

BEFORE THE FISH AND WILDLIFE COMMISSION AND
THE DEPARTMENT OF FISH, WILDLIFE and PARKS

In the matter of the amendment of) NOTICE OF ADOPTION AND
ARM 12.4.203, 12.4.205, 12.4.206,) REPEAL
12.4.207, and 12.4.210 and the)
repeal of ARM 12.4.204 and 12.4.208)
pertaining to the block management)
program)

TO: All Concerned Persons

1. On November 3, 2023, the Department of Fish, Wildlife and Parks (FWP) and the Fish and Wildlife Commission (commission) published MAR Notice No. 12-617 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rule at page 1440 of the 2023 Montana Administrative Register, Issue Number 21.

2. On December 1, 2023, a public hearing was held on the proposed amendment and repeal of the above-stated rule, via Zoom. FWP and the commission received both written and oral testimony comments by December 4, 2023.

3. FWP and the commission have repealed ARM 12.4.204 and 12.4.208 as proposed.

4. FWP and the commission have adopted and amended the following rule from the proposal notice with the following changes based on comments received and after further review. New matter underlined, deleted matter interlined:

12.4.203 DEFINITIONS (1) through (15) remain the same and are adopted as proposed.

AUTH: 87-1-301, 87-1-303 MCA
IMP: ~~87-1-265~~, 87-1-301, 87-1-303, MCA

12.4.205 USE OF BLOCK MANAGEMENT AREAS (1) through (4)(c) remain the same and are adopted as proposed.

AUTH:87-1-301, 87-1-303, MCA
IMP: ~~87-1-265~~, 87-1-301, 87-1-303, MCA

12.4.206 COMPENSATION TO COOPERATORS (1) through (2)(f) remain the same and are adopted as proposed.

AUTH: 87-1-301, 87-1-303, MCA
IMP: ~~87-1-265~~, 87-1-301, 87-1-303, MCA

MAR Notice No. 12-617

12.4.207 OUTFITTING AND COMMERCIAL HUNTING ACTIVITY

(1) through (6) remain the same and are adopted as proposed.

AUTH: 87-1-301, 87-1-303, MCA

IMP: 87-1-265, 87-1-301, 87-1-303, MCA

12.4.210 COMPLAINT RESOLUTION SYSTEM (1) through (3) remain the same and are adopted as proposed.

AUTH: 87-1-301, 87-1-303, MCA

IMP: 87-1-265, 87-1-301, 87-1-303, MCA

5. FWP and the commission have thoroughly considered the comments and testimony received. A summary of the comments received, and FWP's and the commission's responses are as follows:

COMMENT 1: One commenter requested that ARM 12.4.203(3) ("Block management tabloid") remain in ARM 12.4.203.

RESPONSE 1: FWP and the commission believe that the definition for "Block management tabloid" is unnecessary. The only reference to a "Block management tabloid" was in ARM 12.4.208. As noted above, ARM 12.4.208 is repealed and, as a result, the definition is no longer needed. Nevertheless, while the definition for "Block management tabloid" may be removed, FWP does not plan to stop producing a tabloid at this time. Rather, FWP is considering shifting the tabloid from paper form to an online format to reduce the high costs associated with printing and mailing the tabloid.

COMMENT 2: One commenter requested that the definition for "Hunting season," in ARM 12.4.203(10), include unprotected species (such as rabbits, hares, ground squirrels, coyotes, and rock chucks) thereby allowing hunters to access block management areas and legally take unprotected species.

RESPONSE 2: FWP and the commission disagree. While the ability to shoot unprotected species would most likely be a by-product of hunting game birds and game animals, there could be instances where an individual accesses a block management area with the sole intent to take unprotected species. Landowner compensation is funded from the sale of hunting licenses and permits required to hunt game birds and game animals and compensates landowners for the impacts received because of hunting. Unprotected species do not require a hunting license or permit and, as a result, any individual intending to access block management area to take unprotected species are not contributing towards landowner compensation. Thus, FWP and the commission believe unprotected species should not be included in the definition and the decision of whether to allow hunters to take unprotected species should remain with the participating landowner.

COMMENT 3: One commenter requested that ARM 12.4.204 remain in administrative rule.

RESPONSE 3: While ARM 12.4.204 details criteria for participation that concerns management objectives or projects/programs, most of the criteria listed in ARM 12.4.204 concerns public access to private and public lands for hunting purposes, as described in § 87-1-265, MCA. Since the root of the block management program, as well as some of the criteria, is already listed in § 87-1-265, MCA, FWP and the commission believe the language of ARM 12.4.204 is informational language that is better suited in the program's procedural document(s) and should be removed in accordance with the Governor's Red Tape Relief Project.

COMMENT 4: A few commenters requested that the repealed portions of ARM 12.4.205 should remain in administrative rule.

RESPONSE 4: FWP and the commission disagree. Most of the language included in ARM 12.4.205 does not concern the use of the block management areas, such as enrollment in the block management program and consideration given to properties participating in the block management program. This language runs contrary to the stated purpose of ARM 12.4.205. Additionally, § 87-1-265(3), MCA, identifies the terms of public access to or across private property; thus, inclusion of those terms is repetitive and unnecessary. Relevant language regarding the use of block management areas remains in ARM 12.4.205, and any language removed through this process is better suited in the program's procedural document(s) and adheres to the Governor's Red Tape Relief Project.

COMMENT 5: A few commenters requested that the repealed portions of ARM 12.4.206 should remain in administrative rule. One commenter particularly expressed concern regarding the removal of paragraph(1)(b), and the fact that the removed language highlighted the department's responsibilities regarding permission books.

RESPONSE 5: The repealed portions of ARM 12.4.206 do not specifically relate to compensation cooperators receive while participating in the block management program. The language retained in ARM 12.4.206 condenses the ARM and readily identifies the types of payment a landowner will receive and, in certain instances, how that payment may be computed. The repealed language is better suited in the program's procedural document(s) and should be removed in accordance with the Governor's Red Tape Relief Project. In addition, as per § 87-1-265(7)(c), MCA, FWP will provide staffing assistance, permission materials, signage, and/or other forms of benefits to cooperators so long as financial resources are available to do so.

COMMENT 6: A few commenters requested that FWP and the commission define "unreasonably restricted" in ARM 12.4.207(1).

RESPONSE 6: FWP and the Commission do not believe "unreasonably restricted" needs to be defined. Section 87-1-265(4), MCA, identifies that private land is not

eligible for inclusion in a hunting access program if outfitting, commercial hunting, or fees charged for private hunting access “unreasonably restrict” public hunting opportunities. FWP and the commission believe the additional language proposed in ARM 12.4.207 provides FWP employees with adequate means to determine whether outfitting or commercial hunting will cause negative impacts to public hunting. If public hunting opportunity is unreasonably restricted, whether determined at the outset of the hunting season or during the hunting season, the landowner and their property are ineligible for enrollment or re-enrollment in the block management program, as per § 87-1-265(4), MCA.

COMMENT 7: One commenter agreed with the suggested additions for ARM 12.4.207 and stated that the additions ensured fairness and equality for the block management program.

RESPONSE 7: This comment does not require acceptance or rejection by FWP and/or the commission. However, FWP and the commission acknowledge the comment and the commenters acceptance to the additions.

COMMENT 8: A few commenters requested that ARM 12.4.208, or portions thereof, should remain in administrative rule.

RESPONSE 8: FWP and the commission believe that the language contained in ARM 12.4.208 is better left in the program’s procedural document(s). FWP has continued to provide additional hunting season opportunities and continues to promote those opportunities to the public. By removing this language, it allows FWP greater flexibility in determining how program information may be produced and distributed. Landowner compensation is based on public use. Thus, if FWP ceased production and distribution of participating property information, or failed to provide sufficient information concerning those properties, landowner participation would significantly decrease or fail altogether. Additionally, 87-1-265(3), MCA, identifies the terms of public access to or across private property. Since the agreement must contain a detailed description of the conditions for use, the agreement, itself, acts as the binding documents thereby removing the need for the ARM language. Accordingly, FWP and the commission believe the language should be removed in accordance with the Governor’s Red Tape Relief Project.

COMMENT 9: A few commenters requested that the repealed portions of ARM 12.4.210 should remain in administrative rule.

RESPONSE 9: FWP and the commission disagree. In substance, ARM 12.4.210 has not changed. ARM 12.4.210 was condensed to better articulate the requirements for submitting a formal complaint and the process FWP staff must adhere to once a formal complaint is received. Any language removed better reflects FWP’s streamlined process for formal complaints.

COMMENT 10: A few commenters suggested changes to the standard operations of the block management program. One commenter suggested that hunters should be

required to purchase an annual stamp to hunt on lands enrolled in block management. One commenter requested that the sign-in procedures change for vehicles with multiple hunters, whereby one hunter completes the sign-in slip and indicates the additional number of hunters in the vehicle. One commenter requested block management properties provide motorized access to and across the enrolled property to promote hunting for elderly, injured, or disabled individuals. One commenter identified that hunters have recently disposed their trash on the enrolled properties and/or nearby non-enrolled properties and cause loud vehicle noise during early morning hours.

RESPONSE 10: These comments do not require acceptance or rejection by FWP or the commission, as the comments are outside of the scope of the proposed rule changes. Nevertheless, FWP and the commission acknowledge the comments made and will continue to seek improvements to the block management program, as well as address any issues that arise related to the program.

COMMENT 11: A few commenters were dissatisfied with the proposed rule changes and did not agree that the removed language should reside in program procedural documents. The commenters requested that the removed language remain in their respective administrative rules.

RESPONSE 11: FWP and the Commission disagree. The removed language is repetitive, dated, and, in some instances, does not reflect current practices or the content of the administrative rule. To assure the block management program represents current day practices, as well as remove any unneeded language, FWP and the commission find that the removed language will be best reflected in the program's procedural document(s).

COMMENT 12: One commenter requested more time to review rule changes.

RESPONSE 12: This comment does not require acceptance or rejection by FWP or the commission. The proposed changes followed the Montana Administrative Procedures Act and were presented to the commission in compliance with Montana's open meeting laws.

COMMENT 13: One commenter suggested that since the department could not quantify the impacts to small business, the issue should not have been raised or addressed in accordance with § 2-4-111, MCA.

RESPONSE 13: This comment does not require acceptance or rejection by FWP or the commission. FWP and the commission are required to address § 2-4-111, MCA, and is only required to conduct a small business impact analysis when the impacts are significant. Given the difficulty in quantifying the monetary impact to small business, specifically outfitters, FWP noted that there may be an impact, but did not expect the impact to be significant.

/s/ Alexander Scolavino
Alexander Scolavino
Rule Reviewer

/s/ Lesley Robinson
Lesley Robinson
Chair
Fish and Wildlife Commission

/s/ Dustin Temple
Dustin Temple
Director
Fish, Wildlife and Parks

Certified to the Secretary of State _____, 2024.