MONTANA
ADMINISTRATIVE
REGISTER

DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTION

MAR NOTICE NO. 2025-171.2

Summary

The department has adopted NEW RULE 1 (18.7.208) to implement House Bill 672, which was enacted by the 2025 Montana Legislature, establishing a process to help ensure the timely and accurate relocation of utilities and other facilities affected by certain highway construction projects on commission-designated highway systems and state highways.

Previous Notice(s) and Hearing Information

On November 21, 2025, the department published MAR Notice No. 2025-171.1 regarding the proposed adoption of a new rule in the 2025 Montana Administrative Register, Issue No. 22. A virtual hearing was held December 12, 2025. Comments were received by the comment deadline of December 19, 2025.

Final Rulemaking Action – Effective April 11, 2026

ADOPT WITH CHANGES

The agency has adopted the following rule with changes from the original proposal, stricken matter interlined, new matter underlined:

NEW RULE 1 (18.7.208) UTILITY RELOCATION FOR DESIGN-BID-BUILD HIGHWAY PROJECTS

(1) In addition to other options available to the department, all facilities located in the highway right-of-way must follow this rule when any part of them must be moved for a highway project that uses the design-bid-build delivery method.

(2) The department will send a preliminary notice to any facility owner whose facility may need to be moved for a highway project.

(a) The preliminary notice will be in writing and will give enough information for the facility owner to know the project location, the possible extent of the move, and the approximate date the project will go out for bids based on the department's tentative construction plan.

(b) The department may send a preliminary notice anytime during project planning, but always before or at the meeting with the facility owner to discuss project details, estimated reimbursement, or a utility agreement.

(3) Any facility owner that receives a preliminary notice under (2) will also receive a written notice to move its facilities for the highway project. The written notice will allow the facility owner a reasonable amount of time to move the facility ~~for relocation~~. This timeframe will be no less than 90 days, and it is always in addition to the 90 days following the preliminary notice. A reasonable written notice is effective the date it is sent or 90 days after the preliminary notice is sent, whichever is later.

(a) A notice to proceed counts as reasonable written notice.

(b) A letter may also serve as reasonable written notice if it sets a date for removal and warns the facility owner that the department will remove the facility itself if the facility is not moved as instructed.

(4) A facility owner shall submit a written notice of completion to the department upon finishing the relocation work.

(a) The department shall give the facility owner a written acknowledgment stating the date the notice was received, which will be the completion date.

(b) If a facility owner entitled to reimbursement ~~does not cooperate during the department's project planning process or~~ fails to ~~relocate~~ move the facility as required under a reasonable written notice, ~~a daily charge~~ the department will reduce department participation in relocation costs on a daily basis in an amount equal to ~~of~~ 2.5% of the total reimbursement amount set forth in the utility agreement ~~will be deducted~~. The ~~charge starts~~ reduction begins on the date listed in the utility agreement (at least 90 days after the reasonable written notice was sent) and continues until the completion date established in (4)(a) ~~relocation is accepted by the department~~ or until the reimbursement amount is reduced to zero, whichever occurs first.

(5) If a facility owner submits a written request claiming an excusable delay, the department may extend the reasonable amount of time for ~~relocation~~ removal as defined in this rule, counted to the nearest full day.

(a) The request must be submitted within 21 days of the event that caused the delay. The facility owner must provide documentation proving the delay was excusable and specific to the project and location.

(b) The request will be reviewed by the district agent, right-of-way utilities manager, or another designated staff member, and the decision will be provided in writing.

(c) An excusable delay is caused by something beyond the facility owner's control that could not have been predicted. Examples include, but are not limited to, severe winter weather, environmental conditions preventing ~~relocation~~ removal, delays caused by the department that influence the timeline as established in the utility agreement, or material delays caused by an industry-wide strike, national disaster, or major shortage.

(d) Delays caused by things the facility owner could have prevented or anticipated, such as traffic control device needs, late supply orders, and financial problems are not excusable.

(6) Facility owners must ensure ~~relocations~~ removals are accurate and comply with permits and agreements.

~~(a) Once relocation is finished, the department will confirm in writing, which is the official completion date.~~

~~(b)~~ Final acceptance by the department does not guarantee the installation is accurate; it only finalizes the ~~charges~~ penalty deducted from reimbursement and establishes the total reimbursement reduction.

(7) If a facility owner does not ~~relocate~~ remove the facility in compliance with this rule, the department has the right to hire qualified contractors to remove the facility. Removal of a facility may begin no sooner than 130 days following the reasonable written notice provided under (3).

(8) If a department notice under this rule contains an error, it can be corrected with another notice. Minimum time periods set in this rule or in 60-4-403, MCA, will not automatically change because of the error, unless the error misled the facility owner or made the notice invalid. A corrective notice may also clarify how or if a timeline is affected.

(9) Any notice to a facility owner under this rule may be delivered using the contact information on record for the permit, if one exists. If no permit exists, the department may use any commercially reasonable method to contact the facility owner.

Authorizing statute(s): 60-4-403, MCA

Implementing statute(s): 60-4-402, 60-4-403, MCA

Statement of Reasons

The agency has considered the comments and testimony received. A summary of the comments received, and the agency's responses are as follows:

Comment 1: Several commenters expressed support for the proposed rule, and appreciation for the stakeholder meetings held to develop the proposed rule language.

Response 1: The department appreciates all comments received during the rulemaking process.

Comment 2: A commenter noted it would be beneficial to all parties if the department is able to provide advance notice of future plans with potential impacts to facilities.

Response 2: The department acknowledges the benefits to all when there is early notice of projects. To this end, the department engages in a publicly transparent process as it assists the Transportation Commission in identifying and prioritizing construction projects, often providing notice to the public years in advance of when projects are let.

Comment 3: Several commenters suggested the department should be obligated to notify facility owners at the earliest opportunity when it becomes known or reasonably known to the department that facilities will be affected.

Response 3: The department thanks the commenters, but notes that the preliminary notice will detail timeframes agreed upon during the meeting with the facility owner to discuss project details, estimated reimbursement, or a utility agreement. Further, the reasonable written notice or notice allows an additional 90 days for a facility owner to move its facilities for the highway project.

Comment 4: A commenter suggested adding language to (2)(a) to provide additional notice information, if possible, and striking (2)(b) entirely.

Response 4: The department thanks the commenter for the suggestion, but requiring a notice period in those terms would leave questions of enforceability that could undermine the purpose of the law upon which this rule is predicated. Given the timeframe provided in the law and the additional time already built into this rule, the suggested revision is not suitable to the process. The department notes that (2)(b) imposes a deadline upon the department in relation to giving the preliminary notice, and that deadline, favorably accepted by a well-informed group of stakeholders, ensures notice is given sufficiently early in the process.

Comment 5: A commenter suggested adding language to (3) and (5) that would expand "reasonable timeframe" parameters to include delays caused by other parties and offered other expository text revisions.

Response 5: The department appreciates the suggestions but is unable to add language outside the scope of HB 672 where "written notice" is a defined term. The department is not responsible for coordination between facility owners. The department further notes that (3)

describes who receives written notice to remove a facility, outlines the department expectations of the facility owner, and has specific language regarding timeframes. Additional expository suggestions are redundant or otherwise unnecessary.

Comment 6: A commenter suggested revising the term in (3)(b) and (7) from "removal" to "relocation," along with adding language that combines the two 90-day periods into one 180-day period, ensuring consistent language differentiating between facility and facility owner, and imposing a duty upon the department to make every effort to mitigate consumer impacts when relocating facilities.

Response 6: The department thanks the commenter for calling attention to the potential confusion caused by the proposed rule's use of the terms "move," "remove," and "relocate." "Move" and "relocate" are used interchangeably in the adopted rule, consistent with their use in HB 672, and it may be inferred that the facility, or some portion of it, will still lie within the highway right-of-way after it is moved or relocated by a facility owner. In contrast, when the term "remove" is used, the implication is that the facility is not being restored to a useful or functioning condition; a removed facility is simply taken out of the right-of-way so the highway project may proceed without delay.

The department has revised the rule where appropriate so that those terms operate within the rule consistent with the law and within the department's statutory authority. The department further notes that the law ultimately authorizes the department to remove a facility to give way to a project under certain circumstances; it was never intended to impose upon the department the burden of relocating (i.e., reestablishing) any facility. The number of days allowed for facility removal is provided elsewhere in the rule, and the suggested language to mitigate consumer impact is beyond the scope of the rule and is the responsibility of the facility owner.

Comment 7: A commenter suggested revising (4) to ensure a facility owner does not continue to incrementally lose cost participation once the notice of completion has been submitted to the department.

Response 7: The department acknowledges the commenter's concern. Changes have been made to (4) and (6) in the adopted rule to make clear that the date the notice of completion is submitted to the department will be treated by the department as the completion date which may be different than the date the department acknowledges receipt. While the department does not anticipate any delay between a utility's submission of a notice of completion and the department's purely ministerial act of acknowledging receipt, it has adopted the rule with modifications to both (4) and (6) to clarify that the facility will not be penalized for a department's delay in issuing a written acknowledgment.

Comment 8: A commenter suggested revising (4) to delete the phrase, "does not cooperate during the department's project planning process" as a basis for reducing cost participation because the intent of HB 672 was ultimately to penalize utilities for not relocating in a timely manner.

Response 8: The department notes that cooperation during the planning process is important to allow MDT to timely plan its project schedule and collectively establish the notice timeframe but agrees with the comment that a facility's failure to cooperate is not a basis for reducing cost participation.

Comment 9: A commenter suggested revising language in (4) to more accurately describe the fiscal consequence of failing to move a facility.

Response 9: The department thanks the commenter for suggesting clarifying language. Revisions have been made to the adopted text to address this concern.

Comment 10: A commenter suggested additional language in (4) to provide parity for facility owners not receiving reimbursement, to ensure that all facilities have the same effective 90-day notice period plus a 40-day grace period, during which the 2.5% reduction penalty is applied to facilities eligible for reimbursement, to complete their work.

Response 10: The department thanks the commenter for the suggestion. Section (4) addresses how the department will incrementally reduce its participation in relocation costs. Section (7) of the adopted new rule has been revised to make clear that the department's right to remove a facility begins on the same date for all facilities regardless of whether they are entitled to reimbursement. All facilities will have at least 130 days following the reasonable written notice provided for in (3) to complete their work.

Comment 11: Some commenters suggested revising (5)(c) to include delays caused by the department.

Response 11: The department thanks the commenters for the suggestion. The department agrees, and (5)(c) of the adopted new rule has been revised to address delays caused by the department.

Comment 12: A commenter suggested revising the first sentence in (5)(c) so that an event or circumstance need only be outside the facility owner's control, and not necessarily unpredictable, for it to constitute the basis for an excusable delay.

Response 12: The department maintains excusable delays are those delays caused by events or circumstances that are both outside the facility owner's control and that could not have been predicted. This was discussed during the stakeholders' meetings and resolved in favor of the proposed language. The department has decided to adopt the rule as proposed because excusable delay is fundamentally about fair risk allocation to prevent a facility owner from being punished for events that it can neither predict nor control, while keeping each facility owner responsible for risks it can foresee and manage.

Comment 13: Two commenters suggested revising (6) to clarify the closeout or completion process. One commenter noted "the utility should bear some responsibility in closing a relocation project, triggering the department to be able to establish an official completion

date." The other suggested, "upon Department acceptance, the official completion date will be the date the notice is provided."

Response 13: The department has adopted the rule with revised text in (4) and (6) in response to these comments. The rule as proposed imposed the 2.5% daily reduction to a reimbursable cost amount until the department acknowledged receipt of the notice of completion. The adopted new rule clarifies that any time lapses between the notice of completion and the department's acknowledgment is time that will not be charged to the facility owners.

Comment 14: A commenter suggested adding an additional 30-day notice period before the department may begin removing facilities that are not moved in compliance with the law and this new rule.

Response 14: The department thanks the commenter for the suggestion, but notes that all minimum timeframes required by the law are met or exceeded, and the process for notice and removal has been clarified, all as provided in the rule as adopted.

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Approval

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