

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

In the matter of the amendment of )  
ARM 12.3.650 and the adoption of ) **WRITTEN COMMENT MATERIAL**  
NEW RULES I and II pertaining to the )  
Smith River private and commercial )  
use permit system )

The *Notice of Public Hearing and Proposed Amendment and Adoption* published as MAR Notice No. 12-629 at page 1412 of the 2024 Montana Administrative Register, Issue No. 12, provided that written data, views, or arguments could be submitted to: Deb O'Neill, Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; or email [doneill@mt.gov](mailto:doneill@mt.gov), and received no later than 5:00 p.m., July 22, 2024.

Copies of the written comment materials are attached.

**From:** [Brian McGeehan](#)  
**To:** [O'Neill, Deb](#)  
**Cc:** [Mike Bias](#); [Mike Geary](#); [Brandon Boedecker](#); [Joe Sowerby](#); [John Herzer](#); [Todd France](#); [Steve Mackey](#)  
**Subject:** [EXTERNAL] Public comment for amendment of ARM 12.3.650  
**Date:** Thursday, July 18, 2024 5:30:31 PM

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Greetings Montana Parks board members,

I would like to provide comment on the amendment of ARM 12.3.650

1) I support all of New Rule II (ARM 12.11.6802) which largely moves what was biannual rule to permanent ARM

2) I support items 1,2 and 3 in NEW RULE 1 (ARM 12.11.6801) which also is moving biannual rule to permanent ARM

3) I am neutral on item 4 in NEW RULE 1 (ARM 12.11.6801). This new ARM provides a blueprint for reallocating commercial Smith River launches should they become available if a commercial permit is abandoned or revoked. This has never happened in the past since the Smith River legislation and rules were implemented, however it is possible. I agree that any launches that are forfeit from lack of use or a revoked permit should be made available so that the service continues to be made available to the general public by another operator. There is no perfect answer for how to reallocate launches. Opening up reallocated launches to any service provider/outfitter via lottery would likely result in many more service providers but only permitted to launch a single trip. Due to the complexity of operations on the Smith there is some economy of scale when operating more launches that encourages outfitters to invest in better equipment and also have guides that have more experience on the river. The downside of only making reallocated launches to existing providers results in a smaller pool of service providers that eventually could dwindle to just one or two outfitters which may result in less choice to the general public for guided services.

4) I am strongly opposed to the language in the REASON provided for New Rule 1 where the department suggests that the death of a permit holder would result in a permit revoked which is needed by that business to provide services on the Smith River to continue to support the business and the family of the service provider. I suggest that this language be removed from the Public Notice as it directly conflicts with language related to the death of outfitters in Montana MCA. A river permit that is for a business should be treated in similar way and the family of the permit holder should have the opportunity to either sell the business or name a new outfitter or designate a new permit holder that can work towards meeting state qualifications:

## Transfer Or Amendment Of Outfitter's License -- Partial Sale Of Outfitter Business

**37-47-310. Transfer or amendment of outfitter's license -- partial sale of outfitter business.** (1) An outfitter's license may not be transferred.

(3) Subject to approval by the board, a person designated by the family of an outfitter who is deceased or incapacitated due to physical or mental disease or injury or who is unable to carry

out the responsibilities of an outfitter due to the outfitter's status as an active member of the military may continue to provide outfitting services for the outfitter's unexpired license year, or until the family sells the outfitting business, until the designee obtains an outfitter license.

5) I am strongly opposed to the language in the REASON provided for New Rule 1 where the department suggests a permit becomes forfeit in the sale of the business. We have existing MCA that deals with the sale of outfitting businesses that outlines that an outfitting license may be held for the benefit of a named business. By default this would allow an outfitter that is not the business owner to operate guided fishing or hunting for the business. So long as a business provides services that are supervised by an outfitter in good standing river permits for the business should not be revoked. Furthermore, Title 37 clearly outlines that the partial sale or temporary sale may not be prohibited. Clearly a business that relies on operating on the Smith River that holds a river permit needs the river permit to transfer to the business to a new owner operator. This has already been initially supported in a legal injunction. This commentary in REASON should be removed as it is inconsistent with current state law.

## Montana Code Annotated 2023

TITLE 37. PROFESSIONS AND OCCUPATIONS

CHAPTER 47. OUTFITTERS AND GUIDES

Part 3. Licensing

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(4) (a) Except as provided in subsection (4)(b), if changes are properly reflected in an operations plan, the partial sale or temporary transfer of a hunting or fishing outfitter's business may not be prohibited.

There are several inconsistencies with ARM language and MCA. I recommend that the department work with the outfitting industry to recommend revisions with current ARM to become consistent with Title 37 as well as ensure that related ARM under the scope of Parks, Fish and Game and the Board of Outfitters is consistent.

Thank you! Brian McGeehan

--

Brian McGeehan  
Owner and Outfitter  
Montana Angler Fly Fishing  
435 East Main Street  
Bozeman, MT 59715

[www.montanaangler.com](http://www.montanaangler.com) [montanaangler.com]

cell 406.570.0453

office 406.522.9854

**From:** [Joe Sowerby](#)  
**To:** [O'Neill, Deb](#); [Brian McGeehan](#); [Mike Geary](#)  
**Subject:** [EXTERNAL] Re: Public comment for amendment of ARM 12.3.650  
**Date:** Friday, July 19, 2024 10:31:25 AM

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Deb and the Montana Parks Board:

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There are several inconsistencies with ARM language and MCA. I recommend that the department work with the outfitting industry to recommend revisions with current ARM to become consistent with Title 37 as well as ensure that related ARM under the scope of Parks, Fish and Game and the Board of Outfitters is consistent.

Thank you,

Joe Sowerby  
Owner / Outfitter  
Montana Flyfishing Connection, LLC  
406-370-2868

Sent from my iPhone

**From:** [Steve Mackey](#)  
**To:** [O'Neill, Deb](#)  
**Cc:** [Mike Bias](#); [seedofzeus@gmail.com](mailto:seedofzeus@gmail.com); [Brandon Boedecker](#); [Joe Sowerby](#); [John Herzer](#); [Todd France](#); [Brian McGeehan](#)  
**Subject:** [EXTERNAL] Re: Public comment for amendment of ARM 12.3.650  
**Date:** Friday, July 19, 2024 9:59:40 AM

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Good morning,

I fully agree and support Brian McGeehan's comments below on the proposed amendments to ARM 12.3.650 and I want to emphasize points that Brian made related to subpart 4 and the "Reason" supporting proposed new rule 1: 12.11.6801.

- I find subpart 4 to be unclear and the first sentence is a run-on sentence that should be clarified. I found myself re-reading this paragraph, and especially the first sentence, three times to make sure I understood what it was saying.
- Under the "Reason" section point (a) regarding the death of a permit holder, completely ignores not only the MCA section Brian pointed out but the existing successorship rules in place in ARM 24.171.504 and administered by the Board of Outfitters. It is imperative that FWP stay coordinated with the Board of Outfitters and I am quite concerned that this is an indication they are not.
- Under the "Reason" section point (b) regarding an inter vivos sale or transfer the department asserts...that a buyer/transferee that is ineligible to receive their own commercial use permit... This is clearly inconsistent with the language in ARM 12.14.120 (2) which states that a commercial use permit may be issued to an individual or as a representative of a business or entity. The language used in the proposal implies that there are "eligibility" requirements beyond the language that exists in all of section 12.14.120 and thus the entire point (b) should be removed.
- In addition, the business transfer forms issued by FWP are clearly inconsistent with the regulatory language in ARM 12.14.120 and should be completely revised. As part of revising these forms a regulatory mapping should be completed between the corresponding MCA's, ARM's and any forms used to process transfers.

Respectfully,  
Steve Mackey  
Twin Bridges, MT

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**From:** Brian McGeehan <brian@montanaangler.com>

**Sent:** Thursday, July 18, 2024 5:30 PM

**To:** O'Neill, Deb <doneill@mt.gov>

**Cc:** Michael Bias <mikebias@3rivers.net>; seedofzeus@gmail.com <seedofzeus@gmail.com>; Brandon Boedecker <brandonboedecker@gmail.com>; Joe Sowerby <joe@mtffc.com>; John Herzer <john@blackfootriver.com>; Todd France <weflythedry@gmail.com>; Steve Mackey <steve.mackey@hwllodge.com>

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37-47-310. Transfer or amendment of outfitter's license -- partial sale of outfitter



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Brian McGeehan  
Owner and Outfitter

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**From:** [Joe Sowerby](#)  
**To:** [Todd France](#)  
**Cc:** [Brian McGeehan](#); [Brandon Boedecker](#); [John Herzer](#); [Mike Bias](#); [Mike Geary](#); [O'Neill, Deb](#); [Steve Mackey](#)  
**Subject:** [EXTERNAL] Re: Public comment for amendment of ARM 12.3.650  
**Date:** Friday, July 19, 2024 9:26:53 AM

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Greetings Deb O'Neil, Montana Parks Board, and anyone else it may concern;

I completely agree with the concise summary presented below by fellow Smith River Outfitter, Brian McGeehan.

Thank you for seriously considering input from the existing outfitters on the Smith River. I'm my humble opinion, I am joined by an extremely dedicated and professional group that are among the finest outfitters in the state of Montana.

We look forward to helping make the wisest decisions in the effort to protect the Smith River and future of the outfitting community in Montana.

Sincerely,  
Joe Sowerby  
Owner / Outfitter  
Montana Flyfishing Connection  
406-370-2868  
[www.MTFFC.com](http://www.MTFFC.com) [[mtffc.com](http://mtffc.com)]

On Thu, Jul 18, 2024 at 5:30 PM Brian McGeehan <[brian@montanaangler.com](mailto:brian@montanaangler.com)> wrote:

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**From:** [Mike Geary](#)  
**To:** [O'Neill, Deb](#)  
**Subject:** [EXTERNAL] smith river rule  
**Date:** Friday, July 19, 2024 10:33:12 AM

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I would also like to mention that the Smith River season is over for 2024 by mid July. There have been no complaints to FWP on any outfitter issue since the inception of the Smith River program in the early 1990's.

The existing FWP Commercial Rule provides a provision for existing outfitters desiring to sell their business.

FWP is looking for a problem that doesn't exist with 30 years of evidence showing the quality of compliance and service by outfitters on the Smith River.

Mike Geary



**From:** [Todd France](#)  
**To:** [Brian McGeehan](#)  
**Cc:** [Brandon Boedecker](#); [Joe Sowerby](#); [John Herzer](#); [Mike Bias](#); [Mike Geary](#); [O'Neill, Deb](#); [Steve Mackey](#)  
**Subject:** [EXTERNAL] Re: Public comment for amendment of ARM 12.3.650  
**Date:** Friday, July 19, 2024 8:41:29 AM

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As usual, these things come up during the busiest time of the outfitting seasoning! As Brian McGeehan had stated And for very similar reasons, I also Believe that fish wildlife from Parks needs to do a lot of restating Of the amendment to ARM 12. 3. 650. New rule one needs to have a lot more thought put into the wording, rationale and consequences when reallocating single permits to new outfitters. Brian McGeehan states a very solid fact when discussing gears and crews provide successful launches on the Smith River. I am already late for this morning's float and would like to comment further maybe I'll get the chance if any of these things come to fruition in the off-season?????

Sincerely,  
Todd France

On Thu, Jul 18, 2024 at 5:30 PM Brian McGeehan <[brian@montanaangler.com](mailto:brian@montanaangler.com)> wrote:  
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4) I am strongly opposed to the language in the REASON provided for New Rule 1 where the department suggests that the death of a permit holder would result in a permit revoked which is needed by that business to provide services on the Smith River to continue to support the business and the family of the service provider. I suggest that this language be removed from the Public Notice as it directly conflicts with language related to the death of outfitters in Montana MCA. A river permit that is for a business should be treated in similar way and the family of the permit shoulder should have the opportunity to either sell the business or name a new outfitter or designate a new permit holder that can work towards

meeting state qualifications:

## Transfer Or Amendment Of Outfitter's License -- Partial Sale Of Outfitter Business

**37-47-310. Transfer or amendment of outfitter's license -- partial sale of outfitter business.** (1) An outfitter's license may not be transferred.

(3) Subject to approval by the board, a person designated by the family of an outfitter who is deceased or incapacitated due to physical or mental disease or injury or who is unable to carry out the responsibilities of an outfitter due to the outfitter's status as an active member of the military may continue to provide outfitting services for the outfitter's unexpired license year, or until the family sells the outfitting business, until the designee obtains an outfitter license.

5) I am strongly opposed to the language in the REASON provided for New Rule 1 where the department suggests a permit becomes forfeit in the sale of the business. We have existing MCA that deals with the sale of outfitting businesses that outlines that an outfitting license may be held for the benefit of a named business. By default this would allow an outfitter that is not the business owner to operate guided fishing or hunting for the business. So long as a business provides services that are supervised by an outfitter in good standing river permits for the business should not be revoked. Furthermore, Title 37 clearly outlines that the partial sale or temporary sale may not be prohibited. Clearly a business that relies on operating on the Smith River that holds a river permit needs the river permit to transfer to the business to a new owner operator. This has already been initially supported in a legal injunction. This commentary in REASON should be removed as it is inconsistent with current state law.

## Montana Code Annotated 2023

TITLE 37. PROFESSIONS AND OCCUPATIONS

CHAPTER 47. OUTFITTERS AND GUIDES

Part 3. Licensing

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(4) (a) Except as provided in subsection (4)(b), if changes are properly reflected in an operations plan, the partial sale or temporary transfer of a hunting or fishing outfitter's business may not be prohibited.

There are several inconsistencies with ARM language and MCA. I recommend that the

department work with the outfitting industry to recommend revisions with current ARM to become consistent with Title 37 as well as ensure that related ARM under the scope of Parks, Fish and Game and the Board of Outfitters is consistent.

Thank you! Brian McGeehan

--

Brian McGeehan  
Owner and Outfitter  
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**From:** [Todd France](#)  
**To:** [Joe Sowerby](#)  
**Cc:** [Brandon Boedecker](#); [Brian McGeehan](#); [John Herzer](#); [Mike Bias](#); [Mike Geary](#); [O'Neill, Deb](#); [Steve Mackey](#)  
**Subject:** [EXTERNAL] Re: Public comment for amendment of ARM 12.3.650  
**Date:** Friday, July 19, 2024 9:38:23 AM

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Thank you, Deb O'Neal for the reply and informing me on the process.  
Sincerely,  
Todd France

On Fri, Jul 19, 2024 at 9:34 AM Joe Sowerby <[joe@mtffc.com](mailto:joe@mtffc.com)> wrote:

Greetings Deb O'Neil, Montana Parks Board, and anyone else it may concern;

I completely agree with the concise summary presented below by fellow Smith River Outfitter, Brian McGeehan.

Thank you for seriously considering input from the existing outfitters on the Smith River. I'm my humble opinion, I am joined by an extremely dedicated and professional group that are among the finest outfitters in the state of Montana.

We look forward to helping make the wisest decisions in the effort to protect the Smith River and future of the outfitting community in Montana.

Sincerely,  
Joe Sowerby  
Owner / Outfitter  
Montana Flyfishing Connection  
406-370-2868  
[www.MTFFC.com](http://www.MTFFC.com) [[mtffc.com](http://mtffc.com)]

On Thu, Jul 18, 2024 at 5:30 PM Brian McGeehan  
<[brian@montanaangler.com](mailto:brian@montanaangler.com)> wrote:

Greetings Montana Parks board members,

I would like to provide comment on the amendment of ARM 12.3.650

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