

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 36.25.145, 36.25.146,) PROPOSED AMENDMENT
36.25.149, 36.25.150, 36.25.152,)
36.25.157, 36.25.158, and 36.25.159)
pertaining to recreational use of state)
lands)

TO: All Concerned Persons

1. On September 26, 2024, at 10:00 a.m., the Department of Natural Resources and Conservation (DNRC) will hold a public hearing at the DNRC building in the Montana Conference Room, First Floor, located at 1539 Eleventh Avenue, Helena, Montana, and via Zoom, to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

- a. Join Zoom Meeting: <https://mt-gov.zoom.us/j/84524412631?pwd=g3GVbvgjeeCeeVbhwd4azumlIbuRR6.1>; Meeting ID: 845 2441 2631; Password: 875446; or
- b. Dial by Telephone: +1 646 558 8656; Meeting ID: 845 2441 2631; Password: 875446; Find your local number: <https://mt-gov.zoom.us/u/kdTimrwcsV>

2. The department will provide reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require accommodation, contact the department no later than 5:00 p.m. on September 20, 2024, to advise us of the nature of the accommodation that you need. Please contact Jamie Price, Department of Natural Resources and Conservation, 1539 Eleventh Avenue, P.O. Box 201601, Helena, Montana, 59620-1601; telephone (406) 444-6615; Montana Relay 711; or e-mail DNRCOAH@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

36.25.145 DEFINITIONS Wherever used in ARM 36.25.143 through ARM 36.25.162, unless a different meaning clearly appears from the context:

(1) through (7) remain the same.

(8) "Director" means the director of the Department of Natural Resources and Conservation, ~~provided for in 2-15-3202, MCA.~~ The director is the chief administrative officer of the department of natural resources and conservation.

(9) through (17) remain the same.

~~(18) "Recreational use account" means the account established by 77-1-808, MCA, in which revenues generated from general recreational use of state lands are~~

~~deposited and from which expenses of the general recreational use program are paid.~~

(19) through (21) remain the same but are renumbered (18) through (20).

~~(22)~~(21) "Special recreational use" means:

(a) remains the same.

(b) non-commercial recreational activities conducted by an organization, such as a lodge, business, church, union, or club; and

(c) overnight recreational use on leased or licensed lands by one or more persons outside a designated campground and more than 200 feet from a customary and legal access point or water body; ~~and~~

~~(d) overnight horse use.~~

(22) "Trust land administration account" means the account established by 77-1-108, MCA, from which expenses of the recreational use program are paid.

AUTH: 77-1-209, 77-1-804, 77-1-806, MCA

IMP: 77-1-101, 77-1-801, 77-1-802, 77-1-804, 77-1-805, 77-1-806, MCA

REASON: The proposed amendments are reasonably necessary to implement SB 65 (2009), which eliminated the recreation use account, to implement SB 326 (2015), which authorized overnight horse use, and to remove the citation to 2-15-3202, MCA, which has been repealed.

36.25.146 GENERAL RECREATIONAL USE OF STATE LANDS: LICENSE REQUIREMENT

(1) Subject to restrictions imposed pursuant to ARM 36.25.149 and 36.25.153 and closures imposed pursuant to ARM 36.25.150, 36.25.152, and 36.25.153, state lands administered by the department, except those lands described in ARM 36.25.144, are open to general recreational use ~~to a person under the age of 12 years or a person 12 years old or older who obtains a recreational use license, signs that license, and has a valid signed license in his or her possession. Under 77-1-801, MCA, general recreational use without a license is a misdemeanor.~~

(2) A recreational use license is required by any person 12 years of age or older for general recreational use on state lands administered by the department or on private lands that have been opened to the public pursuant to an exchange under ARM 36.25.152.

(a) 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, a conservation license is required for general recreational use of legally accessible trust land.

(b) 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, a state lands recreational use license is required for general recreational use of legally accessible trust land.

~~(2)~~(3) A general state lands recreational use 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. The cost of a general recreational use license is \$5 before March 1, 1996. After February 29, 1996, the cost of the license is \$5 for persons 17 years of age or younger or 60 years of age or older. The cost of the license for persons who

are older than 17 and younger than 60 is \$10. Family members living within the same household may obtain recreational use licenses by paying a family fee of \$20. The license is personal and non-transferable. It may be purchased at any authorized license agent of the Department of Fish, Wildlife and Parks. Any person may purchase a recreational use license for a spouse, parent, child, brother, or sister, ~~but the license is not valid until signed by the person in whose name it is issued.~~

~~(3)(4)~~ A person who uses state lands for general recreational use shall abide by the restrictions imposed pursuant to ARM 36.25.149 and may not use for general recreational purposes state lands that have been closed pursuant to ARM 36.25.150, 36.25.152, or 36.25.153. ~~Violations of this provision subjects the violator to civil penalties pursuant to ARM 36.25.157.~~

~~(4)(5)~~ No lessee or other person may interfere with a person who is making lawful general recreational use of state lands in accordance with this rule. ~~Violation of this provision subjects the violator to civil penalties pursuant to ARM 36.25.157.~~ The lessee may, without such interference, make inquiry concerning the status of those using state lands.

~~(5)(6)~~ Under 77-1-801(2) and (3), MCA, a person who is engaging in general recreational use on state land, or on private land that has been opened pursuant to an exchange under ARM 36.25.152, must, upon request of a fish and game warden or department employee, present for inspection his or her recreational use license. ~~Failure to present the license is a misdemeanor.~~

~~(6)~~ ~~A person who is engaging in general recreational use on state land shall, upon request of a department employee, present his or her recreational use license for inspection. Failure to present the license subjects the recreationist to a civil penalty pursuant to ARM 36.25.157.~~

~~(7)~~ ~~A person who is engaging in general recreational use on private land that has been opened pursuant to an exchange under ARM 36.25.152 shall, upon request of a department employee or a fish and game warden, present his or her recreational use license for inspection. Failure to present the license subjects the recreationist to a civil penalty pursuant to ARM 36.25.157.~~

AUTH: 77-1-106, 77-1-209, 77-1-802, 77-1-804, MCA

IMP: 77-1-106, 77-1-801, 77-1-802, 77-1-804, 77-6-210, MCA

REASON: The proposed amendments are reasonably necessary to streamline the language, to remove the signature requirement for licenses, and to implement HB 521 (2023), which amended licensing requirements and the penalties for violations. Penalties are addressed in ARM 36.25.157.

36.25.149 GENERAL RECREATIONAL USE OF STATE LANDS:
RESTRICTIONS (1) through (1)(d) remain the same.

(e) Overnight recreational use on leased or licensed land must take place within 200 feet of a legal and customary access point or water body that is navigable for recreational purposes under 23-2-302, MCA. The person may not drive or park a vehicle more than 50 feet from the access point. A recreationist's overnight use of state lands must not exceed the following time limits:

(i) remains the same.

(ii) for a designated campground - ~~14 consecutive~~ 16 days in a 30-day period;

(iii) for unleased, unlicensed lands outside a campground ~~44 - 16 days per calendar year~~ in a 30-day period, unless permission for a longer period is obtained from the department.

(f) A recreationist may ~~not~~ keep horses on state land overnight, subject to the following restrictions:-

(i) horses may not remain in a stream riparian zone for more than one hour;

(ii) only certified noxious weed seed free forage may be brought onto state land; and

(iii) horses must be restrained in a manner that minimizes impacts to vegetation.

(g) A recreationist shall keep pets on a leash or otherwise in control. A recreationist may not allow the pet to harass livestock or wildlife.

(h) through (j) remain the same.

(k) From March 1 to December 1, or for an extended period of time if posted on site, the acts described under ARM 12.12.109(1)(a), (b), and (c) are prohibited on state land:

(i) located in any county west of the Continental Divide; or

(ii) 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.

(2) remains the same.

AUTH: 77-1-209, 77-1-804, MCA

IMP: 77-1-804, MCA

REASON: The proposed amendments are reasonably necessary to implement SB 326 (2015), which authorized motorized vehicle use on designated trails, amended camping limitations, and authorized overnight horse use. Food storage requirements are necessary to regulate recreational use on state trust lands located in bear country. These changes provide consistency with existing rules/orders meant to reduce wildlife-human conflicts on neighboring state and federal lands.

36.25.150 GENERAL RECREATIONAL USE OF STATE LANDS:
CATEGORICAL CLOSURES (1) and (2) remain the same.

(3) Except for closure for fire danger pursuant to (1)(e), the lessee or department shall post categorically closed lands at all customary access points with signs provided by the department or duplicated from signs provided by the department.

AUTH: 77-1-209, 77-1-804, MCA

IMP: 77-1-804, MCA

REASON: The proposed amendments are reasonably necessary to implement SB 326 (2015).

36.25.152 GENERAL RECREATIONAL USE OF STATE LANDS: PROCEDURE FOR SITE SPECIFIC CLOSURES AFTER SEPTEMBER 1, 1992

(1) The department may close specific tracts of state land pursuant to this rule after September 1, 1992, for any of the following reasons:

(a) through (9) remain the same.

(10) If the petition is granted, the lessee or department shall post the closed lands at all customary access points with signs provided by the department or duplicated from signs provided by the department. For temporary closures, the lessee shall remove closure signs at the end of the closure period.

(11) through (14) remain the same.

AUTH: 77-1-209, 77-1-804, MCA

IMP: 77-1-804, MCA

REASON: The proposed amendments are reasonably necessary to streamline the language and implement SB 326 (2015).

36.25.157 GENERAL RECREATIONAL USE OF STATE LANDS: CIVIL 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.

~~(1)(2)~~ Pursuant to 77-1-804(8), MCA, ~~the~~ The department may assess against a recreationist, lessee, or other person a civil penalty of up to \$1,000 for each per day of for violation-violations of a department rule that governs general or special recreational use of ARM 36.25.146, ARM 36.25.149, ARM 36.25.150, ARM 36.25.152, ARM 36.25.153, or ARM 36.25.163. The department may waive the civil penalty for minor or technical violations and shall waive the civil penalty if a criminal penalty has been assessed for the violation.

(2) remains the same but is renumbered (a).

(a) through (c) remain the same but are renumbered (i) through (iii).

(3) through (5) remain the same but are renumbered (b) through (d).

AUTH: 77-1-209, 77-1-804, MCA

IMP: 77-1-804, MCA

REASON: The proposed amendments are reasonably necessary to streamline the language and to implement HB 521 (2023), which amended penalties for violations.

36.25.158 GENERAL RECREATIONAL USE OF STATE LANDS: DAMAGE REIMBURSEMENT (1) through (5) remain the same.

(6) The department shall, on or before July 1 of each fiscal year, designate a portion of the recreational-use trust land administration account for damage

reimbursement. Claims that are granted may be paid only to the extent that funds are available for damage reimbursement in the ~~recreational use~~ trust land administration account and must be paid in the order they have been filed with the department.

AUTH: 77-1-209, 77-1-804, MCA
IMP: 77-1-809, MCA

REASON: The proposed amendments are reasonably necessary to implement SB 65 (2009), which eliminated the recreation use account.

36.25.159 GENERAL RECREATIONAL USE OF STATE LANDS: WEED CONTROL MANAGEMENT (1) The lessee is responsible for weed control on leased state land. However, weed control cost share funds designated pursuant to (2) are available to lessees from the ~~recreational~~ trust land administration account for control of noxious weed infestations caused by general recreational use after February 29, 1992. "Noxious weeds" are those weeds designated as noxious weeds by the Montana Department of Agriculture.

(2) The department shall, on or before July 1 of each fiscal year, designate a portion of the ~~general recreational use~~ trust land administration account for weed control.

(3) through (5) remain the same.

AUTH: 77-1-209, 77-1-810, MCA
IMP: 77-1-810, MCA

REASON: The proposed amendments are reasonably necessary to implement SB 65 (2009), which eliminated the recreation use account.

4. 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: Martin Balukas, Department of Natural Resources and Conservation, 1539 Eleventh Avenue, P.O. Box 201601, Helena, Montana, 59620-1601; or e-mail DNRCOAH@mt.gov, and must be received no later than 5:00 p.m. on October 4, 2024.

5. Martin Balukas, Department of Natural Resources and Conservation, has been designated to preside over and conduct this hearing.

6. 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 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 in 2 above or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at rules.mt.gov.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors for SB 326 (2015) and HB 521 (2023) were contacted by e-mail on June 21, 2024. The primary bill sponsor for SB 65 (2009) was contacted by mail on July 12, 2024.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Jason Kampman
Jason Kampman
Rule Reviewer

/s/ Amanda Kaster
Amanda Kaster
Director
Natural Resources and Conservation

Certified to the Secretary of State August 27, 2024.