

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

RECEIVED

In the matter of the adoption of New) NOTICE OF ADOPTION
Rules I, II, III, IV, V, and VI pertaining)
to Wildlife Habitat Noxious Weed)
Grant Program)

APR 26 2018

Ravalli County Commissioners

--	--	--	--	--

TO: All Concerned Persons

1. On January 12, 2018, the Department of Fish, Wildlife and Parks (department) published MAR Notice No. 12-479 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 17 of the 2018 Montana Administrative Register, Issue Number 1.

2. The department has adopted the following rules as proposed: New Rule I (12.9.1601), II (12.9.1602), and III (12.9.1603).

3. The department has adopted the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE IV (12.9.1604) GRANT APPLICATIONS (1) Grant applications must address how projects would restore, rehabilitate, improve, or manage land as wildlife habitat through noxious weed management, and must contain the following criteria:

(a) through (d) remain as proposed.

(e) a description of public hunting accessibility of participating lands within the project area;

(e) through (l) remain as proposed but are renumbered (f) through (m).

(2) and (3) remain as proposed.

(4) The layout of the monitoring plan must include the following:

(a) documentation of pre- and post-treatment conditions using repeatable quantitative and photographic methods:

(i) for herbicide and cultural treatments, measurements of targeted noxious weeds and ~~native~~ all accompanying plant life, to be annually conducted at representative treatment locations during the treatment year and three consecutive years post-treatment; and

(ii) and (5) remain as proposed.

AUTH: 87-5-808, MCA

IMP: 87-5-803, 87-5-804, 87-5-805, 87-5-806, 87-5-807, MCA

NEW RULE V (12.9.1605) GRANT APPLICATION SCORING AND RANKING (1) and (2) remain as proposed.

(3) Scoring criteria is the primary guide for ranking applications and for determination of grant viability. Additional factors outside of the scoring criteria may

be considered. Applications that meet minimum qualifications will receive a score based on the following criteria:

- (a) through (f) remain as proposed.
 - (g) Project area provides access for public hunting. (0 to 15 pts)
 - (h) Monitoring plan meets or exceeds requirements as described in ARM 12.9.1604. (0 to 10 pts)
 - (i) The grant application, including proposal information, funding plan, and monitoring plan, is clear, well organized, and reflects a high likelihood of success for all aspects of the proposed project (up to 5 pts). Grant application characteristics or circumstances that may be valuable but are not captured in other scoring criteria (up to 5 pts). (0 to 10 pts)
- (4) remains as proposed.

AUTH: 87-5-808, MCA

IMP: 87-5-803, 87-5-804, 87-5-805, 87-5-806, 87-5-807, MCA

NEW RULE VI (12.9.1606) GRANTS (1) Successful applicants for grants funded by federal Pittman-Robertson Wildlife Restoration funding are federal grant sub-recipients subject to administrative requirements of the Pittman-Robertson Wildlife Restoration Act, including Title 54 50 CFR 80.20-160.

(2) through (7) remain as proposed.

AUTH: 87-5-808, MCA

IMP: 87-5-803, 87-5-804, 87-5-805, 87-5-806, 87-5-807, MCA

4. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: These proposed administrative rules are designed to allocate money intended to restore habitats for wildlife species by removing noxious weeds. New Rule II (Eligible expenditures) falls short of this goal in a few areas: a) First, this rule does not require that seeds purchased for the project be native species. If we are trying to restore habitat for native wildlife, we should only be using native species in our restoration efforts. In particular, non-native perennial grass species (i.e., smooth brome, quackgrass, Kentucky bluegrass) should be prohibited from use under these rules, as they can effectively outcompete native grasses and forb species, and are more difficult to remove than many species that are listed as noxious weeds. b) Second, this rule does not allow expenditures to be used for purposes of monitoring, creating an unfunded mandate for these projects. Monitoring outcomes is a vital component of successful projects, and can represent 5 to 25% of total project costs. If funds are not allowed to be spent on monitoring, monitoring efforts will likely be insufficient to determine whether projects are successful or not. c) Installing new fences, and using funding for grazing seems to be counter-productive to the goal of restoring wildlife habitat.

RESPONSE #1: Regarding item a): It is correct that the rules do not specifically require native seed for restoration work. The department agrees the use of native seeds within native habitats would be the most appropriate choice. The law allows a "preference" to those projects that "maintain native plants after project completion." 87-5-804(4)(d), MCA. Because of the preference allowed, the department cannot, by rule, prohibit all nonnative seeds. The department would be rendering the preference in law meaningless through rulemaking. The department is, therefore, prohibited from adopting the rule you suggest.

Regarding item b): The department's authority to spend program funds is limited to conditions of the Wildlife Habitat Improvement Act. Allowable expenditures are limited to weed control, establishing seedings, and establishing grazing management (87-5-806(4), MCA); there is no provision to pay for vegetation monitoring. Vegetation monitoring is a program requirement set in statute (87-5-804(1)(d), MCA), but program funds will not be used for this.

Regarding item c): As earlier described, the program statute provides the option to fund livestock grazing infrastructure for improving livestock management as part of an integrated noxious weed plan. Adjustments in livestock grazing strategies can directly improve resilience and productivity of perennial vegetation. Managing for a vigorous intact native plant community will help reduce a habitat's susceptibility to future weed infestations.

COMMENT #2: Under (1)(a) and (1)(b) of New Rule II, "prescribed grazing management" is listed as a good, and "installation of prescribed grazing infrastructure" is a service, which is erroneous.

RESPONSE #2: The goods described in New Rule II(1)(a) are tangible items that can be purchased using WHIP funding. These would include items such as fence materials, pipelines, watering facilities or the like, used to establish a prescribed grazing system. Subsection (1)(b) describes how installation of such infrastructure improvements is a service that can be paid for using WHIP funding.

COMMENT #3: Wildlife habitat is not necessarily recovered if the target non-native species is removed from the system. Secondary invasion by other non-native species, and damage to native plant populations from herbicide use are common side effects of invasive plant management.

RESPONSE #3: In response to this comment, the department has amended the proposed language to require noxious weeds and all accompanying plant life be measured as part of the monitoring plan.

COMMENT #4: The department received a comment stating that there are no guidelines in these proposed rules for what monitoring efforts should measure. Ideally, the State should develop basic monitoring protocols that detail methods, data forms, and guidelines for number of plots based on project area.

RESPONSE #4: New Rule VI(7) provides for the option for the department to develop standardized monitoring techniques. The department chose not to include these details in ARM because of the likely need for adapting and refining techniques over time.

COMMENT #5: The department received a comment recommending that continuation of grant funding be dependent upon satisfactory annual reports. The administrative rules should establish in ARM guidelines for what is satisfactory.

RESPONSE #5: Reporting requirements will be identified in the subrecipient grant agreement between the department and the project sponsor. These are not included in ARM because of the likely need for refining over time.

COMMENT #6: A comment was received that stated that there should be some recognition that managing noxious weeds in the Priority 1A, 1B, and 2A categories should receive priority for funding, especially when herbicide use is planned. Management efforts that use herbicide to treat more widely established (Priority 2B noxious weeds) are less likely to be successful at reaching restoration goals. Grantees should be encouraged to treat weeds in the 2B category using biological controls, or grazing in the grant ranking procedure, or show that a 2B species has a limited distribution in the project area.

RESPONSE #6: The department recognizes the value of considering weed categories as well as other circumstances that may not be specifically identified in the ranking criteria as proposed. In response to this comment, the department has amended the last scoring criterion New Rule V(3)(i) to provide up to 5 points for other circumstances that may be important but not specifically recognized in the other ranking criteria.

COMMENT #7: A comment was received suggesting that the department should consider allowing grants to fund treatment of noxious weeds that have been listed as noxious weeds by Montana counties, or adjacent states, but not by the state of Montana.

RESPONSE #7: The Montana Wildlife Habitat Improvement Act specifically references 7-22-2101, MCA when defining noxious weeds. That definition includes both statewide noxious weeds as well as weeds that are designated as noxious by a district weed board.

COMMENT #8: The department received a comment requesting that the Russian Olive Tree be listed as a noxious weed in Montana.

RESPONSE #8: This comment is outside the scope of this rulemaking.

COMMENT #9: Noxious weeds have been adapting to resist chemical herbicides and are becoming more and more difficult to manage with chemical applications alone. While the cost of these herbicides continues to rise their relative

effectiveness has remained the same. I would like to see ALL of the allocated funding be directed to mechanical methods for removing and managing noxious weed populations. I believe that mechanical methods will produce a higher quality result while at the same time being the most cost-effective approach, especially since the program is focused on Landscape scale partnership projects. Beyond mechanical removal, over-seeding with suitable native grasses is going to be essential.

RESPONSE #9: Consistent with the Montana Wildlife Habitat Improvement Act and the Montana Noxious Weed Management Plan, the department will encourage an ecologically sound integrated approach to weed management that supports cost-effective treatment techniques that minimize negative impacts on native vegetation. The best technique will vary by circumstance.

COMMENT #10: The option for over-seeding with suitable native grasses is going to be essential.

RESPONSE #10: The rules as proposed provide the option for purchasing seed and contracting seeding operations.

COMMENT #11: A comment was received in support of the use grant funds to enhance wildlife habitat by using herbicides to control noxious weeds on FWP owned and leased property.

RESPONSE #11: Neither statute nor rules, as proposed, prohibit the use of WHIP funding on department lands. That said, it is the department's intent to consider the use of WHIP funding when part of a larger, multi-ownership grant application.

COMMENT #12: A comment was received recommending adding the words "hunting" and "trapping" in New Rule V(3)(g).

RESPONSE #12: The department's intent is to be consistent with the statutory requirement for ranking proposals (87-5-804, MCA). The proposed scoring criteria mistakenly left the word "hunting" out of the public access criterion. In response to this and other comments and consistent with the department's original intent, the term "hunting" was added to the public access criterion. Grant applications with a detailed description of substantial public hunting accessibility, to include trapping opportunities, would receive a higher score based on this criterion.

COMMENT #13: A comment was received suggesting that the department should add to New Rule IV Grant Applications a requirement for detailing public hunting access opportunities within the project area, corresponding to the scoring component of public hunting access in New Rule V.

RESPONSE #13: In response to this comment, the department has amended the proposed administrative rules by adding an additional criterion within New Rule IV

Grant Applications for describing public hunting accessibility of participating lands within the project area.

COMMENT #14: The title number listed under New Rule VI Grants is incorrect. It should be Title 50 (not 51) of the federal rules.

RESPONSE #14: In response to this comment, the department has amended the rule by correcting this mistake, changing Title 51 to Title 50.

/s/ Rebecca Dockter
Rebecca Dockter
Rule Reviewer

/s/ Martha Williams
Martha Williams
Director
Department of Fish, Wildlife and Parks

Certified to the Secretary of State March 20, 2018.