

BEFORE THE FISH AND WILDLIFE COMMISSION AND
THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the adoption of NEW)	NOTICE OF PUBLIC HEARING ON
RULES I through IV, the amendment)	PROPOSED ADOPTION,
of ARM 12.3.105, 12.3.110, 12.3.112,)	AMENDMENT, AND REPEAL
12.3.113, 12.3.115, 12.3.116,)	
12.3.123, 12.3.131 through 12.3.135,)	
12.3.140, 12.3.160, 12.3.165,)	
12.3.185 through 12.3.187, 12.3.205,)	
12.3.209, 12.3.210, 12.3.220,)	
12.3.225, 12.3.230, 12.3.235,)	
12.3.402 through 12.3.404, 12.3.410,)	
and 12.3.411, and the repeal of ARM)	
12.3.106, 12.3.109, 12.3.111,)	
12.3.120, 12.3.121, 12.3.125,)	
12.3.150, 12.3.155, 12.3.170,)	
12.3.175, 12.3.179, 12.3.180,)	
12.3.201, 12.3.201A, 12.3.215,)	
12.3.405, and 12.3.406 pertaining to)	
licensing)	

TO: All Concerned Persons

1. On December 13, 2021, at 1:30 p.m., the Fish and Wildlife Commission (commission) and the Department of Fish, Wildlife and Parks (department) will hold a telephonic public hearing via the ZOOM meeting platform to consider the proposed adoption, amendment, and repeal of the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing in the following way:

(a) Dial by telephone: 1 206 337 9723
Meeting ID: 848 0995 1956
Password: 699751

2. The commission and department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on November 29, 2021, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-9785; or e-mail jesssnyder@mt.gov.

3. OVERALL REASON: All state agencies are required pursuant to 2-4-314, MCA, to review administrative rules at least biennially "to determine if any new rule

should be adopted or any existing rule should be modified or repealed." In addition, Governor Gianforte issued Executive Order No. 1-2021 creating the Red Tape Relief Advisory Council to Implement Regulatory Reform, directing each agency to identify excessive, outdated, and unnecessary regulations.

The department and commission have sporadically adopted, amended, and repealed individual administrative rules pertaining to licensing but have not completed a comprehensive review of all the administrative rules in the licensing chapter (ARM Title 12, chapter 3). Most of the language proposed to be adopted, amended, or repealed in this notice is to remove outdated and unnecessary language and remove rule language that unnecessarily repeats language in statute. The proposed adoption, amendment, and repeal of these rules will not change current practice, but will reflect what is already being done with regard to licensing.

4. The rules as proposed to be adopted provide as follows:

NEW RULE I OUTFITTER PREFERENCE POINTS (1) Preference points are non-refundable and not transferable between applicants.

(2) In accordance with 87-2-115, MCA, nonresidents hunting with an outfitter may purchase an outfitter preference point in addition to the purchase of a preference point.

(3) If an applicant is unsuccessful in the drawing and retains their outfitter preference point, those accumulated points may only be used when the applicant elects to hunt with an outfitter at the time of application in subsequent drawings if done in consecutive years.

(4) Licenses issued using the outfitter preference point shall be clearly marked "OUTFITTER PREFERENCE POINT LICENSE" and shall be endorsed by the outfitter(s) providing the service under that license, in a manner determined by the department.

AUTH: 87-1-301, MCA

IMP: 87-2-115, MCA

REASON: HB 637 (2021) added language allowing "a nonresident hunting with an outfitter licensed pursuant to Title 37, chapter 47, part 3" "may purchase two preference points per license year." This rule clarifies that the preference points are non-refundable and not transferable and that outfitter preference points may only be purchased when the applicant elects to hunt with an outfitter at the time of application. The language contained in (4) provides that a license using an outfitter preference point must be clearly marked or colored indicating that the hunter must be hunting with an outfitter. This measure is necessary to prevent the unauthorized sale and use of a license that was acquired through the use of an outfitter preference point. This will prevent the potential for licenses to be brokered by having a license printed that clearly states that it must be used with an outfitter and will create a sound method for enforcement. Finally, requiring the license to be endorsed by the outfitter(s) providing services for that license will link the hunter to an outfitter. Endorsement will include outfitter(s) signature and outfitter(s) license number.

NEW RULE II CONVERSION OF LICENSE TYPE (1) A resident who has purchased a bear, deer, elk, bird, or fishing license may request a refund by returning the license to the Helena office or a regional office at the time of application for a class AAA combination license.

(2) A resident who purchases a class A-8 license may request a refund by returning the license to the Helena office or a regional office at the time of application for a class A license.

(3) A nonresident who has purchased a season bird, season fishing, or deer license may request a refund by returning the license to the Helena office at the time of application for a B-10 or B-11 license.

AUTH: 87-1-201, MCA

IMP: 87-1-201, MCA

REASON: The language of NEW RULE II was originally found in ARM 12.3.402. The conversion of license type is best suited in a separate rule.

NEW RULE III DONATED LICENSES (1) In accordance with 87-2-815, MCA, the nonprofit organization must provide a copy of the articles of incorporation to the department as verification of eligibility.

(2) Donated licenses must be received by the department prior to the beginning of the hunting season in which they are applicable.

(3) Applications must be submitted on a form supplied by the department.

(4) Applications will be processed on a first come first served basis

AUTH: 87-2-815, MCA

IMP: 87-2-815, MCA

REASON: NEW RULE III is consistent with long-standing and current practice.

NEW RULE IV FORMS OF IDENTIFICATION (1) A valid state, federal, or tribal government-issued picture identification may be used to verify residency when purchasing a resident license.

AUTH: 87-2-106, MCA

IMP: 87-2-106, MCA

REASON: NEW RULE IV is consistent with long-standing and current practice.

5. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

12.3.105 LIMITATION ON NUMBER OF HUNTING LICENSES (1) When the ~~department~~ commission sets a limitation or quota for the number of hunting licenses to be issued in any hunting district or other designated area, resident applicants shall receive at least 90% of the total hunting licenses to be issued for

that game species in that district. When the number of resident applicants totals less than 90% of the quota for that district, all resident applicants shall receive a hunting license for that game species.

(2) The remaining licenses will be issued to the nonresident applicants for that district by drawing. Then, any remaining licenses for that district shall be sold as surplus or over the counter.

~~(3) Any thereafter remaining licenses for that district shall be issued in such manner as the director determines.~~

AUTH: 87-1-304, 87-2-506, MCA

IMP: 87-2-506, 87-2-701, MCA

REASON: The amendments to ARM 12.3.105 clarify the appropriate authority and are consistent with long-standing and current process.

12.3.110 DEFINITIONS For purposes of ~~these annual regulations~~ this chapter:

(1) "Bonus point" means the same as described in 87-2-117, MCA.

(2) "Commission" means the Montana Fish and Wildlife Commission.

(3) "Contiguous land" means land that is owned in fee title by the applicant and that is not interrupted by land owned by another person. Land that is owned by the applicant that is interrupted by adjacent federal or state land may on an individual basis be considered as contiguous land if the individual leases the federal or state land.

(4) "Department" means the Department of Fish, Wildlife and Parks.

(5) "Drawing" means the random selection of licenses or permits when applications received exceed the quota set by the commission for a hunting district. The license or permit may include limitations on taking by sex, age, species, time period, or designated area.

(6) "Employee" means an individual who is paid by a landowner for services rendered and who has state, federal, or FICA taxes withheld from their pay.

(7) "Game damage" means the same as described in 87-1-225, MCA.

(8) "Land that is used by elk" means land that elk inhabit.

(9) "Landowner preference" means a drawing that is conducted before the general drawings in which the landowners are randomly drawn for a portion of the quota as set by the commission.

(10) "Landowner sponsor" means a landowner who meets the qualifications of 87-2-511, MCA, and these rules for licenses.

(11) "License" means an electronic or hardcopy document issued to an individual that grants the opportunity to hunt or fish for the species of animal.

(12) "License agent" means an entity that has received an appointment pursuant to 87-2-901, MCA.

(13) "Party" means a group of two to five persons applying together to obtain a permit or license.

(14) "Permit" means an electronic or hardcopy document to be used in conjunction with the proper license to hunt or fish for specific species of animals.

(15) "Preference point" means the same as established in 87-2-115, MCA.

(16) "Quota" means a set number of animals to be harvested, or licenses to be issued, within a specified land area (hunting district, administrative region, or state).

(17) "Regional license quota" means the total quota established of hunting districts within a specific department administrative region.

(18) "Super-tag" means licenses established under 87-1-271, MCA.

~~(1) "Hunting season" means any season set to accomplish one or all of the following:~~

~~(a) to provide sport hunting (general season);~~

~~(b) to harvest numbers of a species to manage the population according to available habitat (management season);~~

~~(c) to fulfill responsibilities for game damage control (damage season);~~

~~(d) to address the risk of disease.~~

~~(2) "License" means the document issued to an individual upon payment of the proper fee and in compliance with other requirements of law and rule from the department or its authorized license agent. A license constitutes the grant of authority by the state of Montana to hunt the species of game animal under the conditions set forth in annual rules adopted by the commission.~~

~~(3) "Permit" means the document issued to an individual which, upon payment of the proper fee and in compliance with requirements of the department, constitutes permission to that individual to hunt the listed game animal species under the conditions set forth thereon. A permit may be used only in conjunction with the proper license.~~

~~(4) "Drawing" means the random selection of licenses or permits when applications received exceed the quota set by the commission for a hunting district. The license or permit may include limitations on taking by sex, age, species, time period, or designated area.~~

~~(5) "Commission" means the Montana Fish and Wildlife Commission.~~

~~(6) "Contiguous land" means land that is owned in fee title by the applicant and that is not interrupted by land owned by another person. Land that is owned by the applicant that is interrupted by adjacent federal or state land may on an individual basis be considered as contiguous land if the individual leases the federal or state land.~~

~~(7) "Disease" means any disease that may directly or indirectly impact wildlife or wildlife management.~~

~~(8) "Game damage" means damage by game animals to private property—(most often stored livestock feed such as hay stacks or silage or standing cultivated crops such as grain, alfalfa hay or alfalfa seed)—which is of a magnitude deemed "unreasonable", constituting a problem for landowners.~~

~~(9) "Land that is used by elk" means land that elk inhabit.~~

~~(10) "Landowner preference" means a drawing that is conducted before the general drawings in which the landowners are randomly drawn for a portion of the quota as set by the commission.~~

~~(11) "Landowner sponsor" means a landowner who meets the qualifications of section 87-2-511, MCA and these rules for licenses.~~

~~(12) "Employees" mean individuals who are paid by a landowner for services rendered and have state, federal, or FICA taxes withheld from their pay.~~

(13) ~~"Immediate family members" mean individuals who are related to the landowner by blood or marriage.~~

(14) ~~"Quota" means a set number of animals to be harvested, or licenses to be issued, within a specified land area (hunting district, administrative region or state).~~

(15) ~~"Tentative regulations" means "proposed" regulations which are distributed for public review and comment in draft form. In March, following publication, the Montana Fish, Wildlife, and Parks Commission may amend "tentative regulations" prior to adopting them as "final regulations".~~

(16) ~~"Class of licenses" means B-10 is a nonresident combination license, B7 is nonresident deer, etc.~~

(17) ~~"Prerequisite" means a license that must be purchased by a sportsman in order to purchase another license.~~

AUTH: 87-1-201, 87-1-301, MCA

IMP: 87-1-201, 87-1-301, MCA

REASON: The amendments to ARM 12.3.110 place the definitions in alphabetical order so words and definitions can be easily located. "License" and "permit" have been added along with "bonus point," "department," "identification," "party," "preference point," "regional license quota," and "super-tag" from other administrative rules.

12.3.112 ANTELOPE LICENSES (1) ~~Manner of drawing.~~ The department shall issue antelope licenses as described in ~~section~~ 87-2-706, MCA, and ARM 12.3.104 (landowner preference).

(2) Fifteen percent of a district quota will be set aside for the landowner drawing.

~~(3) Landowner applications must be on current year forms and postmarked no later than June 1st.~~

~~(4) Party applications.~~

~~(a) Party applications are limited to five or fewer members per party.~~

~~(b) All valid applications will be considered as a single application for purposes of the drawing; that is, all members will either be successful or unsuccessful.~~

~~(c) Any applicant applying as a member of an antelope party and who is otherwise eligible for landowner preference will be contacted and asked to make a choice between landowner preference and being in the party.~~

~~(d) Applications must have all requested party information, and that information must be correctly presented.~~

~~(e) A party will be broken up only under the following circumstances:~~

~~(i) If all members of the party do not list districts in the same order on their applications, the party will be split up and all members will be entered into the drawing individually.~~

~~(ii) If one member of the party fails to provide mandatory information such as date of birth, signature, etc. — that member will be excluded from the drawings. The remaining members will be processed as a party.~~

~~(5) Landowner preference applications. All applications claiming landowner preference are verified through local game wardens for authenticity of ownership. Applications with errors may be sent back to the applicants for correction at the discretion of the department if time allows.~~

AUTH: 87-2-706, MCA

IMP: 87-2-706, MCA

REASON: The proposed amendments delete language that has been moved and consolidated into ARM 12.3.160. ARM 12.3.112(3) has been moved to ARM 12.3.140(6). ARM 12.3.112(5) is a practice that is no longer feasible as there is not enough time between when applications are submitted and approved that allows local game wardens time to approve individual landowner preference applications.

12.3.113 ELK PERMITS (1) ~~Manner of drawing.~~ The department issues elk permits for landowner preference described in ~~section 87-2-705, MCA~~, according to the following policies and procedures:

(a) The statutory requirement of 640 acres of contiguous land is used only to determine if the applicant is eligible to apply as a landowner.

(b) If license/permits are valid in a designated portion of a hunting district, some of the land owned by the applicant must be within the boundaries of that portion.

(c) Both resident and nonresident landowners must use the special drawing application provided by the department. The department shall verify that the applicant owns 640 acres, that it is contiguous land used by elk, and that the designee of the landowner preference is eligible.

~~(d) The 15% calculation may result in a fraction of a license/permit. e.g. 15% of 50 is 7.5. If the decimal is equal to or greater than .5, it will be rounded up to the next whole number. If the decimal is less than .5, it will be rounded down to the next whole number.~~

~~(e)~~ (d) Partnerships may delegate landowner preference to members of the immediate family, a partner or an employee. Only one person may be delegated landowner preference for each sole proprietorship, partnership or corporation. A corporation may delegate the landowner preference to one shareholder.

~~(f)~~ (e) All applicants entitled to landowner preference will be considered in the preference drawings for elk. Unsuccessful landowner applicants who exceed 15% of a district will be entered into the regular drawings with their district choices. ~~As a result, unsuccessful landowner applicants will have two opportunities to be drawn.~~

~~(g) Landowner applications must be on current year forms and be postmarked no later than June 1.~~

(2) ~~Party applications. Where the commission has authorized party elk hunts, the following rules apply:~~

~~(a) Application for elk permits is limited to two members per party;~~

~~(b) Both applications will be considered as a single application for the purpose of the drawing; both members of the party will either be successful or unsuccessful.~~

~~(c) Applications must have all requested party information correctly~~

presented. A party will be broken up only under the following circumstances:

~~(i) If both members of the party do not list their districts in the same order on their applications the party will be broken up and both members will be entered in the drawing individually.~~

~~(ii) If one member of the party is missing mandatory information such as date of birth, signature, etc. only that member will be eliminated from the drawings. The remaining member will be entered in the drawing individually.~~

~~(3) (2) Special elk permits. Residents may not apply for an elk permit without first purchasing an A-5 elk license.~~

~~(3) Nonresidents must purchase the B-10 nonresident big game combination license prior to or at the time of submittal of drawing applications. All persons holding a valid elk license may participate in postseason elk drawings under annual rules adopted by the commission.~~

~~(4) Landowner preference applications. Applications with errors may be sent back to the applicants for a correction at the discretion of the department if time allows.~~

AUTH: 87-1-301, 87-2-702, MCA

IMP: 87-2-706 87-1-301, MCA

REASON: The language in ARM 12.3.113(1)(d) and (f) is in 87-2-705, MCA, and is unnecessary to be duplicated in administrative rule. ARM 12.3.113(2)(a) through (c)(ii) have been moved and consolidated into ARM 12.3.160. ARM 12.3.113(4) has been consolidated into ARM 12.3.165.

12.3.115 DEER B LICENSE/DEER PERMITS (1) Residents may not apply for a deer permit without first purchasing an A-3 license.

(2) Nonresidents must purchase a B-10 or B-11 license at the time of submittal of drawing applications.

(4) (3) The department shall issue deer B licenses and deer permits as described in ARM 12.3.104 (landowner preference).

~~(2) Residents who apply for a deer permit may do so without prior purchase of a deer license. When an individual is successful in a drawing for a deer permit, he must purchase the appropriate license before hunting. A permit is not valid unless it is accompanied by a valid license for the proper species. A conservation license must be purchased prior to application. Nonresidents who are applying for drawings for deer permits must purchase a B-10 or B-11 license prior to or at the time of submittal of drawing applications.~~

~~(3) Applications with errors may be sent back to the applicants for correction at the department's discretion if time allows.~~

AUTH: 87-1-304, MCA

IMP: 87-1-304, MCA

REASON: The amendments to ARM 12.3.115 are consistent with long-standing and current practice. ARM 12.3.115(3) has been consolidated into ARM 12.3.165.

12.3.116 MOOSE, SHEEP, AND GOAT LICENSES (1) ~~The department shall issue moose, sheep, and goat licenses as described in sections 87-2-701 and 87-2-506, MCA according to the following policy and procedures:~~

(a) ~~(1)~~ Applicants for moose and goat licenses must specify designate only one choice for a hunting district. ~~However, for bighorn sheep, an applicant may specify a second choice.~~

(2) Applicants for sheep licenses must designate a first choice for hunting district. Any secondary opportunity selection must be for ewe only.

(b) ~~Application for unlimited sheep must be postmarked no later than May 1. The deadline may be extended by the department if necessary to provide adequate time for the applicants to apply.~~

(2) (3) The following procedure will be used when allocating 10% license opportunities for nonresidents in moose, sheep, and goat drawings:

(a) The total regional license quota, by species and region, will be used to determine 10% nonresident quota.

(b) Nonresident license allocations will be applied to those hunting districts and season types with a quota of ten or more ~~in the tentative regulations.~~

(c) Any remaining license allocation will be ~~put~~ included, on a rotating basis, in those hunting districts and season types with a quota of less than ten ~~of the tentative regulations.~~

(d) If no hunting district in a region has a quota of ten or more licenses ~~on the tentative regulations~~, all of the nonresident license authority will be allocated as described in (c).

(e) If a region has a total quota of less than ten, no nonresident license allocations will be made for that region.

AUTH: 87-1-304, 87-2-701, MCA

IMP: 87-1-304, 87-2-506, 87-2-701, MCA

REASON: The amendments to ARM 12.3.116 are consistent with long-standing and current practice.

12.3.123 COMBINATION LICENSE ALTERNATE LIST (1) Interested nonresident hunters may sign up to be placed on a randomized list for a B-10 or B-11 license. ~~The department may initially issue more nonresident combination licenses than are set by quota. Quotas will be met by reduction of initial sales through the refund process. In addition, upon completion of the initial sale of nonresident combination licenses, the department will randomly draw names of unsuccessful general big game combination license applicants for an alternates' list and names for alternates' lists for the general and landowner-sponsored nonresident deer combination licenses.~~

(2) ~~These unsuccessful applicants~~ Interested nonresident hunters may be contacted and given the opportunity to purchase a license in the event refunds are issued to successful applicants which leave quotas unmet.

(2) ~~In the event the alternate list is exhausted and refunded licenses remain to be issued, a secondary alternate list shall be prepared. Names shall be placed on the secondary alternate list on a first come, first served basis. Individuals must~~

~~request in writing to have their names placed on the list.~~

AUTH: 87-1-201, MCA

IMP: 87-2-511, MCA

REASON: The amendments to ARM 12.3.123 are consistent with long-standing and current practice.

12.3.131 PROPOSALS FOR LICENSES SOLD BY AUCTION OR LOTTERY

~~(1) The commission may authorize:~~

~~(a) the department to conduct the auction or lottery; or~~

~~(b) a wildlife conservation organization to conduct the auction or lottery.~~

~~(2) (1)~~ Organizations that demonstrate a commitment to the conservation of the species may submit a proposal to the commission for a license to be sold by auction or lottery.

~~(3) (2)~~ A proposal must include:

(a) a statement of the organization's purpose;

(b) copies of bylaws or articles of incorporation;

(c) details of the organization's previous involvement in the conservation of the species hunted under the license;

(d) details of the organization's previous experience in auctions or lotteries;

(e) information on how the auction or lottery would be conducted and an estimate of the potential revenue that will be generated; and

(f) a statement indicating whether the organization plans to retain up to 10% of the proceeds to cover reasonable auction expenses and that the organization will submit expenses associated with the auction of the license.

~~(4) (3)~~ The commission reserves the right to reject all bids and proposals.

AUTH: 87-2-722, 87-2-724, 87-2-725, 87-2-811, 87-2-812, MCA

IMP: 87-2-722, 87-2-724, 87-2-725, 87-2-811, 87-2-812, MCA

REASON: The amendments to ARM 12.3.131 remove language found in statute.

12.3.132 PROCEDURE FOR SUBMITTING PROPOSALS AND AWARDDING AN AUCTION OR LOTTERY LICENSE ~~(1) The department will advertise the opportunity for organizations to submit auction or lottery license proposals through media announcements and letters to organizations showing interest in previous years solicit and accept proposals from organizations to conduct auctions or lotteries for licenses.~~

~~(2) Proposals for auctions or lottery licenses to be issued for the following license year must be mailed or hand delivered to Montana Department of Fish, Wildlife and Parks, License Bureau, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701 and must be postmarked or hand delivered received by the department's Licensing Bureau on or before July 15. If July 15 is a Saturday or Sunday the next business day is when proposals will be due.~~

~~(3) The commission may select a conservation organization proposal to receive the auction or lottery license and conduct the auction or lottery. The license~~

will be valid for the following license year.

AUTH: 87-2-722, 87-2-724, 87-2-725, 87-2-811, 87-2-812, MCA

IMP: 87-2-722, 87-2-724, 87-2-725, 87-2-811, 87-2-812, MCA

REASON: The amendments to ARM 12.3.132 are consistent with long-standing and current practice.

12.3.133 ISSUANCE AND USE OF A LICENSE SOLD BY AUCTION OR LOTTERY (1) A license obtained through an auction or lottery may not be resold and may not be transferred except in accordance with this rule. A license ~~transferred by sale will be voided with no refund.~~

(2) The highest bidder or lottery winner may designate one person to receive the license before issuance of the license by:

~~(a) submitting a completed and signed affidavit provided by the department;~~
and

~~(b) sending the affidavit certified mail to the department.~~

(3) The department shall issue the appropriate hunting license to the highest bidder, lottery winner, or a designee:

(a) after receipt of completed application; and

(b) after verification that the applicant is legally able to be licensed ~~under current statutes and administrative rules.~~

(4) A ~~hunting~~ license sold by auction or lottery is valid for ~~take of~~ one animal of the species for which it is issued.

(5) A ~~hunting~~ license sold by auction or lottery may be used in legally described hunting districts during legal hunting seasons for the species for which the license is issued.

AUTH: 87-2-722, 87-2-724, 87-2-725, 87-2-811, 87-2-812, MCA

IMP: 87-2-722, 87-2-724, 87-2-725, 87-2-811, 87-2-812, MCA

REASON: The amendments to ARM 12.3.133 are consistent with long-standing and current practice.

12.3.134 MOOSE, SHEEP, AND GOAT - SEVEN-YEAR WAIT REQUIREMENT (1) Prior to August 1, Applicants who are successful in drawing a moose, sheep, or goat license in a license year may request to have their license voided. A voided license under this rule does not subject a hunter to the seven-year wait requirement when the applicant is annulled and therefore are deemed not to have been issued the license so that they are not subject to the requirement to wait seven years to reapply if the following circumstances occur:

~~(a) the applicant is:~~

(i) (a) a member of the armed forces and is either deployed outside the continental United States in support of a contingency operation as provided in 10 U.S.C. 101(a)(13) to a combat zone, deployed in support of a peace-keeping mission, or deployed in response to a state or national emergency; or

(ii) (b) affected by a catastrophic or major natural disaster or man-made

event that requires the applicant's assistance as a member of a local, state, or federal management agency;

~~(b) the applicant did not use and was unable to use the license during any part of the hunting season in the license year for which the license was issued and can provide appropriate documentation; and~~

~~(c) the applicant return the unused license as soon as possible during the hunting season for the species for which the license was issued or at least by December 31 and certifies that it was not used;~~

~~(i) the director or designee may authorize exceptions for extenuating circumstances that prevent the applicant from meeting the December 31 deadline for the return of license.~~

(2) Moose, sheep, and goat licenses returned under these circumstances may be reissued to unsuccessful applicants in for the original drawing.

AUTH: 87-1-301, MCA

IMP: 87-2-702, MCA

REASON: The amendments to ARM 12.3.134 are consistent with long-standing and current practice.

12.3.135 BONUS POINTS: AWARD AND ACCUMULATION (1) Bonus points are non-refundable and non-transferable between applicants or species.
~~There is a bonus point program.~~

(2) If An applicant for a permit/ or license drawing who has elected to participate in the bonus points program by paying the fee established in 87-2-113, MCA, is unsuccessful in the drawing, they shall be awarded a the species-specific bonus point they purchased. for that species for each year the applicant is unsuccessful, if the applicant has elected to participate in the bonus point program.
~~Bonus points are awarded only when a participant in the bonus point program is unsuccessful in a drawing. A person may not "purchase" or be awarded a bonus point without applying for a license.~~

~~(3) The bonus point is awarded to the species, not the district, except in the case of a nonresident combination license classes B-10 and B-11, the bonus point applies to the license and not the species.~~

~~(4) (3) An applicant's bonus points accumulate until the applicant is successful in drawing a permit/ or license for a species in their first choice district, including landowner preference applications. or until the applicant fails to apply for a permit/license for more than two consecutive years for a particular species. However, if the applicant is a Montana resident in full time active military status, as verified by military orders, said time period can be for as many additional years as the applicant is on active duty.~~

~~(5) (4) If an applicant is successful in drawing a permit/ or license for a species in the first choice district, the applicant's loses all accumulated bonus points are reduced to zero for that species only.~~

~~(6) (5) If the following special circumstances occur, an applicant who is successful in drawing a permit/ or license in the first choice district may retain their accumulated bonus points if the applicant:~~

(a) the applicant is:

(i) ~~(a)~~ is a member of the armed forces and is either deployed to a combat zone, ~~deployed in support of a peace-keeping mission,~~ outside the continental United States in support of a contingency operation as provided in 10 U.S.C. 101(a)(13) or deployed in response to a state or national emergency; or

(ii) ~~(b)~~ is affected by a catastrophic or major natural disaster or man-made event that requires the applicant's assistance as a member of a local, state, or federal management agency; ~~;~~

~~(b) the applicant did not use and was unable to use the permit/license during any part of the hunting season in the license year for which the permit/license was issued and can provide appropriate documentation; and~~

~~(c) (6) the A qualifying applicant under (5) must~~ returns the unused permit/ or license as soon as possible or at least by December 31 and certifies that it was not used; prior to the first day of the season applicable to the permit or license.

~~(i) (7) The director or designee may authorize exceptions for extenuating circumstances that prevent the applicant from meeting the December 31 deadline for the return of permit/licenses.~~

~~(7) Rejection of an application pursuant to ARM 12.3.140 is equivalent to failure to apply.~~

~~(8) (8)~~ Applicants who lose hunting and fishing privileges through court action will lose accumulated bonus points for all species.

AUTH: 87-1-301, 87-2-117, MCA

IMP: 87-1-304, 87-2-113, 87-2-117, 87-2-506, 87-2-701, 87-2-702, 87-2-705, 87-2-706, MCA

REASON: The amendments to ARM 12.3.135 are consistent with long-standing and current practice. ARM 12.3.135(3) is deleted as the bonus point system was replaced with the preference point system for B-10 and B-11 licenses in 2011.

12.3.140 APPLICATION FOR DRAWINGS (1) The application deadline for B-10 and B-11 license drawings is April 1.

(2) The application deadline for elk and deer permit drawings is April 1.

(4) (3) The application deadline date for the moose, sheep, and goat, and bison special drawings is on or before May 1.

(4) The application deadline date for elk B, deer B, and antelope, and antelope B special license and permit drawings is on or before June 1.

(5) Applications for youth licenses and permits are determined by the age of the child at the time of submitting the application.

(6) All applications for participation in any special permit/ or license drawing, except drawings under ARM 12.9.801 (damage hunts) provided for by these regulations must be submitted by the expressed deadline, postmarked by the U.S. Postal Service on or before the deadline date of the current license year, or delivered by private mail service on or before the deadline date; or if personally delivered, received in the Helena Fish, Wildlife and Parks office by 5:00 p.m., on the deadline date of the current license year. If the deadline date for application for any license or drawings, as set by the department, falls on a Sunday or state holiday,

that date shall be automatically extended to 5:00 p.m. of the next full work day. The deadline may be extended by the department if necessary to provide adequate time for the applicants to apply.

(2) The department shall reject an application for any permit/license drawing or for surplus, mountain lion, black bear, trapping, buffalo, or grizzly bear licenses if:

(a) application is not made on the current year's form provided by the department;

(b) applicant fails to provide mandatory information on the form;

(c) applicant fails to sign the application; or

(d) applicant fails to submit the proper fee. The department will not accept personal checks from nonresidents for nonresident license applications and drawing fees.

(3) Submittal of more than one application for any one drawing by an individual will disqualify that individual's applications from the drawing for which the multiple applications were submitted.

(4) (7) No corrections or changes may will be made after the department has received the drawing application, except those types that can be made without contacting the applicant. These include:

(a) adding hunter safety numbers;

(b) moving valid district choices up to replace invalid choices;

(c) eliminating species choices on those applications that are short money when the shortfall is the amount for that species; and

(d) adjusting party applications to insure party consistency.

(5) Any category of correction made by the department must be applied to all applications. In addition, the department will accept corrections on the applications of those seeking landowner preference. Unless otherwise provided by these rules, all drawings will take place in Helena.

(6) All applications for participation in buffalo, spring grizzly bear, swan and turkey drawings must be postmarked by the U.S. Postal Service by the advertised deadline date, or delivered by private mail service on or before the date to the address indicated for the particular drawing which is being applied for.

~~(7)~~ (8) If an application for any species is rejected by the department pursuant to this rule:

(a) the application must not be included in the procedure for awarding the permits/licenses applied for will not be included in the drawing;

(b) the applicant must will not be awarded a bonus point for that drawing for that species; and

(c) the drawing fee, preference point fee, and any bonus point fee, and any prerequisite licenses once the application is entered into the drawing, will be retained by the department. Applications not processed in the drawing because of errors will be returned to the applicant with all fees.

(9) Rejection of an application pursuant to this rule is equivalent to failure to apply.

AUTH: 87-1-304, 87-2-701, MCA

IMP: 87-1-304, 87-2-506, 87-2-701, 87-2-705, MCA

REASON: The amendments to ARM 12.3.140 were made for clarification and are consistent with long-standing and current practice. Applications are limited to electronic submissions only and require mandatory information from the applicant prior to submission, making ARM 12.3.140(2) and (3) unnecessary. Mail-in applications are no longer accepted with the exception of limited application types which maintain submission requirements that are incompatible with the current automated licensing system.

12.3.160 PARTY APPLICATIONS MEMBERS OF A PARTY; EFFECT OF REJECTION OF APPLICATION OF ONE MEMBER; EFFECT OF SPECIFICATION OF AN INCORRECT DISTRICT OR SPECIES (1) All valid applications will be considered as a single application for purposes of the primary drawing; that is, all members will either be successful or unsuccessful.

(2) The party establisher will designate all members of the party at the time of application.

(3) Each party member is responsible for individually finalizing their own applications.

(4) Applications must have all requested party information, and that information must be correctly presented.

(5) The party establisher will create the party's hunting districts, bonus point enrollment, outfitter preference point, and preference point enrollment for the entire party. Any member applying under different designations will be removed from the party and will be entered into the drawing individually.

(6) Any applicant applying as a member of a party and who is otherwise eligible for landowner preference will be removed from the party and entered into the landowner preference drawing as an individual.

~~(1) If the department is required, pursuant to ARM 12.3.140, to reject an application submitted by one member of a party, the department will not reject the applications of the remaining members, if submitted correctly, and they will remain in the party.~~

~~(2) If a member of a party specifies on the application a species or district different from that specified by any other member or members of the party, that application will be eliminated from the party and entered into the drawing as an individual.~~

~~(3) As used in this part, "party" means two or more persons applying together as a group to obtain a permit/license.~~

AUTH: 87-1-301, MCA

IMP: 87-1-304, 87-2-506, 87-2-701, 87-2-702, 87-2-705, 87-2-706, MCA

REASON: Proposed amendments to ARM 12.3.160 consolidate language originally found in ARM 12.3.112 and 12.3.113. The definition of "party" was added to ARM 12.3.110.

12.3.165 APPLICATION ERRORS BY THE DEPARTMENT (1) Applications submitted with errors may be sent back to the applicants for correction at the department's discretion if time allows.

~~(1)~~ (2) If the department commits an error which results in the rejection or incorrect processing of an application that has been submitted in compliance with the regulations for a permit/ or license, the authorized number of permits/ or licenses, established by the commission, may be exceeded by up to 10% of the quota for each district by at least one license.

(3) The department is not responsible for third-party errors. If an applicant for a permit or license drawing proves to the satisfaction of the department the rejection of the application was due solely to a third-party error, and the department deems there is sufficient time to complete the processing of the application before the drawing is held, the department shall include the application in that drawing.

~~(2)~~ (4) The issuance of the permit/ or license referred to in (1) will be considered on a case-by-case basis ~~only to accommodate those applicants who might have received a permit/license if not for an error on the part of the department in processing the application.~~ This Any increase in the quotas must be approved by the director and may not exceed 50 for all species in any license year. Any necessary quota extension in excess of the ~~number herein authorized~~ 50 must be approved by the commission.

(5) If the applicant is entitled to purchase a bonus point and/or a preference point and is not entered into the drawing solely because of an error, and the applicant fails to obtain a permit or license for the year the application was submitted, the applicant is entitled to purchase a bonus point or preference point for that year.

~~(3) If the department confirms an error on a rejected or incorrectly processed application and no permit/license can be issued, the department shall award that applicant a bonus point, if applied for, for the species for which the application was submitted.~~

AUTH: 87-1-301, MCA

IMP: 87-1-304, 87-2-506, 87-2-701, 87-2-702, 87-2-705, 87-2-706, MCA

REASON: Language contained in ARM 12.3.115 regarding application errors and in ARM 12.3.170 regarding third-party errors has been consolidated into ARM 12.3.165.

12.3.185 SUPER-TAG HUNTING LICENSES ~~(1) The department will issue one deer, one elk, one shiras moose, one mountain sheep, one mountain goat, one wild buffalo or bison, one antelope, and one mountain lion hunting license each year through a lottery. These hunting licenses are known as "super-tags."~~

~~(2)~~ (1) For each species, as designated in 87-1-271, MCA, an unlimited number of chances to draw a super-tag will be sold at \$5 per chance. Chances will be sold by license agents as defined in ARM 12.3.201A or through the department authorized web site on the internet. License agents will receive a commission of \$0.50 for each super-tag transaction for a species. A transaction in this case means the purchase of one or more super-tag chances of the same species at one time. Individuals purchasing a ticket through the internet shall pay a convenience fee in accordance with the current internet provider contract.

~~(3)~~ (2) After the completion of the special license drawing for a species, ~~t~~The

department will conduct a computerized drawing to selecting randomly the super-tag winner for that each species. ~~The department shall issue the appropriate super-tag to the lottery winner.~~

~~(4)~~ (3) Only a person legally ~~able~~ eligible to be licensed ~~under current Montana statutes~~ may purchase chances to draw a super-tag or use a super-tag. A person must possess a valid conservation license to be eligible to purchase a chance to draw a super-tag.

~~(5)~~ (4) The super-tag is valid for the taking of one animal of the species for which it is issued and is valid only for the current license year. A super-tag may be used in any legally described hunting district ~~open for hunting of that species with an established season.~~ A super-tag may be used only during the legal hunting season for the species for which it is issued. The person using the super-tag may use it only during a hunting district's ~~open~~ established season and is subject to all hunting regulations, including special weapons regulations, that apply to a hunting district. However, if a hunting district requires a permit to hunt that species in that district, a super-tag can be used without the special permit, and a super-tag is not subject to an established quota in a hunting district.

~~(6)~~ (5) In the event that a person who drew a license or purchased a license is also drawn for the super-tag for the same species, the person must surrender the license to the department before receiving the super-tag. The department will refund the license fee paid by the winner of the super-tag. The person winning the super-tag shall retain any accumulated bonus points for that species.

~~(7)~~ (6) The super-tag is a nontransferable license.

AUTH: 87-1-271, 87-1-301, MCA

IMP: 87-1-271, MCA

REASON: The amendments to ARM 12.3.185 are for clarification and to be consistent with long-standing and current practice.

12.3.186 SALVAGE PERMITS (1) For the purposes of 87-3-145, MCA, an individual may apply for a salvage permit for a A deer, elk, moose, or antelope accidentally killed as a result of a vehicle collision ~~may be salvaged and possessed if a permit is obtained from a peace officer, a department regional office during regular business hours, or by the department through an electronic application and issuing process within 24 hours of taking possession of the animal.~~

(2) Any animal taken for salvage must:

(a) be taken in its entirety; and

(b) be disposed of in accordance with 75-10-213, MCA, ~~and any meat rendered must be utilized for human consumption and may not be used for bait or any other purpose.~~

(3) The salvage permit will be issued on a form provided by the department.

(4) ~~Big game~~ Licenses and tags issued for the purpose of hunting shall not be used for purposes of salvaging animals.

(5) All parts of animals salvaged shall be made available for inspection by a peace officer upon request.

AUTH: 87-3-145, MCA

IMP: 87-1-301, 87-3-145, MCA

REASON: The amendments to ARM 12.3.186 remove language found in statute.

12.3.187 APPRENTICE HUNTER CERTIFICATE (1) An apprentice hunter must be accompanied by a mentor while hunting. The mentor must:

- (a) meet the requirements of 87-2-810, MCA;
- (b) possess a completed department-issued designation form;
- (c) only accompany one apprentice at a time;
- (d) remain within direct voice contact with the apprentice without the use of enhancement or transmittal devices, except prescription hearing aids; and
- (e) remain within direct sight of the apprentice without the use of any magnifying or enhancing aids except prescription eyewear.

~~(2) Section 87-2-810, MCA, states a person cannot obtain an apprentice hunting certificate upon completion of a hunter safety course. For the apprentice hunter certificate, completion of a hunter safety and education course is defined as:~~

- ~~(a) passing a state-approved hunter education course including the required test and field day; and~~
- ~~(b) reaching 12 years of age by January 16 of the license year.~~

(3) (2) Apprentice hunters 15 years of age or younger are allowed to hunt during any specified statewide youth season as provided in the regulations.

AUTH: 87-2-810, 87-1-301, MCA

IMP: 87-2-810, MCA

REASON: The amendments to ARM 12.3.187 remove language found in statute.

12.3.205 REVIEW OF APPOINTMENTS (1) A license agent's appointment shall may be reviewed annually. In considering review, the department will evaluate the following:

- (a) compliance of the agent to the procedures of the department and requirements of law for license fee remittance and ~~handling of the licenses assigned to him;~~
- (b) complaints about the license agent that have remained ~~unexplained or unsatisfactorily explained~~ unresolved;
- (c) the public convenience to the public of continuation of a license agency at the location of this applicant's business; and
- ~~(d) whether or not it was necessary to go against the bond of the agent; and~~
- ~~(e) (d)~~ the overall performance of this agent.

~~(2) When a license agent sells less than 500 licenses or when the total license sales is less than \$1,000 during a license year in an area where there are other license agents, then the appointment may not be renewed.~~

~~(3) Upon determination by the director that performance of an agent is unsatisfactory, revocation of an agent's certificate shall be initiated.~~

~~(4) An agent whose certificate is revoked, or whose bond was used may not be considered as a license agent for 3 years from date of revocation. Then the~~

~~director must be satisfied the ex-license agent has removed the cause of revocation.~~

AUTH: 87-1-201, 87-2-901, MCA

IMP: 87-2-901, 87-2-904, MCA

REASON: The amendments to ARM 12.3.205 are for clarification and to be consistent with long-standing and current practice.

12.3.209 REGULATIONS FOR ISSUANCE OF FISH AND GAME LICENSES

(1) License agents are required to ~~fill in all blank information spaces on licenses issued~~ complete application information with factual information supplied by the applicants.

(2) It is prohibited for any license agent to date a license with any date other than the actual date the license is issued, except for the following:

(a) ~~nonresident 2-day fishing B-4 or B-5~~ licenses which may be postdated for the dates the applicant wishes to fish; and

(b) ~~nonresident 3-day shooting preserve bird stamps B-12~~ licenses which may be postdated for the dates the applicant wishes to hunt.

~~(3) No license shall be predated.~~

(4) (3) Any applicant who fails to supply any information required on the licenses or fails to show proof of identity shall be refused the license applied for.

AUTH: ~~2-15-112~~, 87-1-201, MCA

IMP: 87-2-106, MCA

REASON: The amendments to ARM 12.3.209 reference the license classes as established in statute.

12.3.210 DISCOUNT SALE OF HUNTING AND FISHING LICENSES

PROHIBITED (1) Licenses must be sold at the rate established by Montana law. ~~No license agent shall sell or give away any license authorized or directed by the fish and wildlife laws of the state of Montana for less than the fee prescribed by such laws. No such agent shall advertise that any such license will be sold at any such lesser fee nor shall such agent at any time use the sale of such licenses as a trade stimulator, loss leader, or as any advertising program or device to promote or increase his sales of merchandise or equipment; except that this regulation shall not prohibit such agent from advertising that such licenses can be obtained, upon payment of the prescribed fee, at his usual place of business or designated location.~~

~~(2) The director may revoke the license agency of any license agent violating this rule.~~

AUTH: 87-1-201, MCA

IMP: 87-2-901, 87-2-904, MCA

REASON: License agents do not have the authority to alter license prices. The remainder of the rule language is no longer necessary as license agents use a point of sale device for license sales supplied by the department.

12.3.220 LICENSE AGENT APPLICATIONS ~~(1) A person interested in being appointed as a license agent shall file at the nearest regional office on an application form provided by the department.~~

~~(2) (1)~~ The application must be signed on a current form and provide sufficient information ~~for the department~~ to determine the eligibility for an appointment as set forth in ~~(3) (2)~~ of this rule and for the department, ~~for security, to perform sufficient background checks to insure that applicants and appointees conform to the law and rules.~~

~~(3) (2)~~ Before making an appointment, the department shall consider the following:

(a) the financial responsibility and security of the applicant and the applicant's business or activity; and

~~(i) the applicant shall have satisfactory credit ratings and must meet the bonding or security requirements of ARM 12.3.208;~~

~~(ii) an applicant shall have conducted business for at least one year at the location for which the license agent appointment is requested, unless a waiver is approved by the department;~~

~~(b) unless a waiver is approved by the department, the type of business or accessibility of the applicant's place of business to the public, including but not limited to:~~

~~(i) location of the business;~~

~~(ii) sporting goods stores;~~

~~(iii) (ii)~~ hours the business is open to the public; and

~~(c) (iii) the availability of existing license agents to serve the public, convenience and the volume of the expected sales;~~

~~(d) applicant's willingness to reimburse the department for the cost of the required electronic device and willingness to provide a dedicated telephone line to be attached to the device; and~~

~~(e) first in time, first in consideration.~~

~~(4) This rule will be implemented when the automated license system is operational as authorized by the director.~~

AUTH: 87-1-201, 87-2-901, 87-2-902, MCA

IMP: 87-2-901, MCA

REASON: The amendments to ARM 12.3.220 are for clarification and to be consistent with long-standing and current practice.

12.3.225 LICENSE AGENT ELECTRONIC FUNDS TRANSFER (1) As a condition of appointment, an agent shall agree to participate in the department's electronic funds transfer system.

(2) A license agent shall, before ~~being appointed~~ selling licenses, authorize the debiting and crediting (sweep) of an account in the license agent's name for the purpose of electronic funds transfer to or from the state's collection account, as provided in this rule.

(3) The license agent shall execute all forms required by the department, the

department's bank, or the license agent's bank or the initiating bank.

(4) The department ~~may~~ will determine the schedule for ~~debiting or crediting~~ (sweeping) the license agent account. The department may allow deviation from the schedule in special circumstances.

(5) The license agent shall bring any error or dispute to the attention of the department before the sweep.

(6) In the event a license agent does not have sufficient funds to cover the sweep, a second attempt will be done at the next scheduled sweep. A license agent must pay the amount of any nonsufficient fund (NSF) sweep within 48 hours after notification by certified check, cashier's check, or money order. If a NSF is not covered, the license agent shall immediately surrender licensing material and is subject to revocation proceedings.

(7) If it fails again, the license agent will not be permitted to sell licenses until the issue is resolved and the agent must pay the outstanding amount of all outstanding failed sweeps within 48 hours after notification by certified check, cashier's check, or money order. If outstanding balances are not paid in full within 48 hours, the license agent shall immediately surrender department-issued equipment and materials, is subject to revocation, and may be sent to a collection agency for unpaid balances owed.

(7) (8) Two or more failed sweeps that result in nonsufficient funds within a single license year are cause for revocation or suspension.

~~(8) This rule will be implemented when the automated license system is operational as authorized by the director.~~

AUTH: 87-1-201, 87-2-901, MCA

IMP: 87-2-901, MCA

REASON: The amendments to ARM 12.3.225 are for clarification and to be consistent with long-standing and current practice.

12.3.230 LICENSE AGENT DUTIES (1) Each license agent shall maintain a license agent manual, materials, displays, and electronic devices department-issued equipment, regulations, and materials in accordance with instructions from the department.

(2) Each license agent shall sell licenses via the department-approved electronic device ~~or back enter data if the department provided generic form is used due to system failure.~~

(3) Each license agent shall electronically transfer to the department's bank account the department's portion of license sale proceeds as provided for in ARM ~~12.3.220~~ 12.3.225.

~~(4) This rule will be implemented when the automated license system is operational as authorized by the director.~~

AUTH: 87-1-201, 87-2-901, MCA

IMP: 87-2-901, MCA

REASON: The amendments to ARM 12.3.230 are for clarification and to be

consistent with long-standing and current practice..

12.3.235 REVOCATION OR SUSPENSION OF LICENSE AGENT (1) The department may suspend or revoke an appointment for any of the following reasons:

- (a) a change of business location;
- (b) an insufficient sales volume;
- (c) a delinquency in remitting money owed to the department;
- (d) a violation of any rule adopted by the department or commission;
- (e) the refusal to acquire or display any materials required by the department;

or

(f) the appointee is ineligible for appointment ~~under ARM 12.3.201A and the facts giving rise to such ineligibility occurred or were discovered subsequent to the appointment.~~

(2) After notice in writing, the department shall revoke the license agency appointment for the following reasons:

- (a) knowingly providing false or misleading information to the department or any other agency conducting an investigation on behalf of the department;
- (b) the owner or principal manager of a license agent being convicted of a felony or two hunting or fishing offenses;
- (c) endangering the security of the automated license system; or
- (d) upon suspension, failing to rectify the problems which led to the suspension.

(3) Upon notice of revocation, the license agent shall give a final accounting to the department and surrender all department materials, including any department owned electronic devices. The license agent is liable for all money still owed the department.

~~(4) This rule will be implemented when the automated license system is operational as authorized by the director.~~

AUTH: 87-1-201, 87-2-901, MCA

IMP: 87-2-901, MCA

REASON: The amendments to ARM 12.3.235 are for clarification and to be consistent with long-standing and current practice.

12.3.402 LICENSE AND PERMIT REFUNDS (1) All license sales are final.

~~(1) (2)~~ No refund will be issued for any hunting, fishing, or trapping licenses or permits sold by the department, or associated fees, except as provided in ~~(1)(a) through (e)~~ of this rule.

~~(3)~~ The department will ~~review all applicable information in evaluating requests~~ issue refunds as follows:

(a) a surviving heir of a license or permit holder may receive a full refund of the license or permit fees if the license or permit holder dies and has not used the license or permit;

(b) A a license or permit holder may receive a 90% refund if an immediate family member spouse, domestic partner, parent, step-parent, child, or step-child dies and the license or permit holder has not used the license or permit; ~~A request~~

for such refund must be accompanied by appropriate supporting documentation which includes, at a minimum, a copy of the death certificate of the license holder or immediate family member. For a hunting license, the request must be postmarked by the end of that calendar year;

~~(b) (c) a license or permit holders may receive a 90% refund in the event that a medical emergency occurrence prevents the license or permit holder from using the license or permit; A request for a medical emergency refund must be accompanied by appropriate supporting documentation which includes, at a minimum, a statement signed by a licensed physician. The physician must describe the nature of the medical emergency and state why it precludes using the license. For a hunting license, the request must be postmarked by the end of the calendar year;~~

~~(c) a resident who has purchased a conservation, bear, deer, elk, bird, or fishing license may request a refund by returning the license to the Helena or regional office at the time of application for a combination license. A resident who purchases a two-day fishing license may request a refund by returning the license to the Helena or regional office at the time of application for a season fishing license. A nonresident who has purchased a conservation, season bird, season fishing or deer license may request a refund by returning the license to the Helena office at the time of application for a nonresident big game combination license. A nonresident who has purchased a conservation, season bird or season fishing license may request a refund by returning the license to the Helena office at the time of application for a nonresident deer or elk only combination license;~~

~~(d) if an applicant is issued an incorrect license or permit (e.g., a sportsman over 62 years old is issued a regular conservation license and elk license for full price instead of the half price elk license) through the fault of the department or a license agent, the license fees will be refunded, and the applicant may purchase the correct license or permit;~~

~~(e) except for refunds under (1)(a), (b), and (c), nonresident combination license B-10 and B-11 license holders may receive a license refund according to the following schedule, provided the nonresident license holder certifies that the license was not used:~~

~~(i) 80% refund if postmarked on or before August 1 of the license year;~~

~~(ii) 50% refund if postmarked after August 1 of the license year, but on or before the first day of the general big game hunting season for which the license is applicable, with the following exceptions:~~

~~(A) if the license holder is outfitter sponsored and lack of success in drawing a permit eliminates opportunity to use the license, the amount retained by the agency will be \$100, provided that the request is postmarked on, or prior to, October 1;~~

~~(B) if the license holder is landowner sponsored and lack of success in drawing a permit eliminates opportunity to use the license, the amount retained by the agency will be \$50, provided the request is postmarked on, or prior to, October 1;~~

~~(iii) no refund will be issued after the opening of the general big game hunting season;~~

~~(f) for the purpose of considering refunds, any license ordered by mail shall~~

~~be considered sold when the department receives a valid application;~~

~~(g) (4) The director, or his designee, may authorize exceptions to the refund policy this rule due to extenuating circumstances including but not limited to the following:~~

~~(i) (a) declaration of war or police action;~~

~~(ii) (b) catastrophic or major natural disaster or man-made event that necessitates the assistance from state or federal emergency management agency.~~

~~(5) Requests for refunds must be postmarked by December 1.~~

~~(6) Any request for a refund must be accompanied by supporting documentation as requested by the department.~~

~~(7) Refunds will not be issued for any licenses or permits sold on behalf of other entities.~~

AUTH: 87-1-301, MCA

IMP: 87-1-301, MCA

REASON: The amendments to ARM 12.3.402 are for clarification and to be consistent with long-standing and current practice. ARM 12.3.402(1)(c) was moved to NEW RULE II. ARM 12.3.402(1)(e)(ii)(A) refers to outfitter sponsored licenses which are no longer available.

12.3.403 REPLACEMENT LICENSES AND PERMITS (1) A ~~person~~ hunter may replace a department-issued hunting license or permit that is lost, stolen, or destroyed at a department office or any department license provider.

(2) The ~~person~~ hunter must appear personally at a department regional or area office or at headquarters in Helena, Montana during normal operating hours to replace a lost, stolen, or destroyed license or permit a second or subsequent time for the same species.

(3) The fee for each replacement license or permit issued under this rule is \$5.

(4) Licenses and permits seized pursuant to a law enforcement action are not considered to be lost, stolen, or destroyed and will not be replaced.

(5) Replacement licenses and permits for animals deemed unfit for human consumption will be issued pursuant to ARM 12.3.404.

AUTH: 87-2-104, MCA

IMP, 87-2-104, MCA

REASON: The amendments to ARM 12.3.403 are for clarification and to be consistent with long-standing and current practice. HB 353 (2021) authorized the department to issue replacement licenses and permits for animals that are unfit for human consumption. The department is proposing amendments to ARM 12.3.404 to address those replacement licenses and permits.

12.3.404 ANIMALS UNFIT FOR HUMAN CONSUMPTION (1) The department will issue a replacement license or permit when an animal is deemed unfit for human consumption due to disease or prior injury.

(2) A majority of an animal must be unfit for human consumption in order for a replacement license or permit to be issued.

(3) The determination of whether an animal is unfit for human consumption is at the discretion of a department biologist or warden.

(4) The animal must be surrendered as directed by department personnel.

(5) Replacement licenses and permits will be issued at a department regional office, area office, or at the headquarters in Helena, Montana during normal operating hours. Other license agents are unable to issue replacement licenses and permits.

(6) If the animal was harvested using a combination license, the replacement license will be issued for only the portion of the license used to harvest the animal deemed unfit for human consumption.

(7) The hunter must designate whether they choose to be issued the replacement license or permit for the current year or the next license year when requesting a replacement license or permit.

(8) A replacement license or permit will not be issued if the lack of fitness for human consumption is due to the hunter's improper handling or care of the animal.

~~(1) In some instances, a hunter will shoot and tag a big game animal which is unfit for human consumption. Hunters who have shot such an animal may obtain a free replacement license. The replacement license replaces the license for the applicable license year only. No replacement license will be issued for use beyond the original license year or during any subsequent license year. In order to obtain a replacement license, a hunter may turn in the animal to a department biologist or warden for a determination that the animal is unfit for human consumption. The biologist or warden may make the determination or may refer the hunter to a licensed meat inspector or licensed veterinarian. If the hunter is referred to a meat inspector or veterinarian, a written statement from the meat inspector or veterinarian must be presented to the department for replacement. A hunter may go directly to, or may seek a second opinion from, a licensed meat inspector or a licensed veterinarian which would be honored by the department. No replacement license will be issued if the lack of fitness for human consumption is due to the hunter's improper handling or care of the animal. The animal must have all horns, antlers, bones, hide, hoofs, and teeth. This section does not apply to black bears, grizzly bears, buffalo, or mountain lions.~~

AUTH: 87-1-301, MCA

IMP: 87-1-301, MCA

REASON: HB 353 (2021) authorized the department to issue a replacement license or permit for animals that are unfit for human consumption. The department is proposing amendments to ARM 12.3.404 to address those replacement licenses or permits.

12.3.410 EXTENSION OF DEADLINES (1) The director has the authority to extend a deadline for purchasing or applying for a license or permit if, in the director's discretion, a significant event occurs that hinders the public from purchasing or applying for licenses or permits. ~~A significant event is an occurrence~~

~~that has widespread impacts of sufficient magnitude to warrant, in the director's opinion, the extension of purchasing and application deadlines. Some examples of a significant event include:~~

- ~~(a) automated licensing system failure;~~
- ~~(b) natural disaster; or~~
- ~~(c) major national or state emergency.~~

~~(2) The director has the discretion to determine the amount of time to extend a deadline after consideration of all the circumstances surrounding the significant event. The director may determine that the totality of circumstances makes an extension impractical.~~

~~(3) All other rules and statutes pertaining to licenses and permits are still in effect when the director extends a deadline.~~

AUTH: 87-1-301, 87-1-304, MCA

IMP: 87-1-301, 87-1-304, MCA

REASON: The amendments to ARM 12.3.410 remove unnecessary language. The remaining language gives the director latitude to extend deadlines as necessary.

12.3.411 HUNTERS AGAINST HUNGER (1) The department will annually distribute all funds accumulated in the hunters against hunger account to a federally tax exempt nonprofit organized under 26 U.S.C. 501(c)(3) with a mission to distribute food and provide charitable services to those in need on a statewide basis.

(2) The organization must:

(a) coordinate with other nonprofit organizations within the state to process game animals donated and distribute the processed meat to those in need;

~~(b) not charge more than seven percent overhead for grant processing;~~

~~(c) (b)~~ provide a list of meat processors responsible for processing donated game animals; and

~~(d) (c)~~ retain all carcass tags from donated game animals until meat from the animal is distributed.

(3) ~~Big G~~ Game animals donated for processing must be legally harvested or confiscated by law enforcement. Game animals killed by a vehicle are not permitted to be processed and distributed under this program.

(4) All processed meat through the hunters against hunger program will be offered at no charge to those in need.

(5) The contract will provide annual reporting requirements and any other conditions necessary. Noncompliance with the contract will result in loss or delay of funds.

AUTH: 87-1-293, MCA

IMP: 87-1-293, 87-1-628, MCA

REASON: The amendments to ARM 12.3.411 are for clarification and to be consistent with long-standing and current practice.

6. The department and commission propose to repeal the following rules

because they are either outdated or are unnecessary because they repeat statutory language:

12.3.106 DISABLED PERSONS

AUTH: 87-2-803, MCA

IMP: 87-2-803, MCA

REASON: The definition of "disabled persons" and permit to hunt from a vehicle is found in statute.

12.3.109 PURPOSE

AUTH: 87-1-201, 87-1-301, MCA

IMP: 87-1-201, 87-1-301, MCA

REASON: Administrative rules that state purpose are no longer considered necessary.

12.3.111 LICENSE/PERMIT PREREQUISITES

AUTH: 87-1-201, 87-1-304, MCA

IMP: 87-1-201, 87-1-304, MCA

REASON: Applicable license and permit prerequisites requirements are consolidated into ARM 12.3.113 and 12.3.115

12.3.120 HUNTER SAFETY REQUIREMENTS

AUTH: 87-1-301, 87-2-105, MCA

IMP: 87-2-105, MCA

REASON: Hunter safety requirements are found in statute.

12.3.121 DRAWING FEE

AUTH: 87-1-301, MCA

IMP: 87-2-113, MCA

REASON: ARM 12.3.121 has been incorporated into ARM 12.3.402

12.3.125 CERTIFICATE FOR GUIDED NONRESIDENT

AUTH: 87-1-301, MCA

IMP: 87-2-511, MCA

REASON: ARM 12.3.125 is unnecessary because outfitter-sponsored licenses are

no longer available.

12.3.150 COMPUTERIZED SYSTEM OF DRAWING: BONUS POINT PROGRAM

AUTH: 87-1-301, MCA

IMP: 87-1-304, 87-2-506, 87-2-701, 87-2-705, MCA

REASON: ARM 12.3.150 has been incorporated into ARM 12.3.135.

12.3.155 BONUS POINTS: NONTRANSFERABILITY; APPLICABILITY TO A PARTY

AUTH: 87-1-301, MCA

IMP: 87-1-304, 87-2-506, 87-2-701, 87-2-702, 87-2-705, 87-2-706, MCA

REASON: Applicable bonus point information was incorporated into ARM 12.3.135. Applicable party information was incorporated into ARM 12.3.160.

12.3.170 THIRD-PARTY ERRORS

AUTH: 87-1-301, MCA

IMP: 87-1-304, 87-2-506, 87-2-701, 87-2-702, 87-2-705, 87-2-706, MCA

REASON: ARM 12.3.107 was incorporated into ARM 12.3.165.

12.3.175 PHASE-IN PROCESS

AUTH: 87-2-113, MCA

IMP: 87-2-113, MCA

REASON: ARM 12.3.175 refers to phasing in collection of bonus points in 2001 and 2003.

12.3.179 NONRESIDENT DEER LICENSES SEPARATED FROM BIG GAME COMBINATION LICENSES

AUTH: 87-1-301, 87-2-512, MCA

IMP: 87-1-301, 87-2-512, MCA

REASON: Nonresident deer licenses separated from big game combination licenses are addressed in 87-2-105, MCA, and are unnecessary in administrative rule.

12.3.180 CALCULATION METHOD – VARIABLE PRICED OUTFITTER SPONSORED LICENSES B-10 AND B-11

AUTH: 87-1-268, MCA

IMP: 87-1-268, MCA

REASON: ARM 12.3.180 is unnecessary because outfitter-sponsored licenses are no longer available.

12.3.201 PURPOSE OF APPOINTMENT

AUTH: 87-1-201, 87-2-901, MCA

IMP: 87-2-901, MCA

REASON: Administrative rules that state purpose are no longer necessary.

12.3.201A DEFINITIONS

AUTH: 87-1-201, 87-2-901, MCA

IMP: 87-2-901, 87-2-904, MCA

REASON: Definitions in ARM 12.3.201A were consolidated into ARM 12.3.110.

12.3.215 PLACES OF SALE

AUTH: 87-1-201, 87-2-901, MCA

IMP: 87-2-901, MCA

REASON: Applicable requirements in ARM 12.3.215 were consolidated into ARM 12.3.220.

12.3.405 REVOKED HUNTING LICENSES

AUTH: 87-1-102, MCA

IMP: 87-1-102, MCA

REASON: The language in ARM 12.3.405 is found in statute.

12.3.406 COPYING LICENSE RECORDS

AUTH: 2-6-109, MCA

IMP: 2-6-109, MCA

REASON: Public information requests regarding license records are managed by the department's information request policy.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Licensing Rules Comments, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; or e-mail

FWPLicensingRules@mt.gov, and must be received no later than December 17, 2021.

8. Jessica Snyder or another hearing officer appointed by the department has been designated to preside over and conduct the hearing.

9. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to: Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be emailed to jesssnnyder@mt.gov.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. NEW RULE I is being proposed due to the passage of HB 637 (2021). Representative Seth Berglee, primary bill sponsor of HB 637, was contacted on September 7, 2021, via email. Amendments to ARM 12.3.403 and 12.3.404 are being proposed due to the passage of HB 353 (2021). Representative Steve Gunderson, primary sponsor of HB 353, was contacted on September 7, 2021, via email.

11. With regard to the requirements of 2-4-111, MCA, the department and commission have determined that the adoption, amendment, and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Aimee Hawkaluk
Aimee Hawkaluk
Rule Reviewer

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

/s/ Hank Warsech
Hank Warsech
Director
Department of Fish, Wildlife and Parks

Certified to the Secretary of State November 9, 2021.