

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 ADOPTION,
RULES I through IV, the amendment)	AMENDMENT, AND REPEAL
of ARM 12.3.105, 12.3.110, 12.3.112,)	
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 November 19, 2021, the Fish and Wildlife Commission (commission) and the Department of Fish, Wildlife and Parks (department) published MAR Notice No. 12-551 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 1579 of the 2021 Montana Administrative Register, Issue Number 22.

2. The commission has adopted NEW RULE I (12.3.604) as proposed. The department has adopted NEW RULE II (12.3.628), NEW RULE III (12.3.512), and NEW RULE IV (12.3.502) as proposed.

3. The commission and the department have amended ARM 12.3.105, 12.3.110, 12.3.112, 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, 12.3.403, 12.3.410, and 12.3.411 as proposed.

4. The department has amended ARM 12.3.404 as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

12.3.404 ANIMALS UNFIT FOR HUMAN CONSUMPTION (1) through (8) remain as proposed.

AUTH: ~~87-1-304~~ 87-2-104, MCA
IMP: ~~87-1-304~~ 87-2-104, MCA

5. The commission and the department have repealed ARM 12.3.106, 12.3.109, 12.3.111, 12.3.120, 12.3.121, 12.3.125, 12.3.150, 12.3.155, 12.3.170, 12.3.175, 12.3.179, 12.3.180, 12.3.201, 12.3.201A, 12.3.215,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 as proposed.

6. The commission and the department have thoroughly considered the comments and testimony received. A summary of the comments received and the responses are as follows:

COMMENT 1: The commission received three comments expressing opposition and concerns regarding the proposed rule language addressing outfitter preference points in NEW RULE I (ARM 12.3.604).

RESPONSE 1: NEW RULE I (ARM 12.3.604) was necessary to address the statutory changes made in HB 637 (2021). HB 637 (2021) added language stating "a nonresident hunting with an outfitter licensed pursuant to Title 37, chapter 47, part 3" "may purchase two preference points per license year." NEW RULE I (ARM 12.3.604) outlines how the statutorily required preference points will be implemented.

One of the commenters thought that it was the outfitter that received the preference points. This is incorrect. The nonresident hunter may purchase two preference point per license year, not the outfitter.

COMMENT 2: The commission received one comment expressing concerns regarding the eliminated language in ARM 12.3.113 limiting the landowner preference licenses.

RESPONSE 2: The commission removed the language referencing the 15% limitation of landowner preference for elk permits in ARM 12.3.113 because the limitation is established in 87-2-705, MCA, and was unnecessarily repeated in administrative rule. Landowner preference elk permits are still limited to 15% and will remain so until changed by the legislature.

COMMENT 3: The commission received one comment stating resident applicants should receive 95% of the total hunting licenses for any species in any district instead of the 90% established in ARM 12.3.105.

RESPONSE 3: The commission did not consider or propose any amendments to the long-standing practice of "resident applicants shall receive at least 90% of the total licenses" established in ARM 12.3.105. The amendments to ARM 12.3.105 were made to correct and clarify the commission's role is to set the quota for the number of hunting licenses to be issued.

COMMENT 4: The commission receive one comment stating the 15% set aside for the landowner drawing of a district quota for antelope licenses established in ARM 12.3.112 should be reduced to 5%.

RESPONSE 4: The commission did not consider or propose any amendments to the long-standing practice of setting aside 15% of a district quota for the landowner drawing for antelope in ARM 12.3.112. The amendments to ARM 12.3.112 were made to consolidate the language regarding applications into ARM 12.3.140 and 12.3.160 and to remove the requirement that landowner applications must be verified by local game wardens.

COMMENT 5: The commission received one comment stating organizations that submit proposals for licenses to be sold by auction or lottery should submit their proposal to the public to be voted on by a statewide ballot.

RESPONSE 5: Montana statute authorizes the commission to issue one male mountain sheep license (87-2-722, MCA), one male Shiras moose license (87-2-724, MCA), and one male mountain goat license (87-2-725, MCA) to be sold by auction or lottery. Any change to that authority would require a statutory change by the legislature. The public may provide comment on the proposals submitted when the commission considers which organizations to issue the permits which typically occurs during their August meeting.

COMMENT 6: The commission received one comment stating no applicant regardless of active or veteran military status, should retain accumulated bonus points if they are successful in drawing a permit.

RESPONSE 6: Section 87-2-817, MCA, provides for a member of the armed forces to forfeit a license or permit issued through a drawing as a result of deployment 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. ARM 12.3.135 is amended to guarantee that the member of the armed forces will not lose their accumulated bonus points used to obtain the license or permit if they are unable to use it because of the deployment.

COMMENT 7: The commission received one comment stating the over-the-counter, multi-district archery whitetail doe tags for Region 2 should be five per resident and the season should remain open until January 15.

RESPONSE 7: This comment is outside the scope of this rulemaking process.

/s/ Zach Zipfel
Zach Zipfel
Rule Reviewer

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

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

Certified to the Secretary of State February 15, 2022.