



ADMINISTRATIVE RULES OF MONTANA



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 5 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 ARM 36.25.1204;
 - (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 ARM 36.25.1212.
- (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

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