

BEFORE THE STATE PARKS AND RECREATION BOARD  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT AND  
ARM 12.3.650 and the adoption of ) ADOPTION  
NEW RULES I and II pertaining to the )  
Smith River private and commercial )  
use permit system )

TO: All Concerned Persons

1. On June 21, 2024, the State Parks and Recreation Board (board) published MAR Notice No. 12-629 pertaining to the public hearing on the proposed amendment and adoption of the above-stated rules at page 1412 of the 2024 Montana Administrative Register, Issue Number 12.
2. On July 19, 2024, a public hearing was held on the proposed amendment and adoption of the above-stated rules, via Zoom. The Board also received written comments through July 22, 2024.
2. The board has amended ARM 12.3.650 as proposed.
3. The board has adopted the following rules as proposed: NEW RULES I (12.11.6801) and II (12.11.6802).
4. The board has thoroughly considered the comments and testimony received. No comments or testimony were received regarding the proposed amendment to ARM 12.3.650 to correct the inadvertent reference to “June 15” instead of “July 15” as the end of the peak floating season. No comments or testimony were received in opposition to the adoption of subsections (1) through (3) of proposed NEW RULE I or to the adoption of NEW RULE II in its entirety.

A summary of the comments and testimony received regarding the proposed NEW RULES I and II, and the board's responses, are as follows:

COMMENT 1: Several comments were received in support of the adoption of subsections (1) through (3) of proposed NEW RULE I (ARM 12.11.6801) and NEW RULE II in its entirety (ARM 12.11.6802).

RESPONSE 1: The board appreciates the comments and support for the proposed NEW RULE provisions.

COMMENT 2: The board received no comments or testimony in support of or in opposition to the adoption of subsection (4) of the proposed NEW RULE II but did receive comments expressing neutrality on the proposed language. The commenters noted that there could be advantages to reallocating any available launches to the existing outfitters in terms of experience and economies of scale and

the potential difficulties that might be experienced by any new outfitter with perhaps only one launch available. The commenters also noted, however, the potential downside of a dwindling pool of existing providers over time that could result in less choice for the general public.

RESPONSE 2: The Board appreciates the comments and perspectives provided and agrees with the comments expressed regarding the benefits of having any available launches remain with licensed outfitters with experience on the Smith River. As several commenters noted, there have not been any historical instances to date of launches becoming available for reallocation, and the Board anticipates that trend will continue with an infrequent need for any reallocation. In the event it is required, however, subsection (4) of the proposed NEW RULE II will provide certainty and clarity in terms of the process to be followed.

COMMENT 3: The Board received multiple comments stating objections to and/or disagreements with the language provided in the REASON section of the notice for the proposed amendment and adoption. Specifically, multiple commenters expressed disagreement with the two possible scenarios described in that REASON section (apart from permit revocation) for how launches might become available for reallocation, i.e., upon the death of a permit holder where no arrangements are made for the sale or transfer of the permit holder's business or in the event of a sale or transfer of the permitted business to a buyer/transferee who is not eligible to receive their own commercial use permit.

RESPONSE 3: The Board appreciates the comments and input, but they are beyond the scope of the current rulemaking process. The language in the REASON portion of the notice is not part of the proposed NEW RULE II itself and there is no language in subsection (4) of the proposed NEW RULE II that creates any new or different mechanisms for how any commercial launches might become available for reallocation. Even if, as the commenters suggest, the two scenarios described in the REASON portion of the proposed rule notice are not ones that could result in the availability of any launches, there is at least one acknowledged scenario (permit revocation) that could trigger the need for reallocation. In that event, subsection (4) of the proposed NEW RULE II will provide certainty and clarity as to how that reallocation process will work.

COMMENT 4: One commenter indicated that the language of subsection (4) of the proposed NEW RULE II was unclear.

RESPONSE 4: The Board appreciates the comment, but believes the referenced language is sufficiently clear in describing both (1) the circumstance that will trigger the reallocation process and (2) how that reallocation process will be conducted.

/s/ Jeffrey M. Hindoien  
Jeffrey M. Hindoien  
Rule Reviewer

/s/  
Russ Kipp  
Chair  
State Parks and Recreation Board

/s/  
Dustin Temple  
Director  
Fish, Wildlife and Parks

Certified to the Secretary of State on August X, 2024.