1-810, MCA

### **36.25.145 DEFINITIONS**

**Authorizing statute(s):** 77-1-209, 77-1-804, 77-1-806, MCA

**Implementing statute(s):** 77-1-101, 77-1-801, 77-1-802, 77-1-804, 77-1-805, 77-1-806, MCA

### **36.25.146 GENERAL RECREATIONAL USE OF STATE LANDS: LICENSE REQUIREMENT**

**Authorizing statute(s):** 77-1-106, 77-1-209, 77-1-802, 77-1-804, MCA

**Implementing statute(s):** 77-1-106, 77-1-801, 77-1-802, 77-1-804, 77-6-210, MCA

### **36.25.149 GENERAL RECREATIONAL USE OF STATE LANDS: RESTRICTIONS**

**Authorizing statute(s):** 77-1-209, 77-1-804, MCA

**Implementing statute(s): 77-1-804, MCA**

### **36.25.150 GENERAL RECREATIONAL USE OF STATE LANDS: CATEGORICAL CLOSURES**

**Authorizing statute(s): 77-1-209, 77-1-804, MCA**

**Implementing statute(s): 77-1-804, MCA**

### **36.25.152 GENERAL RECREATIONAL USE OF STATE LANDS: PROCEDURE FOR SITE SPECIFIC CLOSURES**

**Authorizing statute(s): 77-1-209, 77-1-804, MCA**

**Implementing statute(s): 77-1-804, MCA**

### **36.25.153 MANAGEMENT CLOSURES AND RESTRICTIONS**

**Authorizing statute(s): 77-1-804, MCA**

**Implementing statute(s): 77-1-804, MCA**

### **36.25.154 RECREATIONAL USE ADVISORY COUNCIL**

**Authorizing statute(s): 77-1-804, MCA**

**Implementing statute(s): 77-1-804, 2-15-122, MCA**

### **36.25.155 GENERAL RECREATIONAL USE OF STATE LANDS: NOTICE TO LESSEES OF ALL USES OTHER THAN HORSE USE NOT FOR THE PURPOSE OF LICENSED HUNTING, DISCHARGE OF FIREARMS NOT FOR THE PURPOSE OF LICENSED HUNTING, AND OVERNIGHT USE**

**Authorizing statute(s): 77-1-209, 77-1-804, 77-1-806, MCA**

**Implementing statute(s): 77-1-804, 77-1-806, MCA**

**36.25.156 GENERAL RECREATIONAL USE OF STATE LANDS: NOTICE TO LESSEES OF OVERNIGHT USE, HORSEBACK USE FOR ANY PURPOSE OTHER THAN LICENSED HUNTING, AND FOR DISCHARGE OF A FIREARM FOR ANY PURPOSE OTHER THAN LICENSED HUNTING**

**Authorizing statute(s):** 77-1-804, 77-1-806, MCA

**Implementing statute(s):** 77-1-804, 77-1-806, MCA

**36.25.157 GENERAL RECREATIONAL USE OF STATE LANDS: PENALTIES**

**Authorizing statute(s):** 77-1-209, 77-1-804, MCA

**Implementing statute(s):** 77-1-804, MCA

**36.25.161 GENERAL RECREATIONAL USE OF STATE LANDS: OTHER PROVISIONS**

**Authorizing statute(s):** 77-1-209, 77-1-804, MCA

**Implementing statute(s):** 77-1-804, 77-1-806, MCA

**36.25.162 SPECIAL RECREATIONAL USE OF STATE LANDS**

**Authorizing statute(s):** 77-1-209, 77-1-804, MCA

**Implementing statute(s):** 77-1-804, MCA

**36.25.163 BLOCK MANAGEMENT AREAS: GENERAL RULES FOR INCLUSION OF STATE LAND**

**Authorizing statute(s):** 77-1-804, MCA

**Implementing statute(s):** 77-1-804, MCA

**36.25.164 BLOCK MANAGEMENT AREAS: PROCEDURES FOR INCLUSION OF STATE LAND**

**Authorizing statute(s):** 77-1-804, MCA

**Implementing statute(s):** 77-1-804, MCA

### **36.25.165 BLOCK MANAGEMENT AREAS: CRITERIA FOR INCLUSION OF STATE LAND**

**Authorizing statute(s):** 77-1-804, MCA

**Implementing statute(s):** 77-1-804, MCA

### **36.25.166 BLOCK MANAGEMENT AREAS: TERMS OF AGREEMENT**

**Authorizing statute(s):** 77-1-804, MCA

**Implementing statute(s):** 77-1-804, MCA

### **36.25.167 BLOCK MANAGEMENT AREAS: RENEWAL OF AGREEMENT**

**Authorizing statute(s):** 77-1-804, MCA

**Implementing statute(s):** 77-1-804, MCA

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#### **Small Business Impact**

The department has determined that the class or group of businesses that will be affected by this proposed rulemaking are the businesses that hold agriculture or grazing leases on trust land, and businesses that may license trust land for commercial recreational use. The department does not believe the proposed rulemaking will have a significant and direct impact on small businesses. The department has completed a small business impact analysis, which is available upon request.

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#### **Bill Sponsor Notification**

The bill sponsor contact requirements do not apply.

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#### **Interested Persons**

The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail and/or mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such

written request may be mailed or delivered to the contact person or may be made by completing a request form at any rules hearing held by the department.

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**Rule Reviewer**

Jason Kampman

**Approval**

Amanda Kaster, Director