To All Interested Parties:

At the direction of the Fish and Wildlife Commission, Montana Fish, Wildlife & Parks has taken the initiative to propose changes to the Administrative Rules of Montana (ARM) for the Block Management Program. In doing so, FWP has indicated outdated and unnecessary language within the current ARM (12.4.201 – 12.4.210) and proposes to remove such language. Most of the outdated and unnecessary language is language that is either already identified in statute and is therefore repetitive and unneeded or is purely informational and does not need to reside in ARM and should instead be included in departmental policy. This process would assure compliance with the Governor's Office Red Tape Relief Project. This document is intended as a companion to the rule notice to identify which stricken language is already included in statute or would be moved to a departmental policy. Any other stricken language is proposed for repeal. Once finalized, the policy would be available for public review on the department's website in advance of the 2024 Block Management contract season.

12.4.203 DEFINITIONS

Wherever used in ARM 12.4.201 through 12.4.210, unless a different meaning clearly appears from the context The following definitions apply to this subchapter:

(1) "Accessible state lands" means those state lands under the jurisdiction of the Montana <u>dD</u>epartment of <u>nN</u>atural <u>rR</u>esources and <u>eC</u>onservation. <u>which are accessible as described in ARM 36.25.165.</u>

(2) "BMA" means <u>a</u> block management area. A BMA is a specified area on which, by cooperative agreement between the landowner, other resource management agencies and the department, public hunting is permitted with certain restrictions or use rules.

(3) "Block management tabloid" means the document printed annually which provides statewide information on the block management program and describes means through which hunters may get specific information on block management opportunities.

(4<u>3</u>) "Commercial hunting activity" means any activities in which <u>money, goods, or services</u> a consideration is<u>are</u> required as a condition for hunting.

(54) "Commercial filming of hunting activity" means the film, electronic, magnetic, digital, or other recording of a moving image by a person, business, or other entity for a commercial purpose.

(5) "Cooperator" means a private or public landowner or land management agency with which the department enters into an agreement for the purposes of the allowing hunting access on a BMA.

(6) "Department" means the Montana department of <u>fFish</u>, <u>wWildlife</u>, and <u>pParks</u>.

(7) "Director" means <u>the</u> director of the Montana department of f<u>F</u>ish, wWildlife, and pParks.

(8) "DNRC" means Montana <u>dD</u>epartment of <u>nN</u>atural <u>rR</u>esources and <u>eC</u>onservation.

(9) "Hunter day" means one hunter who hunts on a cooperator's property during a calendar day.

(10) "Hunting season" means the time during which game birds and game animals may be legally taken <u>in accordance with</u>as defined by the <u>Fish and Wildlife</u> eCommission regulations <u>under 87-1-304, MCA</u>.

(11) "Livestock loss insurance" means a program which provides reimbursement to livestock owners whose animals are injured or killed as the direct result of allowing public hunting on their property.

(12) "Outfitting" means the act of providing hunting-related services in exchange for money, goods, or services.a consideration as defined in § 37-47-101(510), MCA.

(13) "Regional office" means the headquarters of a department administrative region.

(1413) "Regional supervisor" means the supervisor of a regional office.

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12.4.204 CRITERIA FOR PARTICIPATION

(1) A BMA may be established for any of the following reasons:

(a) the land is a high-priority resource and habitat area as defined by statewide and regional management objectives;

(b) a potential exists for a cooperative relationship between the department and private landowner or landowners for long-term management projects and programs;

(c) establishment of the BMA will result in sustained or increased hunter opportunity, access and hunter days on private lands;

(d) implementation of the BMA will open up access to inaccessible federal and state lands; or

(e) implementation of a BMA will enhance regional management needs which may include but are not limited to:

(i) history of wildlife damage;

(ii) quality of hunting opportunities;

(iii) condition of wildlife habitat; and

(iv) availability of local hunting opportunities.

12.4.205 USE OF BLOCK MANAGEMENT AREAS

(1) The following governs use of BMAs:

(a) Use restrictions for each BMA shall be established by negotiation between department personnel and the cooperator. Restrictions may include but may not be limited to:

(i) restrictions on vehicle use or off-road travel for access or downed game retrieval;

(ii) number of hunters or hunting parties utilizing a BMA per day;

The language in 12.4.204 would be moved to departmental policy.

The language in 12.4.205(1)(a) would be moved to departmental policy. (iii) times and places at which permission slips or other instructions are provided on-site to the public; and

(iv) duration of the use season.

(b) When lands under the authority of federal agencies are proposed for inclusion in a BMA, the managing federal agency must approve the inclusion.

(c) If a hunter reserves permission on a BMA that restricts hunter numbers or requires reservations, that hunter cannot reserve permission on another BMA, for that same day, unless the hunter receives permission from the Cooperator. The Cooperator maintains On BMAs which restrict hunter numbers, a cooperator may allow additional hunters at his or her discretion to allow additional hunters on the BMA.

(d<u>2</u>) The cooperator and the department reserve the right to deny access to a BMA for cause., <u>Reasons for denying access may include:</u> including but not limited to: intoxication;, violation of BMA rules; or previous misconduct on a BMA. <u>A Wwillful violation of BMA</u> rulesegulations on private property which set the terms for entrance on a cooperator's property can be grounds for terminating privileges on a BMA and may result in a misdemeanor citation under § 87-<u>6-415</u>3-304,<u>MCA –</u> <u>Failure to Obtain Landowner's Permission for Hunting</u>. , <u>hunting without</u> landowner permission. BMAs may also be temporarily closed by the e<u>C</u>ooperator, in conjunction with the department, due to weather, <u>livestock</u> operations, fire danger or other conditions or circumstances which would place public safety or resources in jeopardy.

(e) Priority consideration for block management enrollment will be given for lands that are open to all species and gender of game birds and animals available in huntable numbers, with access provided by the cooperator concurrent with applicable fall hunting season dates. Any restrictions on the gender or species available for hunting on a BMA, other than those established by the commission, must be approved by the regional supervisor in writing, documenting any biological or management reasons for such restrictions before implementation of the BMA. Species and gender restrictions, other than those established by the commission, may not be imposed on state or federal land.

(f-<u>3</u>) BMAs which impose daily hunter number limits will allow free, equitable <u>and equal</u> opportunities for access to all hunters requesting use of the BMA. based on a daily hunter number capacity agreed upon by the cooperator and the department. The allocation of this hunter capacity will be on a first come, first served basis. In the event that hunting demand for a certain BMA is greater than supply, similar hunting opportunities may be offered on other days on the BMA or on other BMAs. On BMAs where hunter demand regularly exceeds available opportunity, the department, where practical, or the cooperator, with department approval, will develop equitable methods of allocation such as telephone reservations or drawings. The language in 12.4.205(1)(b) would be moved to departmental policy.

The language in 12.4.205(1)(e) would be moved to departmental policy.

The last three sentences of 12.4.205(1)(f) would be moved to departmental policy. (g) During periods when a BMA is not in operation and commissionestablished hunting seasons are in effect, access to private land is at the discretion of the landowner. These periods will be duly noted on enrollment forms as well as in information distributed to the public. During such non-block management periods, accessible federal and state lands will remain open to the public for recreation under rules and regulations adopted by the appropriate land management agency. Hunter days that occur when a BMA is not in operation and does not provide access to the general public will not be counted towards any compensation given the landowner to offset potential impacts of public hunting on the property.

(h) Enrollment in the block management program may be terminated by the department or the cooperator if the terms of the contract or enrollment form are violated; or, by the department or the cooperator within 30 days following the end of the hunting season. DNRC may withdraw state lands from inclusion in a BMA under ARM <u>26.3.199C</u>. Any such notice must be in writing. A contract or enrollment may be canceled and a cooperator's property withdrawn from the program at any time due to circumstances beyond the control of the cooperator or the department, such as death, illness, natural disaster, or acts of nature.

(i) Cooperators may enroll in or contract to participate in the block management program for up to 5 years at a time. However, this will be contingent on the annual availability of funds to operate the BMA.

(j) Reservations for hunting opportunities on BMAs which restrict hunter numbers may not be accepted by cooperators or department personnel operating a BMA on behalf of a cooperator before September 1 preceding the opening of a use season.

(k) On BMAs which restrict hunter numbers or require reservations, a hunter cannot reserve permission on more than one BMA per day.

(4) With department approval, a Cooperator may impose reasonable limitations through temporary closure of a BMA to address concerns related to high fire danger, rest-days, weather-related impacts to a travel route, safety, or agricultural production activities, such as livestock handling or harvest and planting of crops, so long as:

(a) the Cooperator notifies the department regional headquarters at least 24 hours prior to the closure;

(b) the Cooperator or department personnel post signage indicating the closure; and

(c) the closure is removed within 24 hours after the conditions causing the closure no longer exist.

12.4.206 COMPENSATION TO COOPERATORS

(1) Cooperators in the program may receive various forms of compensation for their participation including, but not limited to, the following:

The language in 12.4.205(1)(g) would be moved to departmental policy.

The language in 12.4.205(1)(h) would be moved into cooperator agreements.

The language in 12.4.205(1)(i) would be moved to departmental policy.

The language in 12.4.205(1)(j) and (k) would be moved into cooperator agreements.

The language in 12.4.206(1) would be moved to departmental policy. (a) department oversight and supervision of hunting on a BMA including the development and implementation of a hunter reservation system administered by the department when practical. For cooperators who elect to have the department provide personnel whose primary duty it is to manage hunting on their property, a compensation value will be assigned to those services by the department, with that amount deducted from the total of any monetary compensation for which the cooperator is otherwise eligible under (1) (c) and (2) of this rule;

(b) supplying of permission books or other materials which document hunter use, signs or hunting-season related supplies; and

(c) monetary compensation to offset potential impacts associated with allowing public hunting access. These impacts include, but are not limited to, those identified in <u>87-1-267</u>(5), MCA, and time spent dealing with hunters. Payments to cooperators will be made following the close of the use season and the submission of hunter use documents (permission slips, etc.) to the department.

(2) Payments to cooperators will be set by the department, figured in the following manner and dependant on available funding <u>Cooperators</u> enrolled in the BMA program may receive the following types of payments:

(a) <u>a</u> basic enrollment payment which will be provided to anyone enrolled in the program;

(b) <u>a</u> basic <u>hunter day</u> impact payment which will be provided to all cooperators and computed at an amount per hunter day;

(c) <u>a</u> length of season impact payment which will be available in addition to other impact payments to for eCooperators who place no restrictions on commission-established fall hunting seasons for any species legally available in huntable numbers on their property. This rate will be set at one-third of the base impact payment;

(d) <u>a</u> species/gender impact payment which will be available in addition to other impact payments, to for eCooperators who place no restrictions on the species and gender of elk, deer, antelope, upland game birds, and <u>waterfowl</u>, available in huntable numbers as they exist on their property. This rate will be set at one-third of the base impact payment;

(e) cooperators who provide access corridors to isolated state or federal lands, with no enrollment of deeded land permitting public hunting access, will be eligible for compensation at 50% of the base impact payment and if no restrictions are placed on the length of season, 50% of the length of season impact payment, based on the number of hunters for which access is provided;

(f) in situations involving unique hunting opportunities or special management circumstances, compensation may be negotiated on a case-by-case basis at a rate not to exceed limits set in <u>87-1-267(7)</u>, MCA. Compensation amounts in these situations will require written approval of the regional supervisor; and

(g) for those cooperators who elect to receive monetary compensation under this rule, a method of measuring hunter use on the

The language in 12.4.206(2)(f) and (g) would be moved to departmental policy. property must be used to document hunter days. This may include, but is not limited to permission slips, daily use rosters or other methods which will accurately reflect the hunter use of a cooperator's property. For those areas with unrestricted access where rosters or permission slips may not be practical, standard department hunter use accounting methods will be used to calculate hunter days.

(32) Additional forms of compensation may also include <u>Cooperators</u> may also receive compensation for:

(a) livestock loss insurance payable at full market value of any loss <u>up</u> to \$5,000;

(b) the supplying of wildlife damage materials and supplies; and

(c) permitting wildlife game damage hunts;

(d) participating in a unified aggregate cooperative;

(e) every five years of participation in the BMA program; and

(f) participation in other department cooperative programs.

12.4.207 OUTFITTING AND COMMERCIAL HUNTING ACTIVITY

(1) Outfitting and commercial hunting activities on BMAs are not consistent with the intent of providing free public access to recreational opportunities on private lands. Outfitting may not take place on a BMA unless public recreation and hunting opportunities are not <u>unreasonably</u> restricted and the e<u>C</u>ooperator and regional supervisor approve the activity.

(2) This rule does not regulate licensed outfitters legally operating on federal or state lands under license or permit obtained from the <u>U.S.</u> <u>Department of Interior bB</u>ureau of ILand mManagement, <u>U.S. Department of Agriculture</u> fForest sService, DNRC or other resource management agency.

(3) A report documenting outfitting activities on the BMA must be supplied by the Cooperator, to the department, within thirty days of the contract ending date. At a minimum, the outfitting activities report must explain:

(a) total number of days outfitted hunting occurred;

(b) total number of outfitted hunters who hunted;

(c) total number of outfitted hunter days that occurred; and

(d) total number of game animals, by species and gender, harvested by outfitted hunters.

(4) A Cooperator, who is also a licensed outfitter, is not eligible to receive block management compensation for any activities conducted by their own hunting clients.

(5) If a Cooperator receives compensation from an outfitter or clients, the Cooperator is not entitled to a basic hunter day impact payment for the days associated with that use.

(6) Commercial filming of hunting activity is not consistent with the intent of free public hunting access on private lands and is not allowed without express consent from the Cooperator.

12.4.208 INFORMATION DISSEMINATION

(1) Information concerning specific BMAs will be available at department regional offices in the region that the BMA operates. Information will be made available to the public upon request, either in person, by mail, telephone or fax. Each region will have available to the public on or before August 15 of each year:

(a) copies of the statewide block management tabloid; and

(b) a list of BMAs in that region for the current year. This list may be expanded if more BMAs are enrolled closer to the opening of the general hunting season.

(2) Block management information on specific areas available to the public will consist of printed materials which include at least the following:

(a) map of BMA showing location and clearly identifying the boundaries

of the BMA. The map will be dated with the year it was produced;

(b) hunting opportunities available;

(c) use restrictions of the area;

(d) method of gaining access;

(e) dates BMA is in effect;

(f) telephone number of regional office for information; and

(g) indication of the location of any state lands in the BMA and notification of the requirement to possess a state lands recreational use license to hunt state lands administered by DNRC.

12.4.209 INCLUSION OF STATE LANDS IN BLOCK MANAGEMENT AREAS

(1) State lands administered by DNRC may be included in BMAs. Whenever a proposed BMA includes accessible state lands, the procedures set forth in ARM 36.25.164 through 36.25.167 shall be followed.

12.4.210 COMPLAINT RESOLUTION SYSTEM

(1) If a Cooperator or a public hunter has an issue and the issue has not been resolved by regional department staff, the Cooperator or hunter may submit a formal complaint to the regional supervisor. Formal complaints BMA cooperators or hunters may make complaints to the department of problems they have encountered on a BMA. The department shall use the following procedure to investigate and resolve complaints.

(a) Block management personnel are encouraged to work on-site to address problems before they reach the complaint stage.

(b) Formal complaints must be in writing, signed by the complainant, and should describe and may be presented to any department employee. Complaints need to include information describing the events that transpired, the BMA involved, <u>the name(s) and contact information of</u> <u>those involved</u>, and, if relevant, any vehicle description.and the names, addresses and, if possible, phone numbers of all individuals involved. The language in 12.4.208 would be moved to departmental policy. (c) Complaints will be turned in immediately to the regional supervisor of the region in which the problem occurred and documented for tracking purposes.

(d) The regional supervisor <u>will review the complaint and is responsible</u> for assessing complaints and initiateing the appropriate level of investigation. If the complaint involves state lands or federal lands, the supervisor will involve the appropriate management agency in resolving the complaint.(e) At the conclusion of the investigation, the regional supervisor will provide written notification to the complainant and the <u>Director.</u> department field services administrator of <u>The notice will include</u> the results of the investigation as well as <u>and</u> any action(s) taken as a result of the investigation. Other parties directly involved with the complaint (cooperator, land management agencies, etc.) will also be notified.

(f) A complainant may appeal the action taken by a regional supervisor to the <u>dD</u>irector. The <u>dD</u>irector will review the complaint and investigation and issue a written decision.

(g) Following the close of the hunting season, the field services division of the department will review and summarize all complaints lodged during the preceding hunting season. Each regional office will get a copy of this summary as well as identification of problem areas and suggested solutions.

(h) For BMAs with any complaints which remain unresolved on March 1 annually after having been investigated through this process, the complaints will be reviewed as set forth in ARM <u>36.25.167</u> to determine if a public review is necessary to assess if continued enrollment in the program is appropriate.