ISSUE NO. 13

The Montana Administrative Register (MAR), a twice-monthly publication, has three sections. The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The rule section indicates that the proposed rule action is adopted and lists any changes made since the proposed stage. The interpretation section contains the attorney general's opinions and state declaratory rulings. Special notices and tables are found at the back of each register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Administrative Rules Bureau at (406) 444-2055.

Page Number

TABLE OF CONTENTS

NOTICE SECTION

BEFORE THE TEACHERS' RETIREMENT SYSTEM
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I, the amendment of ARM 2.44.301A, 2.44.307, 2.44.308, 2.44.401, 2.44.412, 2.44.413, 2.44.513, 2.44.515, 2.44.517A, 2.44.518, 2.44.522, 2.44.523, 2.44.524, 2.44.527, and the repeal of 2.44.511, pertaining to the teachers' retirement system	)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On August 22, 2003, at 8:00 a.m. a public hearing will be held in the boardroom of the Teachers' Retirement System at 1500 East Sixth Avenue, Helena, Montana, to consider the proposed adoption of new rule I, amendment of ARM 2.44.301A, 2.44.307, 2.44.308, 2.44.401, 2.44.412, 2.44.413, 2.44.513, 2.44.515, 2.44.517A, 2.44.518, 2.44.522, 2.44.523, 2.44.524, 2.44.527, and repeal of 2.44.511.

2. The Teachers' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Teachers' Retirement Board no later then 5:00 p.m. on August 15, 2003, to advise us of the nature of the accommodation that you need. Please contact Judy Martin, 1500 East Sixth Avenue, Helena, MT 59620; (406) 444-3134; or e-mail judym@state.mt.us.

3. The proposed new rule provides as follows:

RULE I POST RETIREMENT EARNINGS Any form of non-traditional compensation or employer-paid fringe benefit converted to compensation as pursuant to 19-20-101(3), MCA, and reported to teachers' retirement system as earned compensation prior to retirement, must be included in the compensation reported to teachers' retirement system in a post retirement position subject to 19-20-804, MCA. These types of remuneration will be subject to the one-third earnings limitations under 19-20-804, MCA.

AUTH: Sec. 19-20-201, MCA
IMP: Sec. 19-20-101 and 19-20-804, MCA

REASON: Section 19-20-101, MCA recognizes that employers can and do convert employer-paid fringe benefits excluded from the definition of earned compensation under 19-20-101(6), MCA to earned compensation, and that these enhanced salaries are used to calculate a member's average final compensation. If a

retired member continues to receive this same type of compensation in a post retirement position, it is reasonable that the retired member's total compensation also be subject to the earning limitations provided for in 19-20-804, MCA.

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

2.44.301A DEFINITIONS For the purpose of this chapter, the following definitions apply:

(1) "Board" or "retirement board" means the teachers' retirement board as provided for in 2-5-1010, MCA.

(2) "Contingent beneficiary" means a beneficiary designated to receive payments if all primary beneficiaries are deceased. Contingent beneficiaries will be awarded benefits on a share and share alike basis, unless specified otherwise on the member's designation form.

(3) "Enrolled actuary" means a person who is enrolled by the joint board for the enrollment of actuaries established under subtitle C of ~~the~~ title III of the Employee Retirement Income Security Act of 1974.

(4) "Primary beneficiary" means a beneficiary or beneficiaries designated to receive payments upon the death of an active, inactive or retired member, or alternate payee. Primary beneficiaries will be awarded benefits on a share and share alike basis, unless specified otherwise on the member's designation form.

~~(3)~~(5) "Service credits" or "creditable service" means the number of years credited to a member's account for which contributions have been received as required by statute or rule.

~~(4)~~(6) "School term or school year" means the fiscal year July 1 through June 30.

AUTH: Sec. 19-20-201, MCA
IMP: Sec. 19-20-204, MCA

REASON: There is a reasonable necessity to amend ARM 2.44.301A to clarify the definitions of contingent and primary beneficiaries. These terms are used in various administrative rules to identify potential and/or eligible benefit recipients.

2.44.307 MEMBERSHIP OF TEACHER'S AIDES AND PART-TIME EMPLOYEES (1) ~~Teacher's aides employed in an instructional services capacity after September 1, 1989, are required to participate in the teachers' retirement system provided their predominate duties are those of a teacher's aide and not a substitute teacher or any other position for which membership is mandatory under 19-20-302, MCA and that they are:~~

~~(a) employed for 3.5 hours per day or 17.5 hours per week and;~~

~~(b) employed at least 210 hours during the school year.~~

~~(2)~~ Teacher's aides employed prior to September 1, 1989, who remained in the public employee~~'~~s' retirement system are not eligible to participate in the teachers' retirement system while

employed as a teacher's aide with the same employer.

~~(3) A teacher's aide will be considered in an instructional services capacity if they are assisting a certified teacher in the education and instruction of students in the regular curriculum of the institution.~~

~~(4)~~(2) Part-time, ~~post graduate~~ postgraduate instructors in the university system are not eligible for membership.

~~(5)~~(3) A part-time employee, who has not been re-employed under 19-20-804, MCA will be considered an active member after completing the equivalent of 30 full-time days (210 hours) of membership service.

AUTH: Sec. 19-20-201, MCA
IMP: Sec. 19-20-302, MCA

REASON: ARM 2.44.307 is proposed to be amended because the body of this rule was made part of 19-20-302, MCA, in 1999 as part of HB 97, and ARM 2.44.307 is no longer necessary.

2.44.308 INDEPENDENT CONTRACTOR (1) Any person employed as an independent contractor shall be ineligible for membership in the teachers' retirement system. Certification from the Montana department of labor and industry pursuant to 39-71-401(3), MCA, as an independent contractor shall be accepted as prima facie evidence of independent contractor status by the teachers' retirement board.

(2) In absence of certification by the department of labor and industry, it must be shown that the worker is both free from direction and control of the party utilizing their services and ~~have~~ has an independently established business. ~~The burden of proof before the teachers' retirement board is on the employer.~~

(3) If a person's status as an independent contractor is in question, they must become a member of the teachers' retirement system as provided under 19-20-302, MCA. The burden of proof before the teachers' retirement board is on the employer. The employer will submit to the teachers' retirement board, upon request, a copy of the independent contractor certification issued by the department of labor and industry for any contractor employed in a position normally eligible for membership under the teachers' retirement system.

AUTH: Sec. 19-20-201, MCA
IMP: Sec. 19-20-302, MCA

REASON: The change is reasonably necessary to insure that the qualified plan status of the teachers' retirement system is maintained; independent contractor status must be evaluated under the internal revenue service's test of independent contractor status. The internal revenue service is vigilant in its enforcement of employee status and has focused on school districts as one area where it is looking for noncompliance. Simply "labeling" a person an independent contractor is not determinative of that status - control is.

2.44.401 CALCULATING SERVICE CREDITS (1) The basic period of time for calculating service credit shall be the ~~school term~~ fiscal year July 1 through June 30. Service credit in the Montana teachers' retirement system shall be based upon the following unless otherwise provided by rule or statute:

(a) 180 days or 1,260 hours of full-time employment over a period of at least nine months, shall equal 1.0 year service credit for any employment eligible to be qualified under the teachers' retirement system.

(b) and (c) remain the same.

(2) A member employed ~~part-time~~ less than full-time during the ~~school term~~ fiscal year, shall receive part-time service credit based on the total ~~full-time equivalent~~ number of hours, days, or months ~~verified by his employer~~ reported to the teachers' retirement system, divided by the number of hours, days or months ~~reported~~ of equivalent full-time service. For the purpose of this ~~sub~~section, seven hours shall be considered one day.

(3) remains the same.

AUTH: Sec. 19-20-201, MCA
IMP: Sec. 19-20-401 through 19-20-411 and 19-20-417, MCA

REASON: It is reasonable necessary to amend ARM 2.44.401 for the purpose of clarifying the calculation of service credit for members working less than full-time because the number of part-time members has increased significantly over the past few years.

2.44.412 VETERANS CALLED TO ACTIVE DUTY (1) Members of the teachers' retirement system called to active duty for a period not to exceed five years and reinstated, in accordance with the provisions of ~~Vietnam Era Veterans' Readjustment Act of 1974~~ Uniformed Services Employment and Reemployment Rights Act of 1994, as amended, to a position eligible for membership under the teachers' retirement system shall be considered continuously employed during their military leave when determining vested interest and eligibility for retirement benefits.

(2) Reinstated veterans may elect to purchase creditable service for their military leave to be used in the calculation of retirement benefits. The cost to purchase this service shall be equal to the employee contributions that would have been made had they not been called to active duty. Interest accruing on the balance due to purchase active duty service will not be levied during the first year following the date of discharge. If payment is not received within one year following discharge, interest will be assessed as provided under ARM 2.44.405.

AUTH: Sec. 19-20-201, MCA
IMP: Sec. 19-20-801, 19-20-901 and 19-20-1001, MCA

REASON: The Uniformed Services Employment and Reemployment Rights Act of 1994 is an update to the Vietnam Era Veteran's Readjustment Act relating to protections for retirement service.

These amendments are necessary to ensure that all veterans called to active duty will receive the retirement benefits promised to them under state and federal statutes.

2.44.413 CREDITABLE SERVICE ~~FOR MEMBERS AFTER JULY 1, 1989~~ ACTUARIAL COST (1) The actuarial cost to purchase creditable service ~~by members who first became members on or after July 1, 1989,~~ will vary by the member's compensation, age and years of service at the time they apply or are eligible to purchase the additional service.

(a) The total compensation reported to the teachers' retirement system for the most recent fiscal year for which the member was credited with full-time service will be used to determine the actuarial cost.

(b) remains the same.

(c) The years of service will ~~be determined by~~ include the total number of years of creditable service the member is eligible to ~~receive~~ purchase on the date they apply or are eligible to purchase service under this rule.

(2) Service will be credited to the member's account at the time they have completed payment in full. ~~If the member terminates payments or advises the TRS that they will not make any further payments, the service purchased will be credited on a prorated basis.~~

AUTH: Sec. 19-20-201, MCA
IMP: Sec. ~~Title 19, chapter 20, part 4~~ 19-20-401 through 19-20-411, 19-20-416, and 19-20-417, MCA

REASON: It is reasonably necessary to amend ARM 2.44.413 eliminating extraneous verbiage for the purpose of clarity and to comply with internal revenue service Private Letter Ruling received March 3, 1999. Members electing to purchase service under the provisions of 19-20-415, MCA, and who have signed an irrevocable election to purchase that service, may only terminate payroll deductions upon termination of employment.

2.44.513 WITHHOLDING OF GROUP INSURANCE PREMIUM FROM RETIREMENT BENEFIT (1) A ~~retiree~~ benefit recipient who belongs to an employer sponsored group insurance plan that provides for retirees or their beneficiary to continue participation, may elect to have monthly premiums withheld from their retirement allowance.

(2) ~~Retirees~~ Benefit recipients must enroll in such plans through ~~their~~ the retired member's previous employers.

(3) The employer will provide the following information to the teachers' retirement board:

(a) ~~Certification~~ Written authorization of eligibility for all ~~retirees~~ benefit recipients electing to have the premium withheld from the monthly retirement allowance.

(b) Name, social security number, carrier and monthly premium amount for each ~~retiree~~ benefit recipient.

(4) Notification of changes in the premium amount shall be provided by employer to both the ~~retiree~~ benefit recipient and

the teachers' retirement board ~~30 days prior to the effective date~~.

(a) If ~~30 days~~ notification of eligibility or a change in ~~cannot be provided to~~ premiums is received by the teachers' retirement board before the 15th of the month, the premium change will be made concurrent with the month of receipt. If notification or a premium change is not received by the 15th of the month, the change will not be made until the following month, and the employer must make arrangements with the ~~retiree~~ benefit recipient for payment of the correct premium amount.

AUTH: Sec. 19-20-201, MCA
IMP: Sec. 19-20-1104, MCA

REASON: The Board proposes to amend ARM 2.44.513 eliminating extraneous verbiage for the purpose of clarity. Also, amendments are reasonably necessary to comply with changes in HB 154 from the 2003 session permitting beneficiaries of deceased retired members to elect to have premiums withheld from their retirement benefit if eligible to participate in the employer's plan.

2.44.515 CORRECTION OF ERRORS ON CONTRIBUTIONS AND OVERPAYMENTS (1) remains the same.

(2) Contributions and wages reported for prior ~~school~~ fiscal years must be corrected using the employee and employer contribution rates in effect for the period the wages were earned.

(3) remains the same.

(4) Interest shall accrue on contributions not reported to teacher's retirement system in a prior fiscal year, or on amounts overpaid to members by the system at the actuarial assumed rate. Interest will accrue from the date the contributions were due, or the date the error occurred.

(5) If ~~payment~~ delinquent prior fiscal year employee and/or employer contributions, or a repayment of benefits paid in error are ~~is~~ received by teachers' retirement system within 30 days of notification of the amount due, interest may be waived if less than $5.00 or if the board finds that the error was caused by the teachers' retirement system.

AUTH: Sec. 19-20-201, MCA
IMP: Sec. 19-20-208, MCA

REASON: It is reasonable to amend ARM 2.44.515 to clarify and simplify language regarding correction of errors and interest to be charged by teachers' retirement system on the correction of errors, delinquent contributions and overpayment of benefits.

2.44.517A REPORTING OF TERMINATION PAY (1) A completed and signed Termination Pay Form together with the employee and employer contributions due must be received by the teachers' retirement system by the 15th of the month, following the month

in which ~~the employee terminated employment~~ termination pay is paid to the member.

(2) Interest will be assessed at the actuarially assumed rate on employee and/or employer contributions ~~received after the 15th~~ over 30 days delinquent.

(3) ~~The member and their employer will be notified in writing when contributions due on termination pay are over 30 days past due.~~

~~(4)~~ If contributions on termination pay are not received within 60 days of the effective date of retirement, monthly benefits calculated using termination pay will be recalculated and adjusted retroactive to the date of retirement.

~~(5)~~(4) If the member submits the employee contributions due but the employer refuses or does not timely remit the employer contributions due, the member will be given an additional 30 days to work with the employer to remit contributions due before benefits will be recalculated.

(5) The teachers' retirement system member and their employer will be notified in writing prior to assessing interest on unpaid contributions and given 30 days to remit any contributions due before benefits are recalculated.

AUTH: Sec. 19-20-201, MCA
IMP: Sec. ~~19-20-101(5)~~ 19-20-716, MCA

REASON: It is reasonably necessary to amend ARM 2.44.517A to clarify the collection of delinquent contributions on termination pay and assessment of interest, and to require that the retired member and/or their employer must be notified before any adjustments are made.

2.44.518 LIMIT ON EARNED COMPENSATION (1) through (1)(b) remain the same.

(c) result from compensation received for summer employment, provided summer compensation does not exceed ~~the lessor of:~~

~~(i)~~ one-ninth of the academic year contract for each full month or prorated for each portion of a month employed during the summer; or

~~(ii) 110% of the summer compensation the member was eligible to earn each month during the preceding summer;~~

(d) ~~have resulted from change of employer; or~~

~~(e)~~ have resulted from re-employment for a period of not less than one year following a break in service.

(2) through (2)(b) remain the same.

(3) The assignment of additional duties of a one time or temporary nature shall not be exempt from the 10% limitation.

(4) ~~The 10% cap shall be calculated as per the following example and applied consistently to all members:~~

	~~FY 1996~~	~~FY 1997~~	~~FY 1998~~	~~FY 1999~~
~~BASE CONTRACT~~	~~$64,750.00~~	~~$70,230.00~~	~~$90,000.00~~	~~$90,000.00~~
~~10% CAP~~	~~NA~~	~~NA~~	~~77,253.00~~	~~84,978.00~~

~~EXCESS BASE EARNINGS~~	~~NA~~	~~NA~~	~~12,747.00~~	~~5,022.00~~
SUMMER COMPENSATION ~~(3 months)~~	~~21,583.00~~	~~23,700.00~~	~~30,000.00~~	~~20,000.00~~
~~SUMMER 10% CAP~~	~~NA~~	~~23,410.00~~	~~25,751.00~~	~~NA~~
~~EXCESS SUMMER EARNINGS~~	~~NA~~	~~290.00~~	~~4,249.00~~	~~NA~~
~~TOTAL EXCESS~~		~~$22,308.00~~		
~~AVERAGE FINAL COMPENSATION~~		~~$93,640.00~~	~~$103,004.00~~	~~$104,978.00~~

Average final compensation is equal to total compensation less excess earnings not qualifying for an exemption.

AUTH: Sec. 19-20-201, MCA
IMP: Sec. ~~19-4-101, 19-20-101(5),~~ 19-20-715, MCA

REASON: It is reasonably necessary to amend ARM 2.44.518 eliminating extraneous verbiage for the purpose of clarity. In addition, the stricken language is over restrictive and goes beyond the statement of intent attached to the original legislation. The exemption provided in subsection (1)(d) has been deleted because it is outside the statement of intent in that it allows an exemption for promotions or one time salary increases. The example has been deleted because it is not possible to include an example that covers all situations, making any single example less useful and confusing.

The statement of intent found in Chapter No. 331, Montana Session Laws 1989, House Bill 317, reads as follows:

"It is the intent of the legislature to provide equitable retirement benefits to all members of the teachers' retirement system based on their normal service and salary. The legislature further intends to limit the effect on the retirement system of isolated salary increases received by selected individuals through promotions or one time salary enhancements during their last years of employment. The bill provides that the amount of each year's earned compensation that may be used in the calculation of a member's average final compensation may not exceed the member's earned compensation for the preceding year by more than 10%, except as provided by rule by the board. The legislature intends that the board's rules exempt from the 10% statutory cap increases that:

(1) result from collective bargaining agreements;

(2) have been granted by the employer to all other similarly situated employees; or

(3) have been received as compensation for summer employment.

In addition, the legislature intends that the board's rules require a member to provide adequate documentation to permit the board to make an informed decision concerning exceptions to the 10% statutory cap."

2.44.522 FAMILY LAW ORDER - CONTENTS AND DURATION

(1) remains the same.

(2) ~~A FLO may order the splitting and payment of the sums payable to specific participants from a retirement system.~~ The term participant will be construed to include all possible appropriate participants unless specifically defined in the FLO. If specific participants are not named, retirement benefits or amounts payable to another upon the death of any and all participants will be allocated according to the terms of the FLO. Specific designations of participant(s) in a FLO may include:

(a) An individual "member" (active, inactive or retired)~~.~~;

(b) "Primary" ~~and/~~or ~~designated~~ contingent beneficiary(ies) eligible to receive lump sum payment(s) upon the death of an active or inactive member of the system; and

(c) "~~d~~Designated beneficiary" designated at the time of retirement to receive continuing retirement benefits upon the death of the retired member.

(3) Payments under a FLO must be the same type and form as, and for no greater amount or duration than, those available to any participant from the account being assigned. A benefit, option or payment available for another at the discretion of the ~~participant~~ teachers' retirement system member may be subject to a FLO. Only the ~~participant~~ teachers' retirement system member can be required to designate a specific option or request a refund. ~~(For example, if a participant may choose a beneficiary, the FLO may require the participant to name a specific alternate payee as a beneficiary or require that a portion of the named beneficiary's payment be paid to the alternate payee.)~~

(4) If benefits are currently payable to the participant(s), the FLO may specify a future effective date. However, ~~no~~ a FLO may not provide for payments to an alternate payee prior to the date on which the participant first becomes eligible for payment from the retirement system.

(5) Unless otherwise specified in the FLO, payments to an alternate payee will ~~continue only~~ not terminate until benefits cease to be paid to any participant.

(6) Payments to an alternate payee may be ~~further~~ limited in the FLO to:

(a) and (b) remain the same.

(c) the life of the alternate payee provided payment is further limited not to exceed the life of any participant~~, or~~

~~(d) the life of a designated participant~~.

~~(6)~~(7) Two basic types of payment distributions are allowed to alternate payees: "defined sum" and "proportionate payments."

(a) A "defined sum" must designate a specific total dollar amount to be paid to the alternate payee in the form of a fixed

dollar amount payable for a designated maximum number of months. ~~(For example: "A sum of $9,000 to be paid at a rate of $150 per month for 60 monthly payments or until benefits cease, whichever comes first".)~~ If the fixed monthly payment designated is more than the total monthly benefit or payment to the participant, the lesser amount will be paid for the designated number of months, or until any benefits cease. The defined sum, the designated monthly dollar amount, and the designated number of months will not be increased by subsequent conditions or events.

(b) "Proportionate payments" may be ordered by designating either a fixed percentage of benefits payable or a formula describing how the percentage must be calculated at the time payments begin. The fixed percentage must indicate a specific percentage of each payment to be paid to the alternate payee, either as a percentage or as a fraction for which the numerator and denominator are indicated. ~~(For example: "50% of any withdrawal of member contributions.")~~ A formula calculating a fixed percentage may use either years or dollar amounts to establish a proportionate benefit for an alternate payee. ~~(For example: "a fixed percentage of benefits which is equal to 50% of 7 years divided by the total number of years of service used to calculate the participant's benefit" or "a fixed percentage of benefits which is described by dividing $150 per month by the total monthly benefit amount payable for service retirement when participant's payments begin".)~~ All proportionate payments to the alternate payee will include the same proportion of any guaranteed annual benefit allowance, cost of living allowance, post-retirement adjustment or similar increase payable to the participant in any month during which the FLO is in effect.

AUTH: Sec. 19-20-201, MCA
IMP: Sec. 19-20-305, MCA

REASON: It is reasonably necessary to amend ARM 2.44.522 and eliminate extraneous verbiage for the purpose of clarity and providing that the division of benefits under a family law order is limited to the life of the teachers' retirement system participant.

2.44.523 FAMILY LAW ORDERS – APPROVAL AND IMPLEMENTATION

(1) ~~A~~ The participant, ~~or~~ alternate payee, or their legal counsel, must submit a ~~certified~~ draft copy of ~~a court judgment, decree or order containing a~~ the proposed family law order (FLO) to the board for review and approval. The board ~~may~~ has delegated authority for approval of a proposed FLO to the executive director.

(2) ~~No FLO is effective prior to October 1, 1993. The effective date for a required initiation or change in a type or form of benefit, option, payment, or beneficiary designation will be the date the participant properly executes and files the appropriate corresponding form with the board. Unless a later date is specified in the proposed FLO, the effective date for purposes of allocating benefits and payments in progress, is the first day of the month following receipt.~~ A family law order

will not become effective until after the FLO has been reviewed and approved by the board and a copy of the endorsed file copy has been submitted to the office of the teachers' retirement system and acknowledged by the board as an approved family law order.

(3) ~~Beginning on the appropriate effective date, payments to the participant, if any, will be adjusted as directed in the proposed FLO and payments to be received by the alternate payee(s), if any, will be retained by the board. If the proposed FLO is approved, retained payments will be paid to the alternate payee(s); if not approved, to the participant.~~ The effective date for payment of benefits under a FLO to an alternate payee will be:

(a) the date the teachers' retirement system member applies for and received retirement benefits; or

(b) unless a later date is specified in the FLO for purposes of allocating benefits and payments in progress:

(i) the first of the month in which the endorsed file copy is received, provided the FLO is received on or before the 15th of the month; or

(ii) the first day of the month following receipt of the endorsed file copy if the FLO is received after the 15th of the month.

(c) A date later than the 15th of the month for receipt of a FLO and processing payments may be approved by the retired payroll supervisor, provided the later date would not delay processing of payroll for that month.

(4) The board's decision to approve or not approve a proposed FLO is final unless the participant or alternate payee files a request for an administrative contested case hearing within ~~10~~30 days from the date the board sends notice of the decision. If an administrative hearing is properly requested, the final administrative decision must be made by the board after receiving the hearing examiner's proposed decision.

(5) Upon receipt of a certified copy of a stay from the issuing court or the Montana supreme court, the board will suspend further consideration or implementation of a ~~proposed~~ FLO. Unless otherwise directed by court order, the board will retain payments withheld prior to receipt of the stay and simultaneously resume making payments of participant(s) full benefit(s). The board will take further action only on receipt of a certified copy of an order directing such action. If the stay is lifted, the board will proceed with recognition, approval and implementation procedures as outlined herein. Any amount owing the alternate payee may be paid out of any payments owing the participant.

(6) remains the same.

(7) An alternate payee may receive payment by electronic fund transfer upon submission of a properly executed form ~~required by the board~~.

(8) An alternate payee must promptly inform the board in writing of any change of name or address.

AUTH: Sec. 19-20-201, MCA

IMP: Sec. 19-20-305, MCA

REASON: It is reasonably necessary to amend ARM 2.44.523 eliminating extraneous verbiage for the purpose of clarifying that the effective date of a family law order cannot be prior to a member's termination and application for benefits or prior to the first of the month following the month of receipt of the family law order by the Teachers' Retirement System.

2.44.524 ADJUSTMENT OF DISABILITY ALLOWANCE FOR OUTSIDE EARNINGS (1) ~~Disabled members who are gainfully employed must notify the teachers' retirement system within thirty days of being employed. Notification must include:~~

~~(a) Name and address of employer,~~

~~(b) Salary or hourly rate of pay and estimated yearly earnings, and~~

~~(c) Description of their duties and responsibilities and if the position is full-time or part-time.~~

~~(2) The~~ Until age 60, the disabled member must report to the teachers' retirement system, no less than annually, the total amount earned each year. Members are encouraged to report earnings each month so that the TRS can advise the member when they will earn more than allowed and adjust their benefit if necessary.

(2) Failure to report earnings as required under this rule will result in suspension of benefits until the necessary reports have been filed with the teachers' retirement system.

AUTH: Sec. 19-20-201, MCA
IMP: Sec. 19-20-904, 19-20-905, MCA

REASON: It is not possible or reasonable to enforce or require members to report when they return to work to teachers' retirement system. It is reasonable to require disability recipients, until they reach age 60, to annually report any earnings that could result in reducing or canceling their disability retirement benefit pursuant to 19-20-905, MCA.

2.44.527 PAYMENT FOR SERVICE - CALCULATION OF RETIREMENT BENEFITS (1) All payments for the purchase of service credits must be completed ~~by the 15th of the month in which the member retires~~ within 15 days of the member's retirement effective date.

(2) If payment is over ~~30~~ 90 days past due, the member ~~and their employer~~ will be notified in writing that contributions plus accrued interest are due and payable and that benefits will be recalculated and adjusted retroactive to the date of retirement if payment is not received within ~~60~~ 30 days of ~~the effective date of retirement~~ notification.

AUTH: Sec. 19-20-201, MCA
IMP: Sec. 19-20-801, 19-20-901 and 19-20-1001, MCA

REASON: It is reasonably necessary to amend ARM 2.44.527

clarifying that the failure to contribute the amounts necessary to purchase additional service will result in recalculation of retirement benefits.

5. The Teachers' Retirement Board proposes to repeal the following rule:

2.44.511 REINSTATEMENT OF BENEFITS which can be found on page 2-3265 of the Administrative Rules of Montana.

AUTH: Sec. 19-20-201, MCA
IMP: Sec. 19-20-302 and 19-20-804, MCA

REASON: ARM 2.44.511 is no longer necessary because of the amendments made by the 2003 legislature under HB 154.

6. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to David L. Senn, Teachers' Retirement System, PO Box 200139, Helena, MT 59601-0139, and must be received no later than August 22, 2003.

7. Judy Martin, Teachers' Retirement System, PO Box 200139, Helena, MT 59601-0139, has been designated to preside over and conduct the hearing.

8. The Teachers' Retirement Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. 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 notice regarding the Teachers' Retirement System. Such written requests may be mailed or delivered to Judy Martin, Teachers' Retirement System, 1500 East Sixth Avenue, PO Box 200139, Helena, MT 59620-0139, faxed to the office at (406) 444-2641, e-mailed to judym@state.mt.us or may be made by completing a request form at any rules hearing held by the Teachers' Retirement Board.

9. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

/s/ David L. Senn
David L. Senn, Executive Director
Teachers' Retirement Board

/s/ Dal Smilie
Dal Smilie, Rule Reviewer

Certified to the Secretary of State on July 7, 2003.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the adoption of new Rule I and amendment of ARM 2.43.422, 2.43.423 and 2.43.428, pertaining to the purchase of federal volunteer service by members of the Public Employees' Retirement System Defined Benefit Retirement Plan	))))))	NOTICE OF PROPOSED ADOPTION AND AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On September 12, 2003, the Public Employees' Retirement Board proposes to adopt new Rule I and amend ARM 2.43.422, 2.43.423, and 2.43.428 pertaining to the purchase of federal volunteer service by members of the Public Employees' Retirement System Defined Benefit Retirement Plan. This retirement plan is administered by the Public Employees' Retirement Board.

2. The Public Employees' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Public Employees' Retirement Board no later than 5:00 p.m. on August 11, 2003, to advise us of the nature of the accommodation that you need. Please contact Melanie Symons, Public Employees' Retirement Board, 100 North Park Avenue, Suite 100, P.O. Box 200131, Helena, MT 59620-0131; telephone 406-444-9174; TDD 406-444-1421; FAX 406-444-5428; e-mail msymons@state.mt.us.

3. The proposed new rule provides as follows:

RULE I ELIGIBLE FEDERAL VOLUNTEER SERVICE AND ITS DOCUMENTATION (1) Federal volunteer service eligible to be purchased into a member's PERS account is limited to service in the following:

(a) peace corps;

(b) americorps vista;

(c) americorps national community conservation corps; and

(d) state and national americorps programs that require the volunteer to enroll for a specific term of service.

(2) Federal volunteer service eligible to be purchased into a member's PERS account does not include programs such as:

(a) freedomcorps;

(b) seniorcorps;

(c) learn and serve America; and

(d) any other program for which a specific term of service is not required.

AUTH: 19-2-403, MCA
IMP: 19-3-515, MCA

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

2.43.422 MOST ~~CURRENT~~ RECENT SERVICE ~~QUALIFIED~~ PURCHASED FIRST (1) When ~~qualifying~~ purchasing only a portion of a member's eligible military, federal volunteer, refunded, or other full-time public service, the member must first ~~qualify~~ purchase the most recent service.

(2) When ~~requalifying~~ purchasing or transferring a portion of a member's ~~previously refunded~~ service ~~credits~~ credit from another retirement system, the member must first ~~requalify his~~ purchase the most recent service ~~time within that system~~.

AUTH: ~~19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202~~ 19-2-403, MCA
IMP: ~~Title 19, Ch. 3, part 5, Ch. 5, 6, 7, 8, part 3; Ch. 9 and 13, part 4,~~ 19-2-715, 19-3-503, 19-3-504, 19-3-505, 19-3-510, 19-3-512, 19-3-513, 19-3-515, 19-5-409, 19-6-801, 19-6-803, 19-6-804, 19-6-810, 19-7-803, 19-7-804, 19-7-810, 19-8-901, 19-8-903, 19-8-904, 19-8-905, 19-9-403, 19-9-411, 19-13-403, and 19-13-405, MCA

2.43.423 ~~QUALIFICATION~~ PURCHASE OF OTHER TYPES OF SERVICE (1) When ~~the statutes allow for~~ military, U.S. government, federal volunteer, full-time Montana public ~~service~~ employment, or other service ~~which is not otherwise "creditable service" to be qualified~~ is eligible to be purchased into a retirement system, the ~~eligible~~ member ~~will be~~ is responsible for providing ~~military records or~~ acceptable documentation to the board.

(2) The documents submitted by the member must be sufficient to prove to the board that the service is eligible to be purchased by the member.

(a) Documents used to prove military or federal volunteer service shall include:

(i) military service records verified by the appropriate branch of service;

(ii) peace corps service records verified by the appropriate federal service agency; or

(iii) national service position records verified by the corporation for national and community service.

(b) Documents used to prove U.S. government or Montana public employment shall include employer certification of ~~such~~ the service and the compensation received ~~to the board~~.

~~(2)~~ (i) If ~~certification~~ employer-certified salary and employment documentation is not available from the employer, or if the member contests ~~such certification~~ the certified documents, the member may petition the board to ~~qualify such~~ purchase the service based upon acceptable documentation

listed in ARM 2.43.428.

~~(3)~~ (2) The board shall review the ~~required employer certifications or acceptable~~ documents presented to ~~qualify other full-time public service and~~ determine whether ~~such~~ the service qualifies.

~~(4)~~ (3) The ~~division~~ MPERA will calculate the cost of ~~qualifying~~ purchasing military, federal volunteer service, or other full-time public service employment into the member's current system.

~~(5)~~ (4) The eligible member must have a letter of intent on file with the board to ~~qualify~~ purchase all, or a specific portion of ~~this~~ the service, ~~to be credited to his~~ into the member's account. The letter of intent ~~will~~ must state whether payment for ~~this qualification of~~ the service will be made in a lump sum or in installment payments. ~~Such installment~~ Installment payments will be subject to additional interest as determined by the board and computed over the payment period.

AUTH: ~~19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202~~ 19-2-403, MCA
IMP: 19-2-715, 19-3-503, 19-3-505, 19-3-510, 19-3-512, 19-3-515, ~~19-5-304, 19-6-304, 19-6-305(2),~~ 19-6-801, 19-6-803, ~~19-7-309(2),~~ 19-7-803, ~~19-8-304(3) and (4), 19-8-306(2), 19-8-307~~ 19-8-901, 19-8-903, 19-9-403, ~~19-9-405(2),~~ and 19-13-403, ~~19-13-404(2),~~ MCA

2.43.428 ACCEPTABLE DOCUMENTATION OF PUBLIC SERVICE EMPLOYMENT (1) For the purposes of documenting and ~~qualifying~~ purchasing public service ~~time where~~ employment when there is no ~~employer certification~~ employer-certified salary and employment documentation available or when ~~such certification is~~ certified documents are alleged to be in error, the board will consider ~~such~~ other documents ~~as~~, including but not limited to:

(a) weekly/bi-weekly, or monthly pay stubs;

(b) copies of logs, time sheets or other documents required to be kept by the employee for the employer;

(c) union agreement(s) in effect for time period in question;

(d) any other binding agreement or contract in effect at that time;

(e) certified copy of a court order or out-of-court settlement agreement; and/or

(f) other notarized or official documents which would support the member's claim.

AUTH: ~~19-3-304, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202~~ 19-2-403, MCA
IMP: ~~Title 19, Ch. 3, part 3, Ch. 6, part 3, Ch. 7, part 3, Ch. 8, part 3, Ch. 9, part 4, Ch. 13, part 4,~~ 19-2-715, 19-3-503, 19-3-505, 19-3-510, 19-3-512, 19-3-515, 19-6-801, 19-6-803, 19-7-803, 19-8-901, 19-8-903, 19-9-403, and 19-13-403, MCA

REASON: Chapter 292, Laws of 2003, codified at section 19-3-515, MCA, permits members of the Public Employees' Retirement System (PERS) to purchase membership service and service credit in PERS "for up to 5 years of the members' service as a volunteer in a United States service program, such as the peace corps, or successful completion of a term of service in a national service position described in the National and Community Service Act of 1990, 42 U.S.C. 12501, et seq." The proposed rule and the proposed amendments to existing rules implement this new legislation.

RULE I: The new legislation emphasizes that a PERS member can purchase only that service for which there has been successful completion of a term of service. Further clarification is required regarding exactly what federal volunteer service can be purchased. After consultation with individuals in Montana's Office of Community Service and Montana representatives of the Corporation for National and Community Services, the proposed new rule was developed. The new rule will assist both PERS members and Montana Public Employee Retirement Administration (MPERA) staff in determining what service is eligible to be purchased.

Freedomcorps, Seniorcorps and Learn and Serve America are federal volunteer programs. However, those programs do not have a specified term of service. Rather, volunteers are free to participate or not, based on their own availability and wishes. Confirmation of terms of service to those organizations is difficult, if not impossible. Thus, they are not covered by the new legislation.

2.43.422: The federal volunteer service that may be purchased by a PERS member is similar in nature to certain other types of service in that the purchase of the service is permissive. For actuarial and sound funding purposes, the Public Employees' Retirement Board (the Board) has established rules requiring that the most recent service be purchased first. The proposed amendments ensure that this requirement applies to the purchase of federal volunteer service.

2.43.423: The purchase of service requires confirmation that the service is eligible to be purchased and valid documentation that the retirement system member actually performed the service being purchased. The proposed amendments ensure that this requirement, as well as the entire "purchase of service" process, will apply to the purchase of federal volunteer service.

2.43.423 and 2.43.428: The Board is taking this opportunity to clarify the documents that are required to confirm the various types of service and to clarify the meaning of the term "certification". These amendments will reduce confusion regarding the documents needed to prove that a member is

eligible to purchase certain service.

2.43.422, 2.43.423 and 2.43.428: At the Board's request, the 2001 legislature replaced the term "qualify" and its derivations with the term "purchase" and its derivations. The same change is made in ARM 2.43.422, 2.43.423 and 2.43.428 for consistency purposes.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to Mike O'Connor, Executive Director, Public Employees' Retirement Board, 100 North Park Avenue, Suite 100, P.O. Box 200131, Helena, MT 59620-0131; FAX 406-444-5428; e-mail moconnor@state.mt.us no later than 5:00 p.m. on August 15, 2003.

6. If persons who are directly affected by the proposed actions wish to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Melanie Symons, P.O. Box 200131, Helena, MT 59620-0131; telephone 406-444-9174; FAX 406-444-5428; e-mail msymons@state.mt.us. A written request for a hearing must be received no later than 5:00 p.m. on August 15, 2003.

7. If the agency receives requests for a public hearing on the proposed actions from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed actions; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 2,980 persons based on 2002 payroll reports of active Public Employees' Retirement System members.

8. The Public Employees' Retirement Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding public retirement rulemaking actions. Such written request may be mailed or delivered to Melanie Symons, Public Employees' Retirement Board, 100 North Park Avenue, Suite 100, P.O. Box 200131, Helena, MT 59620-0131; faxed to the office at 406-444-9174; or e-mailed to msymons@state.mt.us, or may be made by completing a request form at any rules hearing held by the Public Employees' Retirement Board.

9. The bill sponsor notice requirements of 2-4-302, MCA apply and have been fulfilled.

/s/ Terry Teichrow
Terry Teichrow, Chairman
Public Employees' Retirement Board

/s/ Kelly Jenkins
Kelly Jenkins, General Counsel and
Rule Reviewer

/s/ Dal Smilie
Dal Smilie, Chief Legal Counsel and
Rule Reviewer

Certified to the Secretary of State on July 7, 2003.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.43.404, 2.43.418, and 2.43.506, pertaining to membership options for officials elected to positions covered by the Public Employees' Retirement System and the reporting of those officials by their employers	)))))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On September 12, 2003, the Public Employees' Retirement Board proposes to amend ARM 2.43.404, 2.43.418, and 2.43.506 pertaining to membership options for officials elected to positions covered by the Public Employees' Retirement System (PERS) and the reporting of those officials by their employers. The PERS is administered by the Public Employees' Retirement Board.

2. The Public Employees' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Public Employees' Retirement Board no later than 5:00 p.m. on July 30, 2003, to advise us of the nature of the accommodation that you need. Please contact Melanie Symons, Public Employees' Retirement Board, 100 North Park Avenue, Suite 100, P.O. Box 200131, Helena, MT 59620-0131; telephone 406-444-9174; TDD 406-444-1421; FAX 406-444-5428; e-mail msymons@state.mt.us.

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

2.43.404 REQUIRED EMPLOYER REPORTS (1) All reporting agencies shall submit ~~contribution~~ required employer reports, other than working retiree reports required by ARM 2.43.506, no later than five working days after each regularly occurring payday. Each report must be accompanied by statutorily required employer and employee contributions to the retirement system.

(a) Beginning July 1, 2003, reporting agencies shall use the MPERA's online web-based reporting system and shall remit payment via automated clearing house (ACH).

(b) If the reporting agency does not have access to the internet, the ~~contribution report~~ employer reports may be either hard-copy or electronic, but must be in the format provided by the MPERA, and must be accompanied by the payment.

(2) The report must be in alphabetical order by last name and ~~include~~ contain for each employee, including any state or local elected official who is an active member of

PERS:

(a) social security number;

(b) last and first name;

(c) salary;

(d) regular contributions;

(e) additional contributions if any;

(f) the actual hours for which the employee received compensation; and

(g) each employee who terminated during the ~~month~~ pay period being reported.

(3) Reporting agencies of the Montana university system (MUS) shall report employees in PERS covered positions who elect the MUS optional retirement program (ORP). The MUS ORP report must include all information required in (2). At the same time, reporting agencies of the MUS shall transmit amounts equal to the statutorily required plan choice rate and the education fund rate for those employees.

~~(4) All PERS and sheriffs' retirement system reporting officials must report, on a pay period basis, all retired PERS and sheriffs' retirement system members employed with their agency. This report must include the retiree's social security number, last and first name, salary and hours worked.~~

~~(5)~~ (4) Reporting errors affecting defined benefit plan members may be corrected on subsequent pay period reports via a letter of explanation that must include all salary and service documentation for the reported error and the affected time period. The MPERA will then notify the reporting agency of the necessary action, including contributions and interest due.

~~(6) The MPERA will notify the reporting agency of the necessary action, including contributions and interest due. Corrections reducing an employee's contributions cannot be accepted if the employee has received a refund.~~

~~(7)~~ (5) Reporting errors affecting PERS members who elect the PERS defined contribution retirement plan (DCRP) will be corrected as follows:

(a) Corrections increasing a contribution will be credited to the participant's individual account within the timeframe established in ARM 2.43.1031 and will not be retroactive.

(b) Corrections reducing a contribution will decrease the participant's individual account. ~~Corrections reducing an employee's contribution cannot be accepted if the employee has received a refund.~~

(i) The DCRP recordkeeper will recover the incorrect contribution from the participant's individual account and submit a refund to the MPERA.

(ii) The MPERA will submit the refund to the reporting agency.

(iii) It is the reporting agency's responsibility to correct payroll records and submit the refund to the DCRP participant.

(6) Corrections reducing an employee's contribution cannot be accepted if the employee has received a refund.

AUTH: 19-2-403, 19-3-2104, MCA
IMP: 19-2-506, 19-3-315, 19-3-316, 19-3-412, 19-3-1106, 19-3-2104, 19-7-1101, MCA

2.43.418 ELECTED OFFICIALS (1) Any ~~member~~ elected official, other than a legislator, ~~elected to a public office and~~ who becomes a member of PERS pursuant to 19-3-412, MCA, ~~receives compensation may accrue membership service and service credit during the entire term. The member~~ will receive service credit based upon the number of the member's compensated hours. Per diem or other benefits are not compensation.

(2) Legislators may elect membership in PERS.

(a) The legislator's application to join or to decline PERS membership must be filed with the board within 180 days of ~~on or after~~ the first day of ~~their~~ the legislator's term of office. ~~They must comply with~~

(i) A senator who is subsequently elected to serve as a representative, or a representative who is subsequently elected to serve as a senator, is considered to have started a new term of office and has a new 180-day election window.

(ii) A senator or representative whose district changes as a result of redistricting is not considered to have started a new term of office and does not have a new 180-day election window.

(b) A legislator may also exercise options available under 5-2-304 and 19-3-412, MCA.

(c) A ~~legislative member~~ legislator who becomes a member of PERS must pay ~~monthly~~ regular contributions ~~for any or~~ on all ~~months served by the member~~ compensation for service in office.

(i) ~~A member~~ The legislator must pay contributions through payroll deduction during a legislative session. ~~Members~~

(ii) The legislator may pay contributions directly to ~~the board~~ MPERA when the legislature is not in session. ~~The member will earn proportional service credit for each month or partial month in which a member makes contributions. A legislator who contributes during a session will receive membership service for the biennium. A member may purchase the entire term for service credit.~~

(d) The total contribution required for the term will be based on the current statutory salary prescribed in 5-2-301, MCA, less any previous contributions. ~~Legislative members~~ The legislator must make all payments to ~~the board~~ MPERA no later than the last day of ~~their~~ the legislator's final term in that office.

(e) Service credit and membership service will be granted pursuant to 19-3-521, MCA.

(3) A retired PERS member who is elected to a state or local government public office covered by PERS may elect to become an active member of PERS or remain a retired member,

with no limitation on the number of hours worked in the elected position.

(4) An active PERS member who is elected to a local government public office and works less than 960 hours a year in the elected position may decline membership in PERS with respect to the elected position.

(5) A member appointed to fill an unexpired term has the same rights and privileges as an elected official.

~~(4)~~ (6) An elected official whose term ends prior to the 15th of a month will be considered to have terminated covered employment effective the last day of the month preceding the end of the term.

~~(5)~~ (7) A member who elects to purchase previous service as an elected official in the PERS must comply with 19-3-505, MCA, except the cost will not include interest for any contributions due on service prior to July 1, 1993.

AUTH: 19-2-403, ~~19-3-304, 19-5-201, 19-7-201,~~ MCA
IMP: 19-2-701, 19-2-702, 19-3-412, 19-3-1106, 19-5-301, 19-7-301, MCA

2.43.506 RETURN TO COVERED EMPLOYMENT BY RETIREE - REPORT (1) ~~For purposes of reemployment, a retiree is considered to be receiving a retirement allowance when the individual:~~

~~(a) has not worked in covered employment for at least 30 days or more; and~~

~~(b) has been paid a retirement benefit.~~

~~(2)~~ A retired PERS ~~retiree~~ member who is employed, after retirement, in ~~by~~ a position covered by the PERS ~~covered employer(s) after retirement~~ must ~~report, in writing, all such covered employment~~ be reported to the ~~PERS~~ MPERA on a monthly basis. This reporting requirement does not apply to a PERS retiree who is elected to a state or local public office and chooses to not become an active member of PERS.

(2) A retired sheriffs' retirement system (SRS) member who is employed, after retirement, in a position covered by the SRS must be reported to the MPERA on a monthly basis.

(3) ~~This~~ The MPERA must receive the report ~~must reach the PERS~~ by the 15th of the month following the month for which employment is being reported. ~~and~~

(4) The report must include the following information:

(a) working retiree's name and social security number;

(b) month and year being reported;

(c) name and address of ~~PERS covered employer(s)~~ working retiree's employer;

(d) number of hours worked ~~(~~for ~~each covered~~ the employer~~)~~; and

(e) gross compensation received ~~(~~from ~~each covered~~ the employer~~)~~.

(5) The report must be signed by both the employer and the working retiree.

(6) A separate report must be filed with MPERA for each employment.

AUTH: ~~19-3-304, 19-7-201~~ 19-2-403, MCA
IMP: ~~19-3-403(15),~~ 19-3-1104, 19-3-1106, ~~19-7-301(2)~~ 19-7-1101, MCA

REASON: The 2003 legislature adopted new legislation permitting state and local elected officials who are drawing a retirement benefit from the Public Employees' Retirement System (PERS) at the time of their election to a PERS-covered office to elect to not return to active membership. Retired members who elect to not return to active membership service will continue to receive their retirement benefit. This legislation necessitates substantial amendments to existing PERS rules.

The Public Employees' Retirement Board (Board) is also taking this opportunity to update its rules to conform to changes in terminology adopted by the 2001 and 2003 legislature, and to clarify processes implemented by the legislature or the Board.

2.43.404: All reporting agencies covered by a retirement system administered by the Montana Public Employee Retirement Administration (MPERA) must report all employees to MPERA. Some reporting agencies have questioned whether "employees" includes elected officials. The proposed amendments clarify that reporting agencies must report elected officials if they choose to be active members of the retirement system. Elected officials who choose to not join the retirement system and elected officials who choose to remain retired PERS members need not be reported.

Reporting agencies must also report, on a separate document and at a different time, all retired members who are employees. These "working retiree" reports are discussed in detail in ARM 2.43.506. Therefore, the working retiree section of ARM 2.43.404 has been deleted.

Reporting errors related to members of PERS's defined benefit retirement plan are corrected in a different manner than are reporting errors related to members of PERS's defined contribution retirement plan. The rule is being amended to better specify which process applies to which plan.

2.43.418: The election window provided to elected officials by 19-3-412, MCA, requires clarification. Specifically, issues arise regarding the term "commencement of their employment." The Board is proposing to amend this rule to clarify the circumstances that constitute new employment as an elected official and thus trigger the 180-day election window.

The 2003 legislature amended 19-3-521, MCA, to clarify the amount of membership service and service credit earned by a legislator. Amendments to sections (1), (2)(c)(ii) and (2)(e) of ARM 2.43.418 correspond to that change.

2.43.506: Section (1) of ARM 2.43.506 is deleted because it merely repeats statutory language, the definition of "retired" found at 19-2-303(35), MCA.

The remainder of the rule governs the reporting of a working retiree. Elected officials who elect to remain a PERS retiree must now be exempted from this reporting requirement. Sheriffs' Retirement System working retirees are added to the reporting requirement pursuant to 19-7-1101, MCA.

4. Concerned persons may submit their data, views, or arguments concerning the proposed amendments in writing to Mike O'Connor, Executive Director, Public Employees' Retirement Board, 100 North Park Avenue, Suite 100, P.O. Box 200131, Helena, MT 59620-0131; FAX 406-444-5428; e-mail moconnor@state.mt.us no later than 5:00 p.m. on August 15, 2003.

5. If persons who are directly affected by the proposed amendments wish to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Melanie Symons, P.O. Box 200131, Helena, MT 59620-0131; telephone 406-444-7939; FAX 406-444-9174; e-mail msymons@state.mt.us. A written request for a hearing must be received no later than 5:00 p.m. on August 15, 2003.

6. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 2,980 persons, based on 2002 payroll reports of active members.

7. The Public Employees' Retirement Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding public retirement rulemaking actions. Such written request may be mailed or delivered to Melanie Symons, Public Employees' Retirement Board, 100 North Park Avenue, Suite 100, P.O. Box 200131, Helena, MT 59620-0131; faxed to the office at 406-444-9174; or e-mailed to msymons@state.mt.us, or may be made by completing a request

form at any rules hearing held by the Public Employees' Retirement Board.

8. The bill sponsor notice requirements of 2-4-302, MCA do not apply.

/s/ Terry Teichrow
Terry Teichrow, Chairman
Public Employees' Retirement Board

/s/ Kelly Jenkins
Kelly Jenkins, General Counsel and
Rule Reviewer

/s/ Dal Smilie
Dal Smilie, Chief Legal Counsel and
Rule Reviewer

Certified to the Secretary of State on July 7, 2003.

BEFORE THE STATE AUDITOR AND COMMISSIONER OF SECURITIES
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 6.10.140 and 6.10.141 pertaining to minimum financial requirements for investment advisers and bonding requirements for certain investment advisers and the adoption of New Rule I, pertaining to custody of client funds or securities by investment advisers and New Rule II, pertaining to custody of notice filings for offerings of federal covered securities	)))))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On August 7, 2003, at 9:30 a.m., a public hearing will be held in the 2nd floor conference room, State Auditor's Office, 840 Helena Avenue, Helena, Montana, to consider the proposed amendment of ARM 6.10.140 and 6.10.141 pertaining to minimum financial requirements for investment advisers and bonding requirements for certain investment advisers and the adoption of New Rule I pertaining to custody of client funds or securities by investment advisers and New Rule II pertaining to custody of notice filings for offerings of federal covered securities.

2. The State Auditor's Office will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the office no later than 5:00 p.m., July 30, 2003, to advise us of the nature of the accommodation that you need. Please contact Darla Sautter, State Auditor's Office, 840 Helena Avenue, Helena, MT 59601; telephone (406) 444-2726; Montana Relay 1-800-332-6145; TDD (406) 444-3246; facsimile (406) 444-3497; or by e-mail to dsautter@state.mt.us.

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

6.10.140 MINIMUM FINANCIAL REQUIREMENTS FOR INVESTMENT ADVISERS ~~(1) Except as provided in (5), unless an investment adviser posts a bond pursuant to ARM 6.6.141 an investment adviser registered or required to be registered under the Securities Act of Montana who has custody of client funds or securities shall maintain at all times a minimum net worth of $35,000. An investment adviser registered or required to be registered under the Securities Act of Montana who has~~

~~discretionary authority over client funds or securities but does not have custody of client funds or securities, shall maintain at all times a minimum net worth of $10,000.~~

~~(2) Unless otherwise exempted, as a condition of the right to continue to transact business in this state, every investment adviser registered or required to be registered under the Securities Act of Montana shall by the close of business on the next business day notify the commissioner if such investment adviser's total worth is less than the minimum required. After transmitting such notice, each investment adviser shall file by the close of business on the next business day a report with the commissioner of its financial condition, including the following:~~

~~(a) a trial balance of all ledger accounts;~~

~~(b) a statement of all client funds or securities which are not segregated;~~

~~(c) a computation of the aggregate amount of client ledger debit balances; and~~

~~(d) a statement of the number of client accounts.~~

~~(3) For purposes of this rule, the term "net worth," shall mean an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include the following as assets:~~

~~(a) prepaid expenses, except as to items properly classified as current assets under generally accepted accounting principles;~~

~~(b) deferred charges;~~

~~(c) goodwill;~~

~~(d) franchise rights;~~

~~(e) organizational expenses;~~

~~(f) patents;~~

~~(g) copyrights;~~

~~(h) marketing rights;~~

~~(i) unamortized debt discount and expense;~~

~~(j) all other assets of intangible nature;~~

~~(k) home;~~

~~(l) home furnishings;~~

~~(m) automobile(s);~~

~~(n) personal items not readily marketable in the case of an individual; and~~

~~(o) advances or loans to stockholders and officers in the case of a corporation or advances or loans to partners in the case of a partnership.~~

~~(4) The commissioner may require that a current appraisal be submitted in order to establish the worth of any asset.~~

~~(5) An investment adviser that has its principal place of business in a state other than this state is not required to comply with the requirements of this rule, provided that the investment adviser is licensed in the state and is in compliance with the state's minimum capital requirements, if any.~~

(1) An investment adviser registered or required to be registered under the Act who has custody of client funds or

securities shall maintain at all times a minimum net worth of $35,000, and every investment adviser registered or required to be registered under the Act who has discretionary authority over client funds or securities but does not have custody of client funds or securities shall maintain at all times a minimum net worth of $10,000.

(2) An investment adviser registered or required to be registered under the Act who has custody or discretion of client funds or securities, but does not meet the minimum net worth requirements in (1) shall be bonded in the amount of the net worth deficiency rounded up to the nearest $5,000. Any bond required by this section shall be:

(a) in the form determined by the director;

(b) issued by a company qualified to do business in this state; and

(c) subject to the claim of all clients of the investment adviser regardless of the client's state of residence.

(3) An investment adviser registered or required to be registered under the Act who accepts prepayment of more than $500 per client and six or more months in advance shall maintain at all times a positive net worth.

(4) Unless otherwise exempted, as a condition of the right to transact business in this state, every investment adviser registered or required to be registered under the Act shall by the close of business on the next business day notify the commissioner if such investment adviser's net worth is less than the minimum required. After transmitting such notice, each investment adviser shall file by the close of business on the next business day a report with the commissioner of its financial condition, including the following:

(a) a trial balance of all ledger accounts;

(b) a statement of all client funds or securities that are not segregated;

(c) a computation of the aggregate amount of client ledger debit balances; and

(d) a statement as to the number of client accounts.

(5) For purposes of this rule, the term "net worth" shall mean an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include as assets:

(a) prepaid expenses (except as to items properly classified assets under generally accepted accounting principles);

(b) deferred charges;

(c) goodwill;

(d) franchise rights;

(e) organizational expenses;

(f) patents;

(g) copyrights;

(h) marketing rights;

(i) unamortized debt discount and expense;

(j) all other assets of intangible nature;

(k) home furnishings;

(l) automobile(s), and any other personal items not readily marketable in the case of an individual;

(m) advances or loans to stockholders and officers in the case of a corporation; and

(n) advances or loans to partners in the case of a partnership.

(6) For purposes of this rule, a person will be deemed to have custody if said person directly or indirectly holds client funds or securities, has any authority to obtain possession of them, or has the ability to appropriate them.

(7) For purposes of this rule, an investment adviser shall not be deemed to be exercising discretion when it places trade orders with a broker-dealer pursuant to a third party trading agreement if:

(a) the investment adviser has executed a separate investment adviser contract exclusively with its client which acknowledges that a third party trading agreement will be executed to allow the investment adviser to effect securities transactions for the client in the client's broker-dealer account; and

(b) the investment adviser contract specifically states that the client does not grant discretionary authority to the investment adviser and the investment adviser in fact does not exercise discretion with respect to the account; and

(c) a third party trading agreement is executed between the client and a broker-dealer which specifically limits the investment adviser's authority in the client's broker-dealer account to the placement of trade orders and deduction of investment adviser fees.

(8) The commissioner may require that a current appraisal be submitted in order to establish the worth of any asset.

(9) Every investment adviser that has its principal place of business in a state other than this state shall maintain only such minimum capital as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is licensed in such state and is in compliance with such state's minimum capital requirement.

AUTH: 30-10-107, MCA
IMP: 30-10-107 and 30-10-201, MCA

6.10.141 BONDING REQUIREMENTS FOR CERTAIN INVESTMENT ADVISERS ~~(1) Every investment adviser having custody of or discretionary authority over client funds or securities shall be bonded in the amount of $35,000.~~

~~(2) An investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of (1), provided that the investment adviser is registered as an investment adviser in the state where it has its principal place of business and is in~~

~~compliance with such state's requirements relating to bonding, if any.~~

(1) Any bond required by this rule shall be issued by a company qualified to do business in this state in the form determined by the commissioner and shall be subject to the claims of all clients of such investment adviser regardless of the client's state of residence.

(a) every investment adviser registered or required to be registered under the Act having custody of or discretionary authority over client funds or securities shall be bonded in an amount determined by the commissioner based upon the number of clients and the total assets under management of the investment adviser;

(b) every investment adviser registered or required to be registered under the Act who has custody or discretion of client funds or securities who does not meet the minimum net worth standard in ARM 6.10.140(1) shall be bonded in the amount of the net worth deficiency rounded up to the nearest $5,000.

(2) An investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of (1), provided that the investment adviser is registered as an investment adviser in the state where it has its principal place of business and is in compliance with such state's requirements relating to bonding.

AUTH: 30-10-107, MCA
IMP: 30-10-107 and 30-10-201, MCA

4. The proposed new rules provide as follows:

RULE I CUSTODY OF CLIENT FUNDS OR SECURITIES BY INVESTMENT ADVISERS (1) It shall be unlawful for any investment adviser to take or have custody of any securities or funds of any client unless:

(a) the investment adviser notifies the commissioner in writing that the investment adviser has or may have custody. Such notification may be given on Form ADV;

(b) the securities of each client are segregated, marked to identify the particular client having the beneficial interest therein and held in safekeeping in some place reasonably free from risk of destruction or other loss:

(i) all client funds are deposited in one or more bank accounts containing only clients' funds;

(ii) such account or accounts are maintained in the name of the investment adviser as agent or trustee for such clients; and

(iii) the investment adviser maintains a separate record for each such account showing the name and address of the bank where the account is maintained, the dates and amounts of deposits in and withdrawals from the account, and the exact amount of each client's beneficial interest in the account;

(c) immediately after accepting custody or possession of funds or securities from any client, the investment adviser

notifies the client in writing of the place where and the manner in which the funds and securities will be maintained and subsequently, if and when there is a change in the place where or the manner in which the funds or securities are maintained, the investment adviser gives written notice thereof to the client;

(d) at least once every three months, the investment adviser sends each client an itemized statement showing the funds and securities in the investment adviser's custody at the end of such period and all debits, credits and transactions in the client's account during such period; and

(e) at least once every calendar year, an independent certified public accountant or public accountant verifies all client funds and securities by actual examination at a time chosen by the accountant without prior notice to the investment adviser. A report stating that such accountant has made an examination of such funds and securities, and describing the nature and extent of the examination, shall be filed with the commissioner promptly after each such examination;

(f) for purposes of this rule, a person will be deemed to have custody if said person directly or indirectly holds client funds or securities, has any authority to obtain possession of them, or has the ability to appropriate them.

(2) This rule shall not apply to an investment adviser also registered as a broker-dealer under section 15 of the Securities Exchange Act of 1934 if the broker-dealer is:

(a) subject to and in compliance with SEC rule 15c3-1 (Net Capital Requirements for Brokers or Dealers), 17 CFR 240.15c3-1 under the Securities Exchange Act of 1934; or

(b) a member of an exchange whose members are exempt from SEC Rule 15c3-1, 17 CFR 240.15c3-1 under the provisions of paragraph (2)(b), and the broker-dealer is in compliance with all rules and settled practices of the exchange imposing requirements with respect to financial responsibility and the segregation of funds or securities carried for the account of customers.

AUTH: 30-10-107, MCA
IMP: 30-10-107 and 30-10-201, MCA

RULE II NOTICE FILINGS FOR OFFERINGS OF FEDERAL COVERED SECURITIES UNDER 18(b)(3) OR (4) OF THE SECURITIES ACT OF 1933

(1) A notice filing for a security that is a federal covered security under 18(b)(3) of (4) of the Securities Act of 1933 shall consist of:

(a) a letter explaining that the security is a federal covered security pursuant to 18(b)(3) of (4) of the Securities Act of 1933;

(b) a U-2 consent to service of process form; and

(c) a fee of $200.

(2) A notice filing under (1) is effective for one year following the date of the commissioner's receipt of the filing. Prior to the expiration date of the notice filing, a

notice filing may be renewed by filing a $200 fee with the commissioner. A renewed notice filing shall be effective for one year commencing upon the expiration of the notice filing being renewed.

AUTH: 30-10-107, MCA
IMP: 30-10-107 and 30-10-201, MCA

5. REASONABLE NECESSITY STATEMENT: The amendments are necessary because they implement a uniform rule issued by the North American Securities Administrators Association. The amendments will make Montana uniform with the laws and regulations of other states. Current Montana rules have both a net worth requirement and a bonding requirement for investment advisers that have custody of or discretionary authority over client accounts. The rule amendments reduce the requirements by mandating a net worth requirement. Under the amendments, the bonding requirements are triggered only in the event an investment adviser does not meet the net worth requirements.

New Rule I is necessary because it implements a uniform rule issued by the North American Securities Administrators Association. This rule will make Montana uniform with the laws and regulations of other states as well as provide guidance to Montana investment advisers with respect to custody of client funds or securities.

New Rule II is necessary because it provides explicit direction to issuers of federal covered securities pursuant to 18(b)(3) and (4) of the Securities Act of 1933 regarding the requirements for compliance with Montana law. This rule provides guidance to issuers with respect to the department's requirements pursuant to 30-10-211(3), MCA. Current department policy mandates that requirements are spelled out in the new rule, including the $200 fee. We are proposing the fee to provide better guidance to issuers, as current language of 30-10-211(3), MCA appears to be permissive and does not provide direct guidance. Since the department currently requires the filing fee, there will be no increase in the monetary amount a person will have to pay. On average, the department collects approximately $1,500.00 to $2,000.00 per year in this particular type of fee, which affects eight to ten entities. This amount of fees collected is not expected to change.

6. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Darla Sautter, State Auditor's Office, 840 Helena Avenue, Helena, MT 59601, or by e-mail to dsautter@state.mt.us, and must be received no later than August 15, 2003.

7. Brenda Thompson has been designated to preside over and conduct the hearing.

8. The State Auditor's Office maintains a list of concerned persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies whether the person wishes to receive notices regarding insurance rules, securities rules, or both. Such written request may be mailed or delivered to the State Auditor's Office, 840 Helena Avenue, Helena, MT 59601, faxed to (406) 444-3497, e-mailed to dsautter@state.mt.us, or may be made by completing a request form at any rules hearing held by the State Auditor's Office.

9. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

JOHN MORRISON, State Auditor
and Commissioner of Securities

By: /s/ BRENDA THOMPSON
Brenda Thompson
Deputy Securities Commissioner

By: /s/ Elizabeth L. Griffing
Elizabeth L. Griffing
Rule Reviewer

Certified to the Secretary of State on July 7, 2003.

BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 6.6.2203 pertaining to rebates and inducements	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 13, 2003, at 9:00 a.m., a public hearing will be held in the 2nd floor conference room, State Auditor's Office, 840 Helena Avenue, Helena, Montana, to consider the proposed amendment of ARM 6.6.2203 pertaining to rebates and inducements.

2. The State Auditor's Office will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the office no later than 5:00 p.m., August 6, 2003, to advise us of the nature of the accommodation that you need. Please contact Darla Sautter, State Auditor's Office, 840 Helena Ave., Helena, MT 59601; telephone (406) 444-2726; Montana Relay 1-800-332-6145; TDD (406) 444-3246; facsimile (406) 444-3497 or e-mail to dsautter@state.mt.us.

3. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

6.6.2203 REBATES AND INDUCEMENTS (1) and (2) remain the same.

(a) ~~F~~furnishing title information in written form without charge or at a charge less than the applicable rate filing. However, cancellation of a title commitment due to the failure of any party to complete the transaction at a charge determined by an underwriter's filed rate schedule shall not be considered an inducement~~.~~;

(b) ~~F~~furnishing information packets, listing kits or hybrid forms of title information~~.~~; ~~An insurer or agent may, however furnish without charge a copy of any existing plot or map and tax information covering a specific parcel of real estate in substantially the "Property Profile" form, approved by the commissioner and available upon request to the commissioner, without additions, addenda, or attachments which may be construed as containing conclusions of the insurer or agent regarding matters of marketable ownership or encumbrances.~~

(c) ~~P~~paying or offering to pay any charges which constitute an obligation of any producer of title ~~insurance~~ business for the cancellation of an existing title insurance order with a competing company~~.~~;

(d) ~~F~~furnishing escrow, closing, or settlement services for a charge (independent of the rate charged for involved title insurance) less than the reasonable cost of so providing~~.~~;

(e) ~~D~~deferring any payment for insurance or services, including title commitments or preliminary reports, otherwise due or payable ~~to become applicable to the payment for insurance or services not yet furnished and not reasonably an integral part of a completed transaction.~~ for more than 30 days;

(f) ~~F~~furnishing or offering to furnish services not reasonably related to bona fide insurance or escrow, closing, or settlement transactions, including, but not limited to: ~~computer services, nonrelated delivery services, accounting assistance, and the referral of legal matters to an attorney with whom the title company has a referral arrangement, unless disclosure is made of that fact and the customer has been advised that the attorney is an agent of the title company and does not represent the individual.~~

(i) computer services;

(ii) nonrelated delivery services;

(iii) mailing services;

(iv) accounting assistance; or

(v) the referral of legal matters to an attorney with whom the title company has a referral arrangement, unless disclosure is made of that fact and the customer has been advised that the attorney is an agent of the title company and does not represent the individual;

(g) ~~R~~renting or offering to rent as either landlord or tenant at a rental favorable to any producer of title ~~insurance~~ business or to any title insurer or ~~agent of~~ title insurance producer as compared with terms otherwise generally available~~.~~;

(h) ~~P~~providing or paying for, as an inducement, the sale of title insurance or escrow services of any of the following non-exclusive items: ~~credit extensions, prizes, vacations, travel expenses, membership or registration fees, or lodging.~~

(i) credit extensions;

(ii) prizes;

(iii) vacations;

(iv) travel expenses;

(v) membership or registration fees; or

(vi) lodging; and

(i) ~~D~~depositing funds, whether interest bearing or not, with a credit or lending institution based on an understanding that title insurance business will be referred to a particular agent or insurer.

(3) An insurer or title insurance producer may furnish a single copy of a "property profile" relating to the ownership and status of title to real property.

(a) A property profile may include only the following six items:

(i) the last deed appearing of record;

(ii) deeds of trust or mortgages which appear to be in full force and effect;

(iii) a plat map reproduction and/or a locator map;

(iv) a copy of applicable restrictive covenants;

(v) tax information; and

(vi) property characteristics such as number of rooms, square footage and year built.

(b) A property profile may include no more than the six above-described items of information and shall not include market value information, demographics, or additions, addenda, or attachments which may be construed as conclusions reached by the title entity regarding matters of marketable ownership or encumbrances. A generic cover letter with the printed standard letterhead of the title entity must be attached to the property profile. The cover letter may include a brief statement identifying by name only, which of the six permitted items of information are attached thereto. The cover letter may also contain a disclaimer as to conclusions of marketable ownership or encumbrances. The content of the cover letter or property profile is strictly limited to the foregoing and shall specifically not include any advertising or marketing for the benefit of the recipient.

(c) Market value information, demographics, or additions, addenda, or attachments which may be construed as conclusions reached by the title entity regarding matters of marketable ownership or encumbrances may be provided, but only upon receipt of a charge commensurate with the actual cost of the work performed and the material furnished.

(3) remains the same, but is renumbered (4).

AUTH: 33-1-313, MCA
IMP: 33-18-210~~(1)~~, 33-25-202, 33-25-401~~(1)(a)~~, MCA

4. REASONABLE NECESSITY STATEMENT: It is necessary to amend ARM 6.6.2203 to clarify the information that may be provided without charge as part of a property profile by removing the reference to the property profile form and instead listing the items that may be provided as part of a property profile. Additionally, it is necessary to clarify the length of time that payment for title insurance or services may be deferred before such deferment becomes an inducement. Other language changes are necessary so the language in the rule will correspond with the definitions in the Montana Title Insurance Act.

5. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Darla Sautter, State Auditor's Office, 840 Helena Avenue, Helena, MT 59601, or by facsimile (406) 444-3497, or by e-mail, addressed to dsautter@state.mt.us, and must be received no later than August 21, 2003.

6. Jennifer L. Massman has been designated to preside over and conduct the hearing.

7. The State Auditor's Office maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies whether the person wishes to receive notices regarding insurance rules, securities rules, or both. Such written request may be mailed or delivered to the State Auditor's Office, 840 Helena Avenue, Helena, MT 59601, faxed to (406) 444-3497, e-mailed to dsautter@state.mt.us, or may be made by completing a request form at any rules hearing held by the State Auditor's Office.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

JOHN MORRISON, State Auditor
and Commissioner of Insurance

By: /s/ Angela Huschka
Angela Huschka
Deputy Insurance Commissioner

By: /s/ Elizabeth L. Griffing
Elizabeth L. Griffing
Rule Reviewer

Certified to the Secretary of State on July 7, 2003.

BEFORE THE BOARD OF NURSING
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment of ARM 8.32.416, 8.32.425, 8.32.1501, and the proposed adoption of New Rule I, related to licensure, fees, prescriptive authority, and psychiatric-mental health practitioner practice	))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On August 7, 2003, at 10:00 a.m. a public hearing will be held in room 438 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or who need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Nursing no later than 5:00 p.m., July 31, 2003, to advise us of the nature of the accommodation that you need. Please contact Jill Caldwell, Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2342; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2343; e-mail dlibsdnur@state.mt.us.

3. The rules proposed to be amended provide as follows: (deleted matter stricken, new matter underlined)

8.32.416 VERIFICATION OF ~~LICENSE TO ANOTHER STATE~~ LICENSURE (1) Licensees requesting verification and documentation of Montana licensure status to another United States board of nursing jurisdiction or foreign country shall submit a ~~written, signed~~ completed request with the appropriate fee to NURSYS@nursys.com or NCSBN, 35331 Eagle Way, Chicago, IL 60678-1353.

(2) Licensees requesting paper verifications shall submit a completed request to the board office.

AUTH: 37-1-131, 37-8-202, MCA
IMP: ~~37-1-134~~ 37-1-304, 37-8-202, ~~37-8-431,~~ MCA

REASON: The Board has concluded this rule change is necessary because all verifications to other states are now done through this centralized system (NURSYS). The Board also recognizes that some licensees need paper verifications for credentialing bodies and certification entities. For this reason, the Board will maintain the option of paper verifications. There is no

fiscal change associated with this rule change. In addition, there is reasonable necessity to amend the catchphrase of the rule to reduce the possibility of confusion with regard to the procedure used by a licensee who needs verification of license status sent to a foreign country. There is also reasonable necessity to correct and update the citations to the statutes the rule implements, so that the rule conforms to the requirements of sections 2-4-305, MCA.

8.32.425 FEES (1) The fee for licensure (RN or LPN) by examination (NCLEX) is ~~$70~~ $100, payable at the time the application is submitted. This fee is retained by the board if the application is withdrawn.

(2) The fee for repeating the examination (NCLEX) for RN or LPN ~~will be~~ is ~~$70~~ $100.

(3) The fee for licensure (RN or LPN) by endorsement is ~~$70~~ $200, payable at the time the application is submitted. This fee is retained by the board if the application is withdrawn.

(4) through (11) remain the same.

(12) The fee for inactive RN or LPN status is ~~$20 per year or $40 per renewal period~~ one half the licensure fee.

(13) through (16) remain the same.

(17) The fee for a temporary RN or LPN permit is $25.

(18) The fee for a temporary permit for an APRN is $35.

AUTH: 37-1-319, 37-8-202, MCA
IMP: 37-1-134, 37-8-202, 37-8-431, MCA

REASON: The Board has concluded that this rule change is necessary because last year the renewal cycle was changed from a one-year to a two-year renewal period. When this change was implemented, the Board did not change the fees for endorsement or examination applications and the associated licenses. This resulted in individuals applying for endorsement and examination receiving two-year licenses while only paying the one-year fee. The Board office reviewed the amount of staff time expended in processing examination and endorsement applications and determined that endorsement applications require far more time and effort than examination applications. For this reason, the examination application fee is lower than the fee for processing endorsement applications. The Board is required by section 37-1-134, MCA, to set its fees commensurate with costs.

The Board decided to charge a fee for a temporary permit because the Board has seen an increase in the number of applicants who apply for licensure, receive a temporary permit, and then never fulfill the requirements for permanent licensure. Historically, individuals seeking a temporary permit were in the process of becoming licensed in Montana, and the individual's application fee for licensure covered the minor incremental additional staff time required to issue the temporary permit. This fee is an attempt to discourage applicants from skirting paying for their fair portions of Board costs by applying for temporary licensure

to work only the term of the temporary permit, without ever applying for a regular license. The fee will cover the additional staff time needed to process temporary permits since not all applicants apply for a temporary permit.

The current fund balance of the Board is $1,104,512.27. The annual or biennial renewal date is 12/31/2004. The current fiscal year's appropriation for the Board is $743,042.41. Total annual revenue generated from fees during the last full fiscal year was $777,569.29. The Board estimates that 2115 licensees/applicants will be affected by the proposed fee increase and $135,650 in additional revenue will be generated during a biennium. The Board is required by section 37-1-134, MCA, to set its fees commensurate with costs.

8.32.1501 PRESCRIPTIVE AUTHORITY FOR ELIGIBLE APRNS

(1) remains the same.

(2) and (2)(a) remain the same.

(b) Psychiatric-mental health NPs and psychiatric CNSs with unencumbered licenses ~~who are certified prior to July 1, 2005,~~ may hold prescriptive authority.

(3) and (4) remain the same.

AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

REASON: The Board has determined that it is reasonable and necessary to amend this rule to provide clarification on eligibility requirements for CNS prescriptive authority. With the exception of the psychiatric-mental health practitioners, CNS programs do not provide the pharmacology or integration of pharmacotherapeutics and diagnostic clinical practice necessary to prepare the graduate to be eligible for prescriptive authority. Because psychiatric-mental health NP and psychiatric CNS education are considered synonymous and both prepare graduates for prescriptive authority eligibility, this amendment to the rule will clarify the eligibility requirements to better protect public safety. This will affect approximately 25 licensees, and there is no fiscal impact.

The Board has also determined that it is reasonable and necessary to amend ARM 8.32.1501 to remove the sunset date for psychiatric CNS prescriptive authority eligibility. The Board, in keeping with the best available information, previously was concerned that psychiatric CNS education programs did not provide suitable instruction and training in medical models of care, such that psychiatric CNSs should be eligible for prescriptive authority, and thus it adopted the existing sunset date. Now, however, current studies indicate that psychiatric CNS education programs provide appropriate instruction and training so that the psychiatric CNS has equivalent training to NPs with regard to the knowledge, skills and experience needed to obtain prescriptive authority. The Board now believes that the sunset date is not needed to protect the public health and

safety.

4. The board proposes to adopt NEW RULE I as follows:

NEW RULE I PSYCHIATRIC-MENTAL HEALTH PRACTITIONER PRACTICE

(1) Psychiatric-mental health NP or psychiatric CNS practice means the independent and/or collaborative management of primary mental health care for individuals, families and communities throughout the life span and for those who have or are at risk for developing mental health problems. The psychiatric-mental health practitioner may be educated as an NP or a CNS in the area of psychiatric-mental health advanced practice nursing. The practice of psychiatric-mental health practitioners includes:

(a) assessing the mental health status of individuals and families using methods appropriate to the client population and area of practice, including:

(i) health history taking;

(ii) diagnosis and treatment of complex mental health issues; and

(iii) assessing developmental health problems;

(b) instituting and providing continuity of mental health care to clients;

(c) managing therapeutic regimens;

(d) ordering treatments and modalities;

(e) receiving and interpreting results of diagnostic procedures;

(f) working with clients to ensure their understanding of and compliance with therapeutic regimens;

(g) promoting mental health wellness and psychiatric disease prevention programs;

(h) recognizing and referring clients to a physician or other health care provider, when appropriate;

(i) instructing and counseling individuals, families and groups in mental health promotion and maintenance, including involving the clients in planning for their health care; and

(j) working in collaboration with other health care providers and agencies to provide and coordinate services to individuals and families.

AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

REASON: There is reasonable necessity to adopt NEW RULE I to identify elements present within the area of psychiatric-mental health practice, in order to clarify the scope of the practice to the general public, health care workers, insurance payors, and potential license applicants. It is the sense of the Board and staff, based upon recent inquiries, that there is a general lack of awareness of the role that nurses can have in psychiatric-mental health practice. The Board notes that the other APRN practice areas have similar rules, and that this rule will provide analogous guidance. Psychiatric-mental health practice is the only APRN practice area where NP and CNS

education prepares graduates for diagnosis and treatment, including pharmacotherapeutic patient management. This distinguishes psychiatric-mental health CNS from other CNS practice. The proposed new rule will affect approximately 20 licensees, and there is no fiscal impact.

5. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted by mail to Jill Caldwell, Board of Nursing, Department of Labor and Industry, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdnur@state.mt.us and must be received no later than 5:00 p.m., August 15, 2003.

6. An electronic copy of this Notice of Public Hearing is available through the Department and Board's site on the World Wide Web at http://www.discoveringmontana.com/dli/nur, in the Rules Notices section. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The Board of Nursing maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. 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 notices and specifies that the person wishes to receive notices regarding all Board of Nursing administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdnur@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

8. Lorraine Schneider, attorney, has been designated to preside over and conduct this hearing.

9. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

10. The Board of Nursing will meet during the October 22-23, 2003, Board meeting in Helena to consider the comments made by the public, the proposed responses to those comments, and

take final action on the proposed amendments and new rules. The meeting will be held in conjunction with the Board's regular meeting. Members of the public are welcome to attend the meeting and listen to the Board's deliberations.

BOARD OF NURSING
KIM POWELL, RN, CHAIRMAN

/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State July 7, 2003.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 24.30.102 and 24.30.107, relating to recording and reporting occupational injuries and illness	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 8, 2003, at 10:00 a.m. the Department of Labor and Industry will hold a public hearing in the Sacajawea Room (basement, east end) of the Walt Sullivan Building, 1327 Lockey, Helena, Montana, to consider the proposed amendment of ARM 24.30.102 and 24.30.107 to update language and incorporate by reference the current version of federal health and safety regulations.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., August 1, 2003, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Bureau, Attn: Ms. Sandra Mihalik, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-6418; fax (406) 444-9396; TDD (406) 444-0532; or email smihalik@state.mt.us.

3. The rules as proposed to be amended provide as follows, new material underlined, stricken material interlined:

24.30.102 OCCUPATIONAL SAFETY AND HEALTH CODE FOR PUBLIC SECTOR EMPLOYMENT (1) and (2) remain the same.

(3) The department of labor and industry hereby adopts a safety code for every place of employment conducted by a public sector employer. This safety code adopts by reference the following occupational safety and health standards found in the Code of Federal Regulations, as of ~~January 1, 2001~~ July 1, 2003:

(a) Title 29, Part 1910; and

(b) Title 29, Part 1926.

(4) All sections adopted by reference are binding on every public sector employer even though the sections are not separately printed in a separate state pamphlet and even though they are omitted from publication in the Montana Administrative Register and the Administrative Rules of Montana. The safety standards adopted above and printed in the Code of Federal Regulations, Title 29, as of ~~January 1, 2001~~ July 1, 2003, are considered under this rule as the printed form of the safety code, and shall be used by the department and all public sector employers, employees, and other persons when referring to the provisions of the safety code. All the provisions, remedies,

and penalties found in the Montana Safety Act apply to the administration of the provisions of the safety code adopted by this rule.

(5) remains the same.

AUTH: 50-71-311, MCA
IMP: 50-71-311 and 50-71-312, MCA

REASON: There is reasonable necessity to amend these rules in order to incorporate by reference the current federal rules promulgated by the Occupational Health and Safety Administration (OSHA). These rules are periodically updated to ensure that public sector employers and employees have essentially the same duties and protections that apply to employers and employees in the private sector. The July 1, 2003 version of the Code of Federal Regulations is proposed for incorporation by reference because it is the most recent version generally available in printed form.

24.30.107 RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESS: LOG AND SUMMARY (1) Each employer shall:

(a) faithfully maintain in each establishment a log and summary of all recordable occupational injuries and illnesses for that establishment; and

(b) enter each recordable injury and illness on the log and summary as early as practical but no later than six ~~(6)~~ working days after receiving information that a recordable injury or illness has occurred. For this purpose a form equivalent to the OSHA No. ~~200~~ 300, furnished by the department of labor and industry, or ~~an equivalent~~ a readable and comprehensible equivalent ~~which is readable and comprehensible to a person not familiar with it~~ shall be used. The log and summary shall be completed in the detail provided in the form. ~~The OSHA form no. 200 shall not be used.~~

(2) ~~Period covered.~~ Records shall be established on a calendar year basis.

(3) ~~Posting requirements. The employer shall continuously post the current year's log throughout the year it represents. In addition, during the entire month of February of a calendar year, t~~ The summary log of the previous calendar year shall be posted from February 1 through April 30 of the subsequent calendar year. The summary log shall consist of annual totals of the data required on the log together with the raw data.

(4) ~~Retention of records.~~ Records provided for in this part shall be retained for a minimum of ~~5~~ five years or as long as is deemed necessary by the department of labor and industry to track potential occupational illnesses peculiar to the work undertaken at that facility.

(5) ~~Access to records.~~ Records provided for in this part maintained and retained by an employer shall be made available promptly upon request to representatives of the safety bureau, or to workers subject to that employer, or their appointed representatives. "Made available" means presenting to the

authorized person to be physically reviewed or copied as necessary.

AUTH: 50-71-311, MCA
IMP: 50-71-311, MCA

REASON: There is reasonable necessity to amend these rules in order to reflect the update from Form 200 to Form 300 by the Occupational Health and Safety Administration (OSHA), to specifically allow use of the OSHA Form 300, and to clarify the type of form required if the OSHA Form 300 is not used. It is also necessary to update language to remove the requirement for continuous posting so as to mirror analogous federal OSHA requirements. In addition, style changes are made to remove internal catchphrases in order to conform to the style requirements promulgated by the Secretary of State and required by ARM 1.2.215.

4. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to:

John Maloney, Bureau Chief
Safety Bureau
Employment Relations Division
Department of Labor and Industry
PO Box 7128
Helena, Montana 59624-1728

and must be received by no later than 5:00 p.m., August 15, 2003. Comments may also be submitted electronically as noted in the following paragraph.

5. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at http://dli.state.mt.us/calendar.htm, under the Calendar of Events, Administrative Rules Hearings section. Interested persons may make comments on the proposed rules via the comment forum, http://forums.dli.state.mt.us, linked to the Notice of Public Hearing, but those comments must be posted to the comment forum by 5:00 p.m., August 15, 2003. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the comment forum do not excuse late submission of comments.

6. The Department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by

this agency. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and any specific topic or topics over which the Department has rulemaking authority. Such written request may be delivered to Mark Cadwallader, 1327 Lockey St., Room 412, Helena, Montana, mailed to Mark Cadwallader, P.O. Box 1728, Helena, MT 59624-1728, faxed to the office at (406) 444-1394, e-mailed to mcadwallader@state.mt.us, or made by completing a request form at any rules hearing held by the Department.

7. The bill sponsor notice provisions of 2-4-302, MCA, do not apply.

8. The Hearings Bureau of the Centralized Services Division of the Department has been designated to preside over and conduct the hearing.

/s/ KEVIN BRAUN	/s/ WENDY J. KEATING
Kevin Braun,	Wendy J. Keating, Commissioner
Rule Reviewer	DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: July 7, 2003.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the proposed adoption of a new rule interpreting legislative changes to statutes that regulate local building code enforcement programs	)))))	NOTICE OF PUBLIC HEARING

TO: All Concerned Persons

1. On August 7, 2003 at 9:00 a.m., a public hearing will be held in room B07 of the Park Avenue Building at 301 South Park Avenue in Helena, Montana to consider adoption of New Rule I.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternate accessible format of this notice. If you require an accommodation, contact the Building Codes Bureau no later than 5:00 p.m. on August 1, 2003 to advise us of the nature of the accommodation that you need. Please contact Ms. Traci Smith at P.O. Box 200517, Helena, Montana 59620-0517, 406-841-2040 (telephone), 406-841-2050 (fax), 406-841-0532 (TTD), or trasmith@state.mt.us (e-mail).

3. The proposed new rule provides as follows:

RULE I INTERGOVERNMENTAL JURISDICTIONAL RELATIONSHIPS RELATING TO BUILDING CODE ENFORCEMENT PROGRAMS (1) Only counties or incorporated cities and towns in Montana have the option of adopting their own code enforcement programs. A city, county, or town code enforcement program must be certified in accordance with ARM Title 24, chapter 301, subchapter 2 before the local government entity may begin enforcing building regulations. Where a county adopts such a program, the county must enforce the building regulations on a county-wide basis, except where an incorporated city or town already has a certified code enforcement program in place or where the city or town is later certified for operation of such programs. Cities, counties and towns may enter into contracts for enforcement of building regulations within their respective jurisdictions, but those contracts must be submitted to the building codes bureau as part of an application for certification, or as an amendment to a previously approved plan before the contract may be performed.

(2) Specific alternative examples of code enforcement jurisdictional relationships and responsibilities are as follows:

(a) As of October 1, 2003, in counties where no certified county code enforcement programs are in effect:

(i) the building codes bureau will continue enforcing Montana's building regulations in all unincorporated cities and towns;

(ii) incorporated cities and towns which also do not have certified code enforcement programs in effect will continue to have Montana's building regulations enforced by the building codes bureau; and

(iii) incorporated cities and towns which do have a certified code enforcement program in effect will continue to operate that program. However, where a program has provided permitting and inspection services outside the boundaries of cities and towns, those extended jurisdictional areas will be invalid as of October 1, 2003.

(A) The building codes bureau will assume jurisdiction over all new and subsequent building projects in those areas on that date.

(B) Where incorporated cities and towns properly issued permits for building projects in areas outside their boundaries prior to October 1, 2003, the city or town will retain jurisdiction over those projects until that building project is completed.

(b) As of October 1, 2003, where an incorporated city or town exists in a county which has a certified building code enforcement program already in effect, but where the building codes bureau has been providing permitting and inspection services to those cities and towns, those permitting and inspection services will become the responsibility of the certified county programs unless the city or town opts to have the building codes bureau continue providing these services.

(c) After October 1, 2003, any city or town which becomes incorporated can choose to:

(i) apply for certification to operate its own code enforcement program;

(ii) be regulated by a county code enforcement program, if one is in effect; or

(iii) have the building codes bureau provide permitting and inspection services inside the city limits in accordance with Montana statutes and administrative rules.

AUTH: 50-60-203, MCA
IMP: 50-60-103, 50-60-106, 50-60-117, 50-60-301, 50-60-302, MCA; Chapter 443, section 25, L. of 2003

4. The Bureau believes it reasonable and necessary to adopt this rule so that all of Montana's city, town, and county officials will be able to inform themselves, on a standardized basis, as to the Bureau's understanding of recent legislative enactments (House Bill 640, enacted as Chapter 443, Laws of 2003) concerning localized enforcement of building regulations. Numerous inquiries about this subject from various city and county officials throughout the state following the 2003 legislative session are the basis of this belief. By proposing this interpretive rule and undertaking the notice and hearing process required for rulemaking, the

Bureau also intends to avail itself of public input it receives as it develops legislative rule proposals concerning the same subject which will be proposed for adoption after the underlying statutory changes become effective on October 1, 2003. The Department notes that pursuant to sections 2-4-102(13)(b), and 2-4-308(1), MCA, an interpretive rule does not carry the force of law, and that in the historical notations to the rule there will be a statement that the rule is advisory only.

5. Concerned persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to William H. Jellison, chief of the Building Codes Bureau, at P.O. Box 200517, Helena, MT 59620-0571, by facsimile to (406) 841-2050, or by e-mail to trasmith@state.mt.us, and must be received no later than 5:00 p.m., August 15, 2003.

6. An electronic copy of this Notice of Public Hearing is available through the Department's and Board's site on the World Wide Web at http://www.state.mt.us/dli/bsd/bc/index.htm. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The Department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding any specific topic or topics over which the Department has rulemaking authority. Such written request may be delivered to Mark Cadwallader, 1327 Lockey St., room 412, Helena, Montana, mailed to Mark Cadwallader, P.O. Box 1728, Helena, MT 59624-1728, faxed to the office at (406) 444-1394, by e-mail to mcadwallader@state.mt.us, or made by completing a request form at any rules hearing held by the Department of Labor and Industry.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

9. Mark Cadwallader, attorney, has been designated to preside over and conduct the hearing.

/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State July 7, 2003.

BEFORE THE BOARD OF LAND COMMISSIONERS AND
THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of adoption of new rules I through VI regarding obtaining a conservation license in lieu of timber sale	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On August 6, 2003, at 3:00 p.m., a public hearing will be held in the Bannack Conference Room of the Department of Natural Resources and Conservation, 1625 11th Avenue at Helena, Montana, to consider the adoption of new rules I through VI relating to establishing rules for obtaining a conservation license in lieu of timber sale.

2. The Department of Natural Resources and Conservation and the Board of Land Commissioners will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Natural Resources and Conservation no later than 5:00 p.m. on August 1, 2003, to advise us of the nature of the accommodation that you need. Please contact Paul Engelman, Forest Management Bureau, Department of Natural Resources and Conservation, 2705 Spurgin Road, Missoula, MT 59804-3199; telephone (406) 542-4212; FAX (406) 542-4274; e-mail to pengelman@state.mt.us.

3. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS As used in conjunction with these rules, the following terms shall have the meanings indicated, except where the context clearly indicates otherwise:

(1) "Applicant" means the individual or organization who submits the original request and associated documentation for a timber conservation license in lieu of a sale.

(2) "Bidder" means any qualified individual or organization who submits a monetary offer to purchase a timber conservation license in lieu of a sale.

(3) "Biological infestation" means any situation where animals, insects, or diseases are present in sufficient amounts to threaten mortality to 25% or more of the standing live trees.

(4) "Deferred stumpage value" means the value of the stumpage that will be foregone as a result of not selling timber for harvest.

(5) "Department" means the department of natural resources and conservation.

(6) "Fire or other damage" means damage to the trees by fire or other natural agents that cause the tree to die.

(7) "Forest improvement fees" means fees collected for the

forest improvement program.

(8) "Minimum asking price" means the lowest purchase price per volume of wood the department will accept on a timber sale.

(9) "Sale-scoping announcement" means the initial public notification of the department's intent to develop a timber sale.

(10) "Timber conservation license" means a temporary agreement restricting the harvest of timber on a state timber sale but not prohibiting other forms of use and management of the land and timber by the state.

(11) "Trust beneficiaries" means those institutions that receive revenue from the management of lands and resources granted to the state under the enabling and subsequent acts.

(12) "Wind throw" means trees blown to the ground by high winds.

AUTH: 77-5-201, MCA
IMP: 77-5-208, MCA

NEW RULE II TIMBER CONSERVATION LICENSE APPLICATION CONDITIONS AND FORMS (1) The department may offer a timber conservation license as an alternative to the sale and harvesting of timber upon the submittal to the department of a written request to defer the sale of timber.

(2) The department may offer a timber conservation license for all or part of a timber sale.

(3) A notice of intent to request a timber conservation license must occur within 60 days of the sale-scoping announcement. The notice must include a fee from the applicant.

(a) If the conservation license is to include only a portion of the total sale area, the fee will be $100.

(b) If the timber conservation license encompasses the entire sale area, a fee of $200 must be included.

(4) In order for the department to comply with its responsibilities pursuant to the Montana Environmental Policy Act and to obtain approval for offering the timber conservation license from the Montana board of land commissioners, an interested party shall, when it seeks the deferral of only a portion of a timber sale, submit to the department within 90 days of the sale-scoping announcement:

(a) a map;

(b) a legal description identifying the sale area to which the timber conservation license would apply; and

(c) all application fees.

(d) The map and legal description shall be submitted on a form prescribed by the department.

(5) An application for the offer by the department of a conservation license in lieu of a timber sale shall be submitted on a form prescribed by the department.

(a) The application fee for a conservation license in lieu of a timber sale for a portion of a timber sale is $500.

(b) The application fee for a conservation license in lieu of a timber sale for the entire timber sale is $200.

(6) The fee identified in (3) submitted with the notice of intent to request a conservation license in lieu of a timber sale shall apply towards the application fee identified in (5)(a) and (b) for a conservation license in lieu of a timber sale.

(7) If the high bidder for the timber conservation license in lieu of a timber sale has a winning bid and is someone other than the applicant, then the successful bidder will be assessed the $500 application fee and the original applicant's fee will be refunded.

(8) The applicant for a timber conservation license shall be notified by the department in writing of any deficiencies in the application that make the license unacceptable. The applicant has 15 days from the date of notice to correct the deficiencies and resubmit the application for consideration. An application may be resubmitted only twice. The department maintains the right to reject any resubmitted application if, in the opinion of the department, the deficiencies in the application have not been adequately addressed.

(9) The duration of the timber conservation license shall be determined within the Montana Environmental Policy Act (MEPA) process but shall not in any event exceed 40 years.

(10) The salvage and forest management rights associated with a timber conservation license shall be explicitly identified during the MEPA process. These rights shall be incorporated into the license.

(11) The department’s environmental analysis shall consider the proposed timber sale with and without the requested timber conservation license.

(12) The timber conservation license application shall be submitted to the state board of land commissioners for its consideration as part of the sale package.

AUTH: 77-5-201, MCA
IMP: 77-5-208, MCA

NEW RULE III TIMBER CONSERVATION LICENSE BIDDING AND BONDING (1) Prospective timber purchasers bidding on a sale that contains a request for a timber conservation license must submit two bids, except as specified below. One bid shall be to purchase the full amount of timber offered for sale. The second bid shall be to purchase the full sale less the timber identified by the timber conservation license. If both bids are not received, the bid shall be considered non-responsive. In the event that the timber conservation license application encompasses the entire proposed timber sale area, timber purchasers shall submit a single bid for the entire proposed sale area.

(2) Prospective conservation license bidders may bid only on the area identified in the conservation license.

(3) If no bid above the minimum asking price is received on the portion of the sale designated for harvest, the department will not award a conservation license in lieu of a timber sale. The department will, at its discretion, withdraw

the sale or will re-offer the sale including the conservation license in lieu of a timber sale at a lower minimum asking price.

(4) The department shall select the bid or combined bid and timber conservation license that generates the most revenue for the trust beneficiaries.

(5) If the timber conservation license is accepted as the winning bid, the license holder must post a performance bond equal to a minimum of 5% of deferred stumpage value, and shall also pay forest improvement fees as may be required by 77-5-204, MCA.

(a) The purchaser of the timber conservation license shall pay the bond as if it were a timber purchase, based on the bid price.

(b) The license cost shall be prorated over three years to simulate the annual average payments made if the sale were for the harvest of the timber.

(c) The first payment is due upon contract signing and the remaining two payments are due on the anniversary of the contract signing date for each of the next two years.

(d) Forest improvement fees shall be paid in six equal quarterly payments beginning with the first quarter following the bid award.

(e) Other arrangements for earlier payment of forest improvement fees may be made if agreed to by the department and the conservation license purchaser.

(f) The purchaser of the sale or portion of the sale for the purpose of harvesting timber shall pay bonds, forest improvement fees, and stumpage in the usual manner based on a harvest of the reduced volume of timber.

(6) If the timber conservation license is not executed within 45 days of the bid award, the project shall be awarded to the next highest bidder.

(7) The volume of timber associated with the timber conservation license shall be counted as part of the annual timber sale requirement for the state timber sale program administered by the department.

AUTH: 77-5-201, MCA
IMP: 77-5-208, 77-5-223, MCA

NEW RULE IV TIMBER CONSERVATION LICENSE CONDITIONS AND RESTRICTIONS (1) The department or its agents shall make periodic inspections of the timber conservation license area during the term of the license.

(2) The holder of the timber conservation license is required to inform the department of any problem occurring on the area covered by the timber conservation license including but not limited to:

(a) biological infestations;

(b) wind throw; and

(c) fire or other damage.

(3) The timber conservation license shall not impinge upon the proposed timber sale or access to other areas of the

timber sale or any future or existing timber sale on this, adjoining properties, or other state trust lands. The department shall look at other reasonable future access alternatives during MEPA analysis and attempt to minimize the potential future impact of department activities on the timber conservation license.

(4) A timber conservation license does not allow any removal or blocking of existing roads or access corridors without the written approval of the department. A timber conservation license does not prohibit the department from adding or improving roads for resource management purposes or eliminating existing roads within the license area.

(5) The timber conservation license holder shall not act in any way that will diminish the monetary value of the timber not harvested pursuant to the terms of the timber conservation license to the trust beneficiaries or any future revenue generation potential of the land covered by the license.

(6) The timber conservation license holder shall not cut trees, live or dead, standing or down, unless prior approval is granted by the department.

(7) The timber conservation license is for conservation purposes only and does not allow any other exclusive or non-exclusive development or use of the license area.

(8) The timber conservation license does not preclude other lawful licensed or permitted uses of Montana's forested trust lands by the state of Montana.

AUTH: 77-5-201, MCA
IMP: 77-5-208, MCA

NEW RULE V ASSIGNMENTS (1) Grantees of timber conservation licenses shall apply on the standard application form prescribed by the department. The provisions of ARM 36.25.118 shall apply to assignments under this rule. Assignments must be approved by the department.

AUTH: 77-5-201, MCA
IMP: 77-5-208, MCA

NEW RULE VI TIMBER CONSERVATION LICENSE CONTRACT TERMINATION (1) All rights conveyed under a timber conservation license return to the state upon the expiration or termination of a timber conservation license.

(2) Conditions for contract termination will be identified during the MEPA analysis.

AUTH: 77-5-201, MCA
IMP: 77-5-208, MCA

REASON: These rules are being proposed in accordance with 77-5-208, MCA, which allows the state board of land commissioners to consider the granting of timber conservation licenses in lieu of a sale. These rules are intended to address and make provisions for the department to implement that legislation. Rule I is to

establish consistent meanings for terminology used in the rules. Rule II is to establish consistent procedures for timber conservation licenses in lieu of a sale. The number of persons expected to be affected is three per year, with an annual cumulative total revenue of $700. Rule III is to establish consistent procedures for the bidding and bonding associated with the offering of timber conservation licenses in lieu of a sale. Rule IV is to establish a framework for timber conservation licenses in lieu of a sale that will ensure the trust receives full fair market value as identified in 77-5-208(1)(c), MCA. Rule V is to establish administrative flexibility in the administration of timber conservation licenses in lieu of a sale by allowing for the assignment of those licenses. Rule VI is to limit license rights and to specify that the rights associated with the timber in a timber conservation license in lieu of a sale are owned by the state.

4. 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 Paul Engelman, Forest Management Bureau, Department of Natural Resources and Conservation, 2705 Spurgin Road, Missoula, MT 59804-3199; telephone (406) 542-4212; FAX (406) 542-4274; or e-mailed to pengelman@state.mt.us and must be received no later than 5:00 p.m. on August 14, 2003.

5. Pete Van Sickle, Forest Management Bureau Chief, Department of Natural Resources and Conservation, 2705 Spurgin Road, Missoula, MT 59804, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Proposed Amendment is available through the department's website at http://www.dnrc.state.mt.us. The department strives to make the electronic copy of this Notice of Proposed Amendment conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specify that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas

conservation, trust land management, water resources or combination thereof. Such written request may be mailed or delivered to Legal Unit, Department of Natural Resources and Conservation, P.O. Box 201601, 1625 11th Avenue, Helena, MT 59620-1601, faxed to the office at (406) 444-2684, or may be made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor notice requirements of 2-4-302, MCA apply and have been fulfilled.

BOARD OF LAND COMMISSIONERS

By: /s/ Judy Martz
JUDY MARTZ
Chair

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

By: /s/ Arthur R. Clinch
ARTHUR R. CLINCH
Director

By: /s/ Donald D. MacIntyre
DONALD D. MACINTYRE
Rule Reviewer

Certified to the Secretary of State July 7, 2003.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM 37.106.704 pertaining to critical access hospital (CAH)	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On August 6, 2003, at 10:00 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rule.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on July 30, 2003, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

2. The rule as proposed to be amended provides as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.106.704 MINIMUM STANDARDS FOR A CRITICAL ACCESS HOSPITAL (CAH) (1) A critical access hospital shall comply with the conditions of participation for critical access hospitals as set forth in 42 CFR 485 Subpart F, ~~October 2001~~ updated through March 2003. The department ~~hereby~~ adopts and incorporates by reference 42 CFR 485 Subpart F, ~~October 2001~~ updated through March 2003. A copy of the cited requirements is available from the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.

~~(2)~~ (3) A critical access hospital shall provide emergency services meeting the emergency needs of patients in accordance with acceptable standards of practice, including the following standards:

(a) Emergency services must be organized under the direction of a practitioner member of the medical staff. A practitioner is a physician, physician's assistant certified or an advanced practice registered nurse.

(b) The services must be integrated with other departments of the facility.

(c) The medical staff must establish and assume continuing responsibility for policies and procedures governing medical

care provided in the emergency services.

(d) A practitioner is on duty or on call and physically available at the facility within one hour at all times, unless the procedures described in (3)(e) or (f) are adopted and implemented.

(e) If the facility cannot ensure that a practitioner is available within one hour after a patient first contacts the facility, within that hour, the director of nursing or alternate must:

(i) evaluate the condition of the patient;

(ii) determine whether a practitioner can reach the facility before the hour is up; and

(iii) if the practitioner will not be available, arrange for the transport of the patient to another facility capable of providing the appropriate level of care.

(f) Facilities with 10 or fewer beds that are located in frontier areas having fewer than six persons per square mile and who have less than two full-time equivalent medical providers may provide emergency services through a registered nurse if they have requested and been granted a waiver by the state survey agency for medicare and medicaid. In these instances:

(i) an on call practitioner must be immediately available by phone or radio for the registered nurse to contact, following completion of a nursing assessment, to determine whether the patient requires discharge, further examination, treatment or stabilization and transfer to a facility capable of providing the appropriate level of care;

(ii) all registered nurses providing emergency service coverage must have documented education and competency in emergency care;

(iii) a registered nurse meeting the qualifications specified in (3)(f)(ii) must be physically present 24 hours per day; and

(iv) the facility may not use a registered nurse to provide emergency services coverage for more than a 72 hour continuous period of time.

~~(3)~~ (2) A facility qualifies as a necessary provider of health care services to residents of the area where the facility is located if the facility: ~~is either~~

(a) is located in a county with fewer than six residents per square mile; ~~or~~

(b) is a state licensed facility located within the boundaries of an Indian reservation;

(c) is located in a county where the percentage of the population age 65 or older exceeds the statewide average; or

(d) has combined inpatient days for medicare and medicaid beneficiaries that account for at least 50% of its total acute inpatient days in the last full year for which data is available.

~~(4) 24 hour emergency care provided by a facility is determined to be necessary for ensuring access to emergency care services in the area served by the facility if, in accordance with a written policy, the facility ensures that:~~

~~(a) A physician, nurse practitioner, or physician's~~

~~assistant is on duty or on call and physically available at the facility within one hour at all times, unless the procedure described in (4)(b) is adopted and implemented;~~

~~(b) If the facility cannot ensure that a practitioner is available within one hour after a patient first contacts the facility, within that hour, the director of nursing or alternate must:~~

~~(i) evaluate the condition of the patient;~~

~~(ii) determine whether a practitioner can reach the facility before the hour is up; and~~

~~(iii) if the practitioner will not be available, arrange for the transport of the patient to another facility capable of providing the appropriate level of care.~~

(4) These requirements are in addition to those licensure rule provisions generally applicable to all health care facilities.

(5) A facility aggrieved by a denial, suspension or termination of licensure may request a fair hearing in accordance with ARM 37.5.117.

AUTH: Sec. 50-5-233, MCA
IMP: Sec. 50-5-233, MCA

3. The proposed rule amendments will update the minimum standards required for critical access hospital state licensure. The Center for Medicare and Medicaid Services (CMS) recently adopted federal rules that became effective on March 1, 2003 that allow a small critical access hospital (CAH) to staff its emergency room with a registered nurse under limited circumstances. Governor Martz and Senator Baucus actively pursued this rule change with CMS because of the potential benefit to several Montana CAHs. The state administrative rules must be updated to incorporate this federal rule change.

The proposed change to ARM 37.106.704 is necessary to update the CAH requirements for state licensure to the most recent standard used by CMS. Updating to the most current version of the CFR will make the regulations consistent for CAHs who are regulated under both state licensing regulations and federal certification requirements. Currently CMS uses 42 CFR 485 Subpart F as adopted on March 1, 2003. Under state law, a CAH is licensed using a reference to 42 CFR 485 Subpart F, October 2001. The disparity between the two standards is confusing to providers.

The proposed rule change will allow Montana to exercise an "opt-out" provision from a Medicare requirement for physician supervision of certified registered nurse anesthetists (CRNAs) in order to receive federal Medicare reimbursement for anesthesiology services. The Board of Medical Examiners and the Board of Nursing have been consulted and agree with this proposed change. The proposed change will increase access to anesthesiology in rural areas.

This proposed rule change will also allow Governor Martz to

request of CMS that Montana be able to include RNs as emergency service providers in limited circumstances. The use of RNs is only available to a CAH with 10 or fewer beds, located in a frontier area that has a demonstrated professional personnel shortage that has been granted a waiver by the state survey agency for Medicare and Medicaid. The rule sets out certain standards for when an RN can be used, the type of training they must have and the need for a contract with an on call practitioner. Less stringent measures were considered and rejected. These measures are considered to be the minimum needed to protect the safety of patients.

The proposed rule change also expands the definition of what kind of facilities in Montana can qualify as a CAH. This change is being instituted to ensure access to CAH services. Enhanced Medicare reimbursement is available to a CAH. This enhanced reimbursement is crucial to facilities located in counties with high elderly populations and those who rely on Medicare or Medicaid payment for 50% or more of their acute patients. The alternative of not adding these criteria was considered and rejected because of the potential that these providers of acute medical services, which are crucial to the people living in these counties, might not be able to stay in business without the enhanced reimbursement.

4. Interested 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 Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, Helena, MT 59620-2951, no later than 5:00 p.m. on August 14, 2003. Data, views or arguments may also be submitted by facsimile (406)444-9744 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

5. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Dawn Sliva
Rule Reviewer

John Chappuis for
Director, Public Health and Human Services

Certified to the Secretary of State July 7, 2003.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed adoption of New Rule I through IV, amendment of ARM 42.20.302 and 42.20.303; transfer and amendment of ARM 42.20.134, 42.20.139, 42.20.141, 42.20.142, 42.20.143, 42.20.144, 42.20.145, 42.20.146, 42.20.147, 42.20.148, 42.20.149, 42.20.150, 42.20.152, 42.20.153, 42.20.159, 42.20.160, 42.20.162, 42.20.164, 42.20.165, 42.20.166, 42.20.167, 42.20.168, 42.20.169, 42.20.170; and repeal of ARM 42.20.135, 42.20.140, 42.20.151, 42.20.154, 42.20.155, 42.20.157, 42.20.161, and 42.20.163 relating to agricultural and forest land properties	)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, TRANSFER AND AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On August 7, 2003, at 1:30 p.m., a public hearing will be held in the Fourth Floor Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption, amendment, transfer and amendment, and repeal of the above-stated rules relating to agricultural and forest land properties.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Room 455, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue not later than 5:00 p.m., August 1, 2003, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax (406) 444-3696; or e-mail canderson@state.mt.us.

3. The proposed New Rules do not replace or modify any section currently found in the Administrative Rules of Montana. New Rules I and III will be placed in new sub-chapter 6, and New Rules II and IV will be placed in new sub-chapter 7 of Title 42, chapter 20. The proposed New Rules provide as follows:

NEW RULE I DEFINITIONS The following definitions apply to this sub-chapter:

(1) "Agricultural application" means department form AB-3 used by taxpayers to request agricultural classification of land.

(2) "Agricultural products produced by the land" means crops or forage used to support livestock are grown directly in the land's soil. "Agricultural products produced by the land" does not mean land that is used as a "platform" for agricultural activities. Examples of agricultural activities that do not meet the definition "agricultural products produced by the land" are the feeding of livestock from external sources that allow stocking rates to exceed the carrying capacity or crops produced in potted soil that are not grown directly in the land's soil.

(3) "Animal unit" means a two-year-old steer or range cow, a bull, or four to five adult sheep that would weigh, either individually or collectively, approximately 1000 pounds.

(4) "Animal unit month" means one animal unit grazing for one month. One animal unit month represents the amount of forage needed to properly nourish one animal unit for one month without injurious effect to vegetation on the land.

(5) "Biological control insect" means an insect that is used to reduce or eliminate noxious weeds by interference with the weed's ecology.

(6) "Bona fide agricultural operation" means an agricultural enterprise in which the land actually produces agricultural crops defined in 15-1-101, MCA, that directly contribute agricultural income to a functional agricultural business.

(7) "Carrying capacity" means the amount of grazing that a pasture will sustain without injurious effect to vegetative growth due to the quality of the soil and the environment where it occurs.

(8) "Conservation reserve program (CRP)" means a federal farm program that pays agricultural landowners to remove land from crop production on highly erodible soils for a specified period of time.

(9) "Contiguous parcels of land" means separately described parcels of land under one ownership that physically touch one another or would have touched one another were the acreages not separated by deeded roads and highways, navigable rivers and streams, railroad lines, or federal or state land that is leased from the federal or state government by the taxpayer whose land is physically touching the federal or state land.

(10) "Farm and ranch reporting form" means a department-designed personal property reporting form (PPB-3) that lists personal property and livestock used in an agricultural business.

(11) "Hobby animals" mean livestock that are owned as pets for the general purpose of personal entertainment, relaxation, and enjoyment, and not used directly in a normal day-to-day income-producing business. Examples of livestock that are not hobby animals are those used in income-producing businesses

including, but not limited to, outfitter operations, working ranches, and horses raised for the specific purpose of producing income.

(12) "Land use" means land placed into a certain type of service or utilization.

(13) "Lease" means an agreement transferring certain rights to a lessee (tenant), including possession, while still allowing the lessor (landlord) to retain fee ownership.

(14) "Livestock" as defined in 15-1-101, MCA, means cattle, sheep, swine, goats, horses, mules, asses, llamas, alpacas, bison, ostriches, rheas, emus, and domestic ungulates.

(15) "Noncontiguous parcels of land" means parcels of land under one ownership that are physically separated from one another by land in a different ownership other than deeded roads and highways, navigable rivers and streams, railroad lines, or federal or state land that is leased from the federal or state government by the taxpayer whose land is physically touching the federal or state land.

(16) "Owner" means that the applicant and owner of record are the same individual, corporation, or partnership.

(17) "Parcel" means a tract or plot of land distinguishable by ownership boundaries.

(18) "Poultry" means domesticated birds raised for eggs, meat, or other commercially marketable products that are not included in the definition of livestock as described in 15-1-101, MCA.

(19) "Productive capacity" means the ability of a soil to produce crops or forage under the environment where it occurs and under a specified system of management. The productive capacity can change over time due to changes in soil fertility or more efficient farming practices and equipment.

(20) "Residence" means all conventionally constructed homes, as well as all mobile homes and manufactured housing, that may serve as living quarters for one or more individuals or a family. The occupancy of the residence shall be irrelevant.

(21) "Under one ownership" means one party owns two or more parcels of land when the title is in the party's name or names; the party has received title in the parcels by a transferring instrument such as a deed, contract for deed, or judgment; and the party has the present right to possess and use the parcels.

AUTH: Sec. 15-7-111, MCA
IMP: Sec. 15-1-101, 15-6-133, 15-7-201, and 15-7-202, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I to define the terms used in new sub-chapter 6 of chapter 20. The terms being defined are common in the agricultural field.

NEW RULE II DEFINITIONS The following definitions apply to this sub-chapter:

(1) "Capable of producing timber that can be harvested in commercial quantity" means:

(a) forest land that can produce 25 cubic feet or more of

stem-wood per acre per year in live softwood trees, 1.0 inch in diameter at breast height, at the culmination of the mean annual increment (the point of maximum wood production) for fully stocked, natural stands; and

(b) is at least 10% stocked with softwood timber of any size on an area at least 120 feet in width; or

(c) has been converted from another use and exhibits a minimum stocking rate of 300 seedlings and/or saplings per acre (12-foot average spacing); or

(d) meets the stocking requirement specified in (1)(b) and (c), but has had the trees removed by man through timber harvest or by fires and other natural disasters, and has been, or will be, naturally or artificially regenerated within 10 years.

(2) "Contiguous parcels of land" means separately described parcels of land under one ownership that physically touch one another or would have touched one another were the acreages not separated by deeded roads and highways, navigable rivers and streams, railroad lines, or federal or state land that is leased from the federal or state government by the taxpayer whose land is physically touching the federal or state land.

(3) "Diameter at breast height (dbh)" means the average stem diameter, outside bark, at a point 4.5 feet above the ground.

(4) "Forest site productivity class" means the range of site quality which expresses the timber production potential of a site in terms of cubic-foot volume growth per acre at culmination of mean annual increment (the point of maximum wood production) in fully stocked natural stands.

(5) "Fully stocked" means the highest degree in which a stand could fully utilize the site's capacity to grow trees.

(6) "Land use" means land placed into a certain type of service or utilization.

(7) "Mean annual increment" is a measure of the average yearly increase in volume produced on one acre. This increment can be calculated by dividing total stand volume by the total age. Mean annual growth increases as the stand matures, attains a maximum growth increment at a later age, then decreases as the growth rate decreases. Volume is expressed in cubic feet.

(8) "Natural stands" means fully stocked, even-aged softwood stands which are naturally regenerated.

(9) "Noncontiguous parcels of land" means parcels of land under one ownership that are physically separated from one another by land in a different ownership other than deeded roads and highways, navigable rivers and streams, railroad lines, or federal or state land that is leased from the federal or state government by the taxpayer whose land is physically touching the federal or state land.

(10) "Non-forest land" means land that is at least 120 feet in width and at least five acres in size which does not meet the requirements of ARM 42.20.702. Non-forest land can include rivers and streams, roads, highways, power lines, and railroads.

(11) "Ornamental trees" means trees grown commercially to

ornament and decorate or for use as shade trees or windbreaks.

(12) "Owner" means that the applicant and owner of record are the same individual, corporation, or partnership.

(13) "Parcel" means a tract or plot of land distinguishable by ownership boundaries.

(14) "Producing timber" is defined as including trees removed through harvest, clear-cut or by natural disaster, such as fire.

(15) "Residence" means all conventionally constructed homes, as well as all mobile homes and manufactured housing, that may serve as living quarters for one or more individuals or a family. The occupancy of the residence shall be irrelevant.

(16) "Site" means the capacity of at least 15 contiguous acres to grow timber.

(17) "Stem-wood" means the bole or trunk of the tree, excluding the roots, branches, and needles.

(18) "Stocked" means a measure of the degree to which an area is effectively covered with living trees.

(19) "Under one ownership" means one party owns two or more parcels of land when the title is in the party's name or names; the party has received title in the parcels by a transferring instrument such as a deed, contract for deed, or judgment; and the party has the present right to possess and use the parcels.

(20) "Uninterrupted forest land" means forest land that meets the requirements of ARM 42.20.702 and is unbroken by non-forest land.

AUTH: Sec. 15-44-105, MCA

IMP: Sec. 15-1-101, 15-44-101, 15-44-102, and 15-44-103, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule II to move definitions that previously were located in several forest land rules into one definition rule for forest land. Additional terms are included in this rule that are found in other rules within the new sub-chapter 7 relating to forest land.

NEW RULE III CLASSIFICATION AND APPRAISAL OF EASEMENTS ON AGRICULTURAL LAND (1) Road, irrigation ditch, or power line easements that do not transfer title to such rights-of-way are taxable and will be classified, graded, and valued as adjoining agricultural land.

(2) A deeded right-of-way that is conveyed through a deed or other instrument, from a private owner to a government agency or other tax-exempt entity is not taxable and is deducted from the ownership in which it is located. If the deeded right-of-way splits two or more ownerships, such as along a deeded county road, the department will deduct proportional amounts of acreage from each ownership. A record of the conveyance must be available in the local county clerk and recorder's office.

(3) To determine the total acreage of land devoted to the easement or deeded right-of-way, the department shall determine the square footage and convert the square footage to acres by

dividing the square footage by 43,560.

AUTH: Sec. 15-7-111, MCA
IMP: Sec. 15-7-103, 15-7-201, and 15-7-206, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule III to clarify the classification and assessment of easements on agricultural land. The treatment of easements on agricultural land is defined in the department's Agricultural Lands Classification and Assessment Manual. However, the department believes the treatment of easements is a critical issue that warrants specific discussion in rule. This rule will be placed in new sub-chapter 6 with the other agricultural rules.

NEW RULE IV VALUATION OF ONE ACRE BENEATH IMPROVEMENTS ON FOREST LAND (1) A market valuation will be made for each one-acre area beneath each residence(s) which is located on forest land as provided in ARM 42.20.160 (42.20.705).

(a) Occupancy of the residential improvement for the purpose of applying this rule shall be irrelevant.

(b) A single one-acre market value determination will be made when multiple residences are located on the same one-acre area.

(c) Each one-acre area beneath a residential improvement on forest land as defined in ARM 42.20.160 (42.20.705) shall be appraised according to market value consistent with that of comparable land.

(d) If the one acre of land is located on forest land that is many miles from a suburban area, the market value assigned to the one-acre area will be consistent with the market value of comparable land. In no case will the market value be lower than the lowest market value assigned to improved tracts within the county.

(e) If the one acre of land is located on forest land that is near a suburban area, the market value assigned to the one-acre area will be consistent with the market value of surrounding suburban land.

(f) To avoid double taxation, the productive capacity value for the one-acre area beneath the residence(s) on forest land must be subtracted from the productive capacity value for the entire property ownership.

(2) No specific site improvement values for water systems and septic systems will be added to the one-acre land values determined in (1)(a) and (b).

AUTH: Sec. 15-44-105, MCA
IMP: Sec. 15-6-134, 15-7-103, 15-8-111, 15-7-201, and 15-7-202, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule IV because it is necessary to address classification and assessment procedures in regard to when department staff does not know where a residential building resides on the property. In those situations, this rule eliminates the current procedure that explains the priority order on how department staff shall

select a land use type and productivity grade to deduct from class ten assessment to avoid double taxation. This rule requires department staff know precisely where the residential buildings reside and deduct the correct land use classification and productivity grade from the landowner's class ten assessment. This rule applies to forest land and is similar to ARM 42.20.134 (42.20.655) which applies to agricultural land.

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

42.20.302 DEFINITIONS The following definitions apply to this sub-chapter:

(1) "Has a separate and independent value for such other purposes" means the land has a demonstrated capacity for recreation, commercial, industrial, or agricultural/timber use. That capacity is demonstrated by one of the following criteria:

(a) the filing of a certificate of survey that creates a division of the mining claim;

(b) ~~ongoing or contemplated (as evidenced by a timber sale) timber harvest within one mile of the mining claim, or~~

~~(c)~~ the growth of agricultural commodities on ~~or adjacent to~~ the mining claim;

~~(d)~~(c) the construction of a recreational structure such as a summer home within one mile of the mining claim;

~~(e)~~(d) the construction of a commercial structure or the operation of a commercial operation such as a hunting guide or outfitter within one mile of the mining claim; or

~~(f)~~(e) the lease of any portion of the surface area for a recreational, commercial, residential, industrial, or agricultural use.

(f) The requirements of (1)(c) and (d) may be waived when the topography of the property is so severe that it precludes development for any purpose other than mining.

~~(2)~~(4) "Nonproductive land" means non-fertile land that is incapable of ~~producing~~ supporting animals or producing plant matter in commercially salable quantities.

~~(3)~~(5) "Owner" means that the applicant and owner of record are the same individual, corporation, or partnership.

~~(4)~~(6) "Patented" means land purchased from the federal government for the sole purpose of developing a mining operation.

~~(5)~~(2) "Incorporated city or town" means any municipality or county area in which the government body has complied with all incorporation provisions outlined in Title 7, MCA.

~~(6) The requirements of (1) may be waived when the topography of the property is so severe that it precludes development for any purpose other than mining.~~

~~(7)~~(3) "~~The mineral~~ Mineral interests of the mining claim have not been depleted" means that the minerals located within the boundaries of the parcel are a vein, lode, or ledge of rock-in-place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, or a placer deposit of gold or other deposit of minerals having a commercial value.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-6-101, 15-6-148, 15-6-153, and 15-8-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.302 for housekeeping changes. The previous provision that excluded applications from consideration when the property was located within a mile of a timber sale is eliminated in this rule. A timber sale conducted by a neighboring landowner should not be a basis for disqualifying a mining claim property from treatment under ARM 42.20.303.

42.20.303 CRITERIA FOR VALUATION AS MINING CLAIM

(1) remains the same.

(2) The applicant for class three property tax treatment is required to demonstrate ownership of the patented mining claim for which classification is sought. If, on the date of application, the applicant is presently carried on the tax rolls of the county as the owner of the mining claim, the department will presume that the applicant is the ~~record~~ owner of record of the mining claim.

(3) If, on the date of application, the applicant is not carried as the owner of record of the mining claim on the tax rolls of the county, the applicant will be required to fulfill criteria set forth in (4)~~(a), (b), and (c)~~.

(4) Proof of the criteria set forth in ~~subsection~~ (1) ~~above~~ must consist of the following:

(a) submission of a copy of the United States patent issued in the name of the owner of record or a written certificate from the bureau of land management certifying the ownership of the patented mining claim;

(b) submission of a copy of the RTC, if provided for by law as of the date of patent issuance, completed by the owner of record or the owner's representative or agent; and

(c) submission of copies of the most recent deeds or security agreements evidencing ownership and a copy of the last assessment on the patented mining claim~~; and~~

(~~d) submission of a completed application on a form provided free of charge by the department of revenue~~.

(5) In the event that class three property tax treatment is sought for a patented mining claim which is owned by multiple parties, the criteria set forth in (2) and (3) must be fulfilled by a majority of the parties or entities currently paying the taxes on the claim or by the single party or entity paying taxes on the ~~patented mining~~ claim.

(6) remains the same.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-6-101, 15-6-133, 15-6-148, 15-6-153, and 15-8-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.303 with general housekeeping changes.

5. The department proposes to transfer and amend the following rules to new sub-chapter 6 dealing with agriculture, stricken matter interlined, new matter underlined:

42.20.134 (42.20.655) VALUATION OF ONE ACRE BENEATH IMPROVEMENTS ON AGRICULTURAL AND NONQUALIFIED AGRICULTURAL LAND ~~AND IMPROVEMENTS ON FOREST LAND~~ (1) An agricultural valuation will be made for each one-acre area beneath each residence(s) located on agricultural land as defined in ARM 42.20.650, 42.20.665, and 42.20.675.

(a) Occupancy of the residential improvement for the purpose of applying this rule shall be irrelevant.

(b) A single one-acre agricultural land value determination will be made when multiple residences are located on the same one-acre area.

(c) Each one-acre area beneath the residence(s) on agricultural land as stated in (1) shall be appraised according to the productive capacity value consistent with the class with the highest productive value and production capacity of agricultural land.

(d) To avoid double taxation, the productive capacity value for the one acre beneath the residence(s) on agricultural land must be subtracted from the productive capacity value for the entire property ownership.

~~(1)~~(2) A market value determination will be made for each one-acre area beneath each residence(s) which is located on nonqualified agricultural land as ~~defined~~ explained in ARM ~~42.20.152~~ 42.20.650 ~~and for each one-acre area beneath each residence that is located on forest land as defined in ARM 42.20.160 and ARM 42.20.161~~.

(a) Occupancy of the residential improvement for the purpose of applying this rule~~,~~ shall be irrelevant. ~~The existence of ancillary structures and outbuildings shall be similarly irrelevant, for the purposes of applying this rule.~~

(b) A single one-acre market value determination will be made when multiple residences are located on the same one-acre area.

~~(2)~~(c) Each one-acre area beneath a residential improvement on nonqualified agricultural ~~or forest~~ land as defined in ~~(1)~~ (2) ~~above,~~ shall be appraised according to market value consistent with that of comparable land.

~~(a)~~(d) If the one acre of land is located on a nonqualified agricultural ~~or forest land operation~~ parcel of land that is many miles from a suburban area, the market value assigned to the one-acre area will be consistent with the market value of comparable land. In no case will the market value be lower than the lowest market value assigned to improved tracts within the county.

~~(b)~~(e) If the one acre of land is located on a nonqualified agricultural ~~or forest land operation~~ parcel of land that is near a suburban area, the market value assigned to the one-acre area will be consistent with the market value of surrounding suburban land.

(f) To avoid double taxation, the productive capacity value for the agricultural productive grazing grade 3 for the one acre beneath the residence(s) on nonqualified agricultural land improvements must be subtracted from the productive capacity value for the entire property ownership.

~~(c)~~(3) No specific site improvement values for water systems and septic systems will be added to the one-acre land values determined ~~according to paragraphs~~ in (2)~~(a)~~(d) and (e) ~~(2)(b) above~~.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-6-134, 15-7-103, 15-7-201, 15-7-202, and 15-8-111, MCA

REASONABLE NECESSITY: The department is proposing to centralize four current rules, ARM 42.20.134, 42.20.135, 42.20.154, and 42.20.155 that address the classification and assessment of one acre beneath agricultural and nonqualified agricultural land into one rule. ARM 42.20.135, 42.20.154, and 42.20.155 will be repealed. The only proposed change applies to the classification and assessment procedures which address what to do when department staff does not know where a residential building resides on the property. In those situations, this rule eliminates the current procedure that explains the priority order on how department staff shall select a land use type and productivity grade to deduct from class three assessment to avoid double taxation. This rule requires department staff to know precisely where the residential buildings reside and deduct the correct land use classification and productivity grade from the landowner's class three assessment.

42.20.139 (42.20.615) APPLICATION FOR AGRICULTURAL CLASSIFICATION OF LAND (1) The property owner of record or ~~his~~ the property owner's agent must make application to the ~~property assessment division,~~ department ~~of revenue,~~ in order to secure agricultural classification of ~~his~~ the property owner's land if the contiguous ownership is less than 160 acres in size. In order to be considered for the current tax year, an application must be filed on a form available from the ~~county appraisal~~ local department office before ~~March 1~~ the first Monday in June or 30 days after receiving a notice of classification change from the department ~~of revenue~~, whichever is later. The form must be filed with the ~~county appraisal~~ local department office.

(2) A party who owns two or more contiguous parcels with title in non-identical names may file an affidavit with the local department office to prove single ownership in the parcels.

(a) Examples of a party with title to multiple parcels of land in non-identical names that may file an affidavit to prove single ownership include, but are not limited to:

(i) John Doe is the same person as John G. Doe; or

(ii) James Cole Smith is the same person as James C. Smith.

(b) Examples of a party with title to multiple parcels of land in non-identical names that are not "under one ownership" and may not file an affidavit to prove single ownership include, but are not limited to:

(i) John Doe has title to one ownership and John and Mary Doe have title to a different ownership;

(ii) John Doe has title to one ownership and John Doe

corporation has title to a different ownership; or

(iii) John Doe has title to one ownership and John Doe trust has title to a different ownership.

~~(2)~~(3) The ~~county appraiser~~ department will review the application and may conduct a field evaluation. The ~~county appraiser~~ department will approve or deny the application, and will return a copy of the form to the property owner or ~~his~~ the property owner's agent. ~~A copy of the form will be provided to the county assessor.~~

~~(3)~~(4) An annual application is not required. An application is required ~~only:~~

~~(a)~~ if the department reclassifies the property and the taxpayer disagrees with the department's reclassification action~~;~~. Examples of reasons why the department may reclassify a property include, but are not limited to:

(a) the property changes ownership;

(b) ~~if when submitting the annual farm and ranch assessment, the owner, the owner's immediate family members, the owner's agent, employee or lessee fails to indicate on the form that the land continues to be used primarily for raising agricultural products through marketing not less than $1,500 in annual gross income from the raising of agricultural products produced by the land;~~ the property is subdivided;

(c) ~~if the owner, the owner's immediate family members, the owner's agent, employee or lessee fails to submit a farm and ranch reporting form; or~~ the department believes agricultural use on the property has been discontinued;

(d) ~~submits a farm and ranch reporting form but significantly reduces the amount of property reported from the prior year to the extent there is convincing belief that the property is no longer a viable agricultural unit.~~ the department is unsure that the taxpayer continues to market the minimum income requirements or that the land produces the equivalent of the minimum income requirement of crops or animals that are consumed;

(e) the property is converted to a residential, commercial, or industrial use; or

(f) the owner, the owner's immediate family members, the owner's agent, employee or lessee submits a farm and ranch reporting form that significantly reduces the amount of property reported from the prior year to the extent there is convincing evidence that the property is no longer a viable agricultural unit.

~~(4)~~(5) The taxpayer will be notified in writing if the department acts to reclassify the taxpayer's property.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-6-133, 15-6-144, and 15-7-202, MCA

REASONABLE NECESSITY: The department is proposing to transfer ARM 42.20.139 to sub-chapter 6 and amend the rule for housekeeping changes. The rule clarifies that landowner’s of contiguous ownerships less than 160 acres in size must apply to the department for agricultural classification of the land. The rule extends the deadline each year for applicants to apply for

agricultural assessment and taxation. ARM 42.20.163 is repealed and its language is included in this rule for better clarification of agricultural eligibility dealing with ownership issues on applications with multiple parcels of land.

42.20.141 (42.20.605) AGRICULTURAL LANDS (1) The department ~~of revenue has herein adopted~~ adopts and ~~incorporated~~ incorporates the "Montana Agricultural Land Classification Manual ~~(1993 - as revised)~~" by reference. Current ~~Copies~~ copies of this manual may be reviewed ~~in this~~ at the local department office or may be ~~purchased from the department at cost plus mailing~~ accessed at the department's website, www.discoveringmontana.com/revenue.

(2) Current schedules for determining grade, classification, and assessed value per acre~~, as~~ are ~~outlined in the pamphlet~~ adopted ~~and referenced in subsection (1) of this rule, are as follows~~ in ARM ~~42.20.142 through 42.20.146~~ 42.20.660, 42.20.665, 42.20.670, 42.20.675, and 42.20.680.

(3) Taxable values for each land use and production category will be phased in or phased down ~~over a 4-year period, beginning January 1, 1994~~ pursuant to 15-7-111, MCA, and ARM 42.20.503.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-6-133 and 15-7-103, MCA

REASONABLE NECESSITY: The department is proposing to transfer ARM 42.20.141 to sub-chapter 6. Minor housekeeping amendments have been made to the rule. The rule specifies that anyone who wants to view or obtain the department's most current version of the Agricultural Land Classification and Appraisal Manual can do so by accessing the Department's internet website. The rule replaces specific mention to the length of time agricultural rules will be phased in or phased down over an appraisal cycle with a reference to 15-7-111, MCA, and ARM 42.20.503. Section 15-7-111, MCA, and ARM 42.20.503 dictate the phase-in or phase-down period for the current reappraisal cycle.

42.20.142 (42.20.680) GRAZING LAND (1) The following is the schedule for the ~~classification and valuation of grazing land:~~ grazing land productive values for each year of the reappraisal cycle beginning January 1, 2003:

(a) ~~In effect from January 1, 1994, through December 31, 1994:~~ Productive capacity values are calculated by using the formula defined in 15-7-201, MCA.

~~Acres for 10-month Grazing Season per 1,000-lb. Steer or Equivalent~~	~~Grade~~	~~Assessed Value Per Acre~~
~~Under - 3~~	~~1A2~~	~~$551.77~~
~~3 - 5~~	~~1A1~~	~~324.47~~
~~5 - 6~~	~~1A+~~	~~230.96~~
~~6 - 10~~	~~1A~~	~~153.03~~
~~11 - 18~~	~~1B~~	~~79.85~~

~~19 - 21~~	~~2A~~	~~55.18~~
~~22 - 27~~	~~2B~~	~~42.52~~
~~28 - 37~~	~~3~~	~~29.92~~
~~38 - 55~~	~~4~~	~~20.45~~
~~56 - 99~~	~~5~~	~~12.02~~
~~100 or over~~	~~6~~	~~6.92~~

~~(b) In effect from January 1, 1995, through December 31, 1995:~~

~~Acres for 10-month Grazing Season per 1,000-lb. Steer or Equivalent~~	~~Grade~~	~~Assessed Value Per Acre~~
~~Under - 3~~	~~1A2~~	~~$546.36~~
~~3 - 5~~	~~1A1~~	~~305.57~~
~~5 - 6~~	~~1A+~~	~~218.89~~
~~6 - 10~~	~~1A~~	~~146.65~~
~~11 - 18~~	~~1B~~	~~77.85~~
~~19 - 21~~	~~2A~~	~~54.64~~
~~22 - 27~~	~~2B~~	~~42.92~~
~~28 - 37~~	~~3~~	~~30.94~~
~~38 - 55~~	~~4~~	~~21.31~~
~~56 - 99~~	~~5~~	~~12.62~~
~~100 or over~~	~~6~~	~~7.47~~

(b) The department will apply a phase-in percentage as defined in 15-7-111, MCA, and ARM 42.20.503 to the full reappraisal productive capacity values for grazing land for the reappraisal cycle beginning January 1, 2003.

GRAZING LAND

GRADE	Acres Per Animal Unit	2003 Assessed Value/AC	2004 Assessed Value/AC	2005 Assessed Value/AC
1A2	< .30	$664.75	$682.03	$699.32
1A1	.30 - .50	$332.37	$341.02	$349.66
1A+	.51 - .59	$241.73	$248.01	$254.30
1A	.60 - 1.00	$166.19	$170.51	$174.83
1B	1.01 - 1.89	$91.69	$94.07	$96.46
2A	1.90 - 2.19	$66.47	$68.20	$69.93
2B	2.20 - 2.79	$54.26	$55.68	$57.09
3	2.80 - 3.79	$40.91	$41.97	$43.03
4	3.80 - 5.59	$28.59	$29.33	$30.08
5	5.60 - 9.99	$17.15	$17.60	$18.05
6	> 9.9	$10.64	$10.91	$11.19

GRAZING LAND

GRADE	Acres Per Animal Unit	2006 Assessed Value/AC	2007 Assessed Value/AC	2008 Assessed Value/AC
1A2	< .30	$716.60	$733.89	$751.17
1A1	.30 - .50	$358.30	$366.94	$375.59
1A+	.51 - .59	$260.58	$266.87	$273.15
1A	.60 - 1.00	$179.15	$183.47	$187.79
1B	1.01 - 1.89	$98.84	$101.23	$103.61
2A	1.90 - 2.19	$71.66	$73.39	$75.12
2B	2.20 - 2.79	$58.50	$59.91	$61.32
3	2.80 - 3.79	$44.10	$45.16	$46.23
4	3.80 - 5.59	$30.82	$31.57	$32.31
5	5.60 - 9.99	$18.49	$18.94	$19.39
6	> 9.99	$11.47	$11.74	$12.02

~~(c) In effect from January 1, 1996, through December 31, 1996:~~

~~Acres for 10-month Grazing Season per 1,000-lb. Steer or Equivalent~~	~~Grade~~	~~Assessed Value Per Acre~~
~~Under - 3~~	~~1A2~~	~~$540.96~~
~~3 - 5~~	~~1A1~~	~~286.67~~
~~5 - 6~~	~~1A+~~	~~206.81~~
~~6 - 10~~	~~1A~~	~~140.27~~
~~11 - 18~~	~~1B~~	~~75.86~~
~~19 - 21~~	~~2A~~	~~54.09~~
~~22 - 27~~	~~2B~~	~~43.32~~
~~28 - 37~~	~~3~~	~~31.95~~
~~38 - 55~~	~~4~~	~~22.17~~
~~56 - 99~~	~~5~~	~~13.22~~
~~100 or over~~	~~6~~	~~8.02~~

~~(d) In effect from January 1, 1997, through December 31, 1997:~~

~~Acres for 10-month Grazing Season per 1,000-lb. Steer or Equivalent~~	~~Grade~~	~~Assessed Value Per Acre~~
~~Under - 3~~	~~1A2~~	~~$535.55~~
~~3 - 5~~	~~1A1~~	~~267.77~~
~~5 - 6~~	~~1A+~~	~~194.74~~
~~6 - 10~~	~~1A~~	~~133.89~~

~~11 - 18~~	~~1B~~	~~73.87~~
~~19 - 21~~	~~2A~~	~~53.55~~
~~22 - 27~~	~~2B~~	~~43.72~~
~~28 - 37~~	~~3~~	~~32.96~~
~~38 - 55~~	~~4~~	~~23.03~~
~~56 - 99~~	~~5~~	~~13.82~~
~~100 or over~~	~~6~~	~~8.57~~

~~(2) Four range ewes with lambs are considered the equivalent of a 1000-lb. steer. Calves are not considered until weaned, and four yearling steers or heifers are considered as equivalent to three 1000-lb. steers. A dry cow is considered the equivalent of a 1000-lb. steer. A range cow with calf is considered the equivalent of a steer.~~

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-7-103, 15-7-201, and 15-7-221, MCA

REASONABLE NECESSITY: The department is proposing to transfer ARM 42.20.142 to sub-chapter 6 and amend the rule to include each new grazing schedule that is effective for years 2003-2008 reappraisal cycle. A different grazing schedule is used for each year of the 2003-2008 reappraisal cycle because 15-7-111, MCA, and ARM 42.20.503 mandate that full reappraisal values be incrementally phased in over the length of an appraisal cycle. The rule contains minor housekeeping changes and explains that the schedules are calculated using the formula defined in 15-7-201, MCA.

42.20.143 (42.20.670) NON-IRRIGATED CONTINUOUSLY CROPPED HAY LAND (1) The following is the schedule for the ~~classification and valuation of continuously cropped hay land~~ non-irrigated continuously cropped hay land productive capacity values for each year of the reappraisal cycle beginning January 1, 2003:

(a) ~~In effect from January 1, 1994, through December 31, 1994:~~ Productive capacity values are calculated by using the formula defined in 15-7-201, MCA.

~~Tons of Hay Per Acre~~	Grade	~~Assessed Value Per Acre~~
~~3.0 and Over~~	~~1~~	~~$556.70~~
~~2.5 - 2.9~~	~~2~~	~~455.50~~
~~2.0 - 2.4~~	~~3~~	~~360.49~~
~~1.5 - 1.9~~	~~4~~	~~263.72~~
~~1.0 - 1.4~~	~~5~~	~~178.03~~
~~.5 - .9~~	~~6~~	~~96.53~~
~~Less than .5~~	~~7~~	~~45.85~~

~~(b) In effect from January 1, 1995, through December 31, 1995:~~

~~Tons of Hay Per Acre~~	Grade	~~Assessed Value Per Acre~~
~~3.0 and Over~~	~~1~~	~~$588.01~~

~~2.5 - 2.9 2 498.86~~
~~2.0 - 2.4 3 399.37~~
~~1.5 - 1.9 4 298.71~~
~~1.0 - 1.4 5 205.44~~
~~.5 - .9 6 114.96~~
~~Less than .5 7 48.64~~

(b) The department will apply a phase-in percentage as defined in 15-7-111, MCA, and ARM 42.20.503 to the full reappraisal productive capacity values for non-irrigated continuously cropped hay land for the reappraisal cycle beginning January 1, 2003.

NON-IRRIGATED CONTINUOUSLY CROPPED HAYLAND

GRADE	Tons of Hay Per Acre	2003 Assessed Value/AC	2004 Assessed Value/AC	2005 Assessed Value/AC
1	> 3.0+	$661.17	$684.14	$707.10
2	2.5 - 2.9	$587.78	$601.17	$614.57
3	2.0 - 2.4	$478.93	$489.84	$500.76
4	1.5 - 1.9	$370.08	$378.52	$386.95
5	1.0 - 1.4	$261.23	$267.19	$273.14
6	.5 - .9	$152.39	$155.86	$159.33
7	< .5	$54.42	$55.66	$56.90

NON-IRRIGATED CONTINUOUSLY CROPPED HAYLAND

GRADE	Tons of Hay Per Acre	2006 Assessed Value/AC	2007 Assessed Value/AC	2008 Assessed Value/AC
1	> 3.0+	$730.07	$753.03	$776.00
2	2.5 - 2.9	$627.96	$641.36	$654.75
3	2.0 - 2.4	$511.67	$522.59	$533.50
4	1.5 - 1.9	$395.38	$403.82	$412.25
5	1.0 - 1.4	$279.09	$285.05	$291.00
6	.5 - .9	$162.80	$166.28	$169.75
7	< .5	$58.14	$59.38	$60.63

~~(c) In effect from January 1, 1996, through December 31, 1996:~~

~~Tons of Hay Per Acre~~	~~Grade~~	~~Assessed Value Per Acre~~
~~3.0 and Over~~	~~1~~	~~$619.32~~
~~2.5 - 2.9~~	~~2~~	~~542.21~~
~~2.0 - 2.4~~	~~3~~	~~438.25~~
~~1.5 - 1.9~~	~~4~~	~~333.70~~
~~1.0 - 1.4~~	~~5~~	~~232.84~~
~~.5 - .9~~	~~6~~	~~133.38~~
~~Less than .5~~	~~7~~	~~51.43~~

~~(d) In effect from January 1, 1997, through December 31, 1997:~~

~~Tons of Hay Per Acre~~	~~Grade~~	~~Assessed Value Per Acre~~
~~3.0 and Over~~	~~1~~	~~$650.63~~
~~2.5 - 2.9~~	~~2~~	~~585.56~~
~~2.0 - 2.4~~	~~3~~	~~477.13~~
~~1.5 - 1.9~~	~~4~~	~~368.69~~
~~1.0 - 1.4~~	~~5~~	~~260.25~~
~~.5 - .9~~	~~6~~	~~151.81~~
~~Less than .5~~	~~7~~	~~54.22~~

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-7-103, 15-7-201, and 15-7-221, MCA

REASONABLE NECESSITY: The department is proposing to transfer ARM 42.20.143 (42.20.670) to sub-chapter 6 and amend the rule to include each new non-irrigated continuously cropped hay land schedule that will be effective for years 2003-2008 reappraisal cycle. A different non-irrigated continuously cropped hay land schedule is used for each year of the 2003-2008 reappraisal cycle because 15-7-111, MCA, and ARM 42.20.503 mandate that full reappraisal values be incrementally phased in over the length of an appraisal cycle. The rule contains minor housekeeping changes and explains that the schedules are calculated using the formula defined in 15-7-201, MCA.

42.20.144 (42.20.660) NON-IRRIGATED SUMMER FALLOW FARM LAND (1) The following is the schedule for the ~~classification and valuation of~~ non-irrigated summer fallow farm land productive capacity values for each year of the reappraisal cycle beginning January 1, 2003:

(a) ~~In effect from January 1, 1994, through December 31, 1994:~~ Productive capacity values are calculated by using the formula defined in 15-7-201, MCA.

~~Bu. Wheat Per Acre on Summer Fallow~~	~~Grade~~	~~Assessed Value Per Acre~~
~~40 & Over~~	~~1A8~~	~~$549.54~~
~~38 - 39~~	~~1A7~~	~~507.45~~
~~36 - 37~~	~~1A6~~	~~465.35~~
~~34 - 35~~	~~1A5~~	~~423.26~~

~~32 - 33~~	~~1A4~~	~~381.16~~
~~30 - 31~~	~~1A3~~	~~341.22~~
~~28 - 29~~	~~1A2~~	~~303.56~~
~~26 - 27~~	~~1A1~~	~~267.82~~
~~24 - 25~~	~~1A~~	~~234.35~~
~~22 - 23~~	~~1B~~	~~203.04~~
~~20 - 21~~	~~2A~~	~~173.88~~
~~18 - 19~~	~~2B~~	~~146.88~~
~~16 - 17~~	~~2C~~	~~122.04~~
~~14 - 15~~	~~3A~~	~~99.30~~
~~12 - 13~~	~~3B~~	~~78.77~~
~~10 - 11~~	~~4A~~	~~60.40~~
~~8 - 9~~	~~4B~~	~~44.18~~
~~6 - 7~~	~~5~~	~~25.43~~

~~(b) In effect from January 1, 1995, through December 31, 1995:~~

~~Bu. Wheat Per Acre on Summer Fallow~~	~~Grade~~	~~Assessed Value Per Acre~~
~~40 & Over~~	~~1A8~~	~~$468.93~~
~~38 - 39~~	~~1A7~~	~~435.80~~
~~36 - 37~~	~~1A6~~	~~402.67~~
~~34 - 35~~	~~1A5~~	~~369.54~~
~~32 - 33~~	~~1A4~~	~~336.41~~
~~30 - 31~~	~~1A3~~	~~304.73~~
~~28 - 29~~	~~1A2~~	~~274.55~~
~~26 - 27~~	~~1A1~~	~~245.66~~
~~24 - 25~~	~~1A~~	~~218.28~~
~~22 - 23~~	~~1B~~	~~192.34~~
~~20 - 21~~	~~2A~~	~~167.84~~
~~18 - 19~~	~~2B~~	~~144.77~~
~~16 - 17~~	~~2C~~	~~123.15~~
~~14 - 15~~	~~3A~~	~~102.92~~
~~12 - 13~~	~~3B~~	~~84.17~~
~~10 - 11~~	~~4A~~	~~66.86~~
~~8 - 9~~	~~4B~~	~~50.98~~
~~6 - 7~~	~~5~~	~~27.09~~

(b) The department will apply a phase-in percentage as defined in 15-7-111, MCA, and ARM 42.20.503 to the full reappraisal productive capacity values for non-irrigated summer fallow farm land for the reappraisal cycle beginning January 1, 2003.

NON-IRRIGATED FARMLAND,
SUMMER FALLOW BASIS

GRADE	Bu. Wheat Per Acre Summer Fallow	2003 Assessed Value/AC	2004 Assessed Value/AC	2005 Assessed Value/AC
1a8	40+	$317.07	$324.84	$332.62
1a7	38 - 39	$301.41	$308.80	$316.20
1a6	36 - 37	$285.75	$292.76	$299.77
1a5	34 - 35	$270.09	$276.72	$283.34
1a4	32 - 33	$254.44	$260.68	$266.92
1a3	30 - 31	$238.78	$244.64	$250.49
1a2	28 - 29	$223.12	$228.59	$234.07
1a1	26 - 27	$207.46	$212.55	$217.64
1a	24 - 25	$191.81	$196.51	$201.22
1b	22 - 23	$176.15	$180.47	$184.79
2a	20 - 21	$160.49	$164.43	$168.36
2b	18 - 19	$144.83	$148.39	$151.94
2c	16 - 17	$129.17	$132.34	$135.51
3a	14 - 15	$113.52	$116.30	$119.09
3b	12 - 13	$97.86	$100.26	$102.66
4a	10 - 11	$82.20	$84.22	$86.24
4b	8 - 9	$66.54	$68.18	$69.81
5	< 8	$31.32	$32.08	$32.85

NON-IRRIGATED FARMLAND,
SUMMER FALLOW BASIS

GRADE	Bu. Wheat Per Acre Summer Fallow	2006 Assessed Value/AC	2007 Assessed Value/AC	2008 Assessed Value/AC
1a8	40+	$340.40	$348.18	$355.96
1a7	38 - 39	$323.59	$330.98	$338.38
1a6	36 - 37	$306.78	$313.79	$320.80
1a5	34 - 35	$289.97	$296.60	$303.22
1a4	32 - 33	$273.16	$279.40	$285.64
1a3	30 - 31	$256.35	$262.21	$268.07
1a2	28 - 29	$239.54	$245.01	$250.49
1a1	26 - 27	$222.73	$227.82	$232.91
1a	24 - 25	$205.92	$210.63	$215.33
1b	22 - 23	$189.11	$193.43	$197.75
2a	20 - 21	$172.30	$176.24	$180.18
2b	18 - 19	$155.49	$159.04	$162.60
2c	16 - 17	$138.68	$141.85	$145.02
3a	14 - 15	$121.87	$124.66	$127.44
3b	12 - 13	$105.06	$107.46	$109.86
4a	10 - 11	$88.25	$90.27	$92.29
4b	8 - 9	$71.44	$73.07	$74.71
5	< 8	$33.62	$34.39	$35.16

~~(c) In effect from January 1, 1996, through December 31, 1996:~~

~~Bu. Wheat Per Acre on Summer Fallow~~	Grade	~~Assessed Value Per Acre~~
~~40 & Over~~	~~1A8~~	~~$388.32~~
~~38 - 39~~	~~1A7~~	~~364.16~~
~~36 - 37~~	~~1A6~~	~~339.99~~
~~34 - 35~~	~~1A5~~	~~315.83~~
~~32 - 33~~	~~1A4~~	~~291.67~~
~~30 - 31~~	~~1A3~~	~~268.23~~
~~28 - 29~~	~~1A2~~	~~245.54~~
~~26 - 27~~	~~1A1~~	~~223.50~~
~~24 - 25~~	~~1A~~	~~202.21~~
~~22 - 23~~	~~1B~~	~~181.65~~
~~20 - 21~~	~~2A~~	~~161.79~~
~~18 - 19~~	~~2B~~	~~142.67~~
~~16 - 17~~	~~2C~~	~~124.25~~
~~14 - 15~~	~~3A~~	~~106.55~~
~~12 - 13~~	~~3B~~	~~89.57~~

~~10 - 11~~	~~4A~~	~~73.32~~
~~8 - 9~~	~~4B~~	~~57.78~~
~~6 - 7~~	~~5~~	~~28.74~~

~~(d) In effect from January 1, 1997, through December 31, 1997:~~

~~Bu. Wheat Per Acre on Summer Fallow~~	~~Grade~~	~~Assessed Value Per Acre~~
~~40 & Over~~	~~1A8~~	~~$307.71~~
~~38 - 39~~	~~1A7~~	~~292.51~~
~~36 - 37~~	~~1A6~~	~~277.31~~
~~34 - 35~~	~~1A5~~	~~262.12~~
~~32 - 33~~	~~1A4~~	~~246.92~~
~~30 - 31~~	~~1A3~~	~~231.73~~
~~28 - 29~~	~~1A2~~	~~216.53~~
~~26 - 27~~	~~1A1~~	~~201.34~~
~~24 - 25~~	~~1A~~	~~186.14~~
~~22 - 23~~	~~1B~~	~~170.95~~
~~20 - 21~~	~~2A~~	~~155.75~~
~~18 - 19~~	~~2B~~	~~140.56~~
~~16 - 17~~	~~2C~~	~~125.36~~
~~14 - 15~~	~~3A~~	~~110.17~~
~~12 - 13~~	~~3B~~	~~94.97~~
~~10 - 11~~	~~4A~~	~~79.78~~
~~8 - 9~~	~~4B~~	~~64.58~~
~~6 - 7~~	~~5~~	~~30.39~~

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-7-103, 15-7-201, and 15-7-221, MCA

REASONABLE NECESSITY: The department is proposing to transfer ARM 42.20.144 (42.20.660) to sub-chapter 6 and amend the rule to display each new non-irrigated summer fallow farm land schedule that will be effective for years 2003-2008 reappraisal cycle. A different non-irrigated summer fallow farm land schedule is used each year of the 2003-2008 reappraisal cycle because 15-7-111, MCA, and ARM 42.20.503 mandate that full reappraisal values be incrementally phased in over the length of an appraisal cycle. The rule contains minor housekeeping changes and explains that the schedules are calculated using the formula defined in 15-7-201, MCA.

42.20.145 (42.20.665) NON-IRRIGATED, CONTINUOUSLY CROPPED FARM LAND (1) The following is the schedule for the ~~classification and valuation of~~ non-irrigated continuously cropped farm land productive capacity values for each year of the reappraisal cycle beginning January 1, 2003:

(a) ~~In effect from January 1, 1994, through December 31, 1994:~~ Productive capacity values are calculated by using the formula defined in 15-7-201, MCA.

~~Bu. of Wheat Per Acre Each Year~~	~~Grade~~	~~Assessed Value Per Acre~~
~~44 & Over~~	~~1A4~~	~~$901.81~~

~~42 - 43~~	~~1A3~~	~~843.10~~
~~40 - 41~~	~~1A2~~	~~784.38~~
~~38 - 39~~	~~1A1~~	~~725.66~~
~~36 - 37~~	~~1A~~	~~666.94~~
~~34 - 35~~	~~1~~	~~608.22~~
~~32 - 33~~	~~2~~	~~549.51~~
~~30 - 31~~	~~3~~	~~493.64~~
~~28 - 29~~	~~4~~	~~440.81~~
~~26 - 27~~	~~5~~	~~390.66~~
~~24 - 25~~	~~6~~	~~343.49~~
~~22 - 23~~	~~7~~	~~299.22~~
~~20 - 21~~	~~8~~	~~257.82~~
~~18 - 19~~	~~9~~	~~219.27~~
~~16 - 17~~	~~10~~	~~184.01~~
~~14 - 15~~	~~11~~	~~150.74~~
~~12 - 13~~	~~12~~	~~120.87~~
~~10 - 11~~	~~13~~	~~93.81~~
~~Less than 10~~	~~14~~	~~56.36~~

~~(b) In effect from January 1, 1995, through December 31, 1995:~~

~~Bu. of Wheat Per Acre Each Year~~	~~Grade~~	~~Assessed Value Per Acre~~
~~44 & Over~~	~~1A4~~	~~$826.61~~
~~42 - 43~~	~~1A3~~	~~777.33~~
~~40 - 41~~	~~1A2~~	~~728.05~~
~~38 - 39~~	~~1A1~~	~~678.78~~
~~36 - 37~~	~~1A~~	~~629.50~~
~~34 - 35~~	~~1~~	~~580.23~~
~~32 - 33~~	~~2~~	~~530.95~~
~~30 - 31~~	~~3~~	~~483.58~~
~~28 - 29~~	~~4~~	~~438.23~~
~~26 - 27~~	~~5~~	~~394.67~~
~~24 - 25~~	~~6~~	~~353.09~~
~~22 - 23~~	~~7~~	~~313.45~~
~~20 - 21~~	~~8~~	~~275.71~~
~~18 - 19~~	~~9~~	~~239.88~~
~~16 - 17~~	~~10~~	~~206.75~~
~~14 - 15~~	~~11~~	~~173.93~~
~~12 - 13~~	~~12~~	~~143.89~~
~~10 - 11~~	~~13~~	~~115.72~~
~~Less than 10~~	~~14~~	~~62.90~~

(b) The department will apply a phase-in percentage as defined in 15-7-111, MCA, and ARM 42.20.503 to the full reappraisal productive capacity values for non-irrigated continuously cropped farm land for the reappraisal cycle beginning January 1, 2003.

NON-IRRIGATED FARMLAND,
CONTINUOUSLY CROPPED BASIS

GRADE	Bu. Wheat Per Acre Per Year	2003 Assessed Value/AC	2004 Assessed Value/AC	2005 Assessed Value/AC
1A4	44+	$696.76	$713.85	$730.95
1A3	42 - 43	$665.45	$681.77	$698.10
1A2	40 - 41	$634.13	$649.69	$665.24
1A1	38 - 39	$602.82	$617.60	$632.39
1A	36 - 38	$571.50	$585.52	$599.54
1	34 - 35	$540.19	$553.44	$566.69
2	32 - 33	$508.87	$521.35	$533.84
3	30 - 31	$477.56	$489.27	$500.99
4	28 - 29	$446.24	$457.19	$468.13
5	26 - 27	$414.93	$425.10	$435.28
6	24 - 25	$383.61	$393.02	$402.43
7	22 - 23	$352.29	$360.94	$369.58
8	20 - 21	$320.98	$328.85	$336.73
9	18 - 19	$289.66	$296.77	$303.88
10	16 - 17	$258.35	$264.69	$271.03
11	14 - 15	$227.03	$232.60	$238.17
12	12 - 13	$195.72	$200.52	$205.32
13	10 - 11	$164.40	$168.44	$172.47
14	< 10	$78.29	$80.21	$82.13

NON-IRRIGATED FARMLAND,
CONTINUOUSLY CROPPED BASIS

GRADE	Bu. Wheat Per Acre Per Year	2006 Assessed Value/AC	2007 Assessed Value/AC	2008 Assessed Value/AC
1A4	44+	$748.04	$765.13	$782.23
1A3	42 - 43	$714.42	$730.75	$747.07
1A2	40 - 41	$680.80	$696.36	$711.91
1A1	38 - 39	$647.18	$661.97	$676.76
1A	36 - 38	$613.56	$627.58	$641.60
1	34 - 35	$579.94	$593.19	$606.45
2	32 - 33	$546.32	$558.81	$571.29
3	30 - 31	$512.70	$524.42	$536.13
4	28 - 29	$479.08	$490.03	$500.98
5	26 - 27	$445.46	$455.64	$465.82
6	24 - 25	$411.84	$421.25	$430.66
7	22 - 23	$378.22	$386.87	$395.51
8	20 - 21	$344.60	$352.48	$360.35
9	18 - 19	$310.98	$318.09	$325.20
10	16 - 17	$277.36	$283.70	$290.04
11	14 - 15	$243.74	$249.31	$254.88
12	12 - 13	$210.12	$214.93	$219.73
13	10 - 11	$176.50	$180.54	$184.57
14	< 10	$84.05	$85.97	$87.89

~~(c) In effect from January 1, 1996, through December 31, 1996:~~

~~Bu. of Wheat Per Acre Each Year~~	~~Grade~~	~~Assessed Value Per Acre~~
~~44 & Over~~	~~1A4~~	~~$751.40~~
~~42 - 43~~	~~1A3~~	~~711.57~~
~~40 - 41~~	~~1A2~~	~~671.73~~
~~38 - 39~~	~~1A1~~	~~631.90~~
~~36 - 37~~	~~1A~~	~~592.07~~
~~34 - 35~~	~~1~~	~~552.23~~
~~32 - 33~~	~~2~~	~~512.40~~
~~30 - 31~~	~~3~~	~~473.52~~
~~28 - 29~~	~~4~~	~~435.65~~
~~26 - 27~~	~~5~~	~~398.67~~
~~24 - 25~~	~~6~~	~~362.69~~
~~22 - 23~~	~~7~~	~~327.67~~
~~20 - 21~~	~~8~~	~~293.61~~
~~18 - 19~~	~~9~~	~~260.50~~

~~16 - 17~~	~~10~~	~~229.50~~
~~14 - 15~~	~~11~~	~~197.13~~
~~12 - 13~~	~~12~~	~~166.92~~
~~10 - 11~~	~~13~~	~~137.64~~
~~Less than 10~~	~~14~~	~~69.44~~

~~(d) In effect from January 1, 1997, through December 31, 1997:~~

~~Bu. of Wheat Per Acre Each Year~~	~~Grade~~	~~Assessed Value Per Acre~~
~~44 & Over~~	~~1A4~~	~~$676.19~~
~~42 - 43~~	~~1A3~~	~~645.80~~
~~40 - 41~~	~~1A2~~	~~615.41~~
~~38 - 39~~	~~1A1~~	~~585.02~~
~~36 - 37~~	~~1A~~	~~554.63~~
~~34 - 35~~	~~1~~	~~524.24~~
~~32 - 33~~	~~2~~	~~493.85~~
~~30 - 31~~	~~3~~	~~463.46~~
~~28 - 29~~	~~4~~	~~433.07~~
~~26 - 27~~	~~5~~	~~402.68~~
~~24 - 25~~	~~6~~	~~372.29~~
~~22 - 23~~	~~7~~	~~341.89~~
~~20 - 21~~	~~8~~	~~311.50~~
~~18 - 19~~	~~9~~	~~281.11~~
~~16 - 17~~	~~10~~	~~252.24~~
~~14 - 15~~	~~11~~	~~220.33~~
~~12 - 13~~	~~12~~	~~189.94~~
~~10 - 11~~	~~13~~	~~159.55~~
~~Less than 10~~	~~14~~	~~75.98~~

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-7-103, 15-7-201, and 15-7-221, MCA

REASONABLE NECESSITY: The department is proposing to transfer ARM 42.20.145 (42.20.665) to sub-chapter 6 and amend the rule to display each new non-irrigated continuously cropped farmland schedule that will be effective for years 2003-2008 reappraisal cycle. A different non-irrigated continuously cropped farmland schedule is used each year of the 2003-2008 reappraisal cycle because 15-7-111, MCA, and ARM 42.20.503 mandate that full reappraisal values be incrementally phased in over the length of an appraisal cycle. The rule contains minor housekeeping changes and explains that the schedules are calculated using the formula defined in 15-7-201, MCA.

42.20.146 (42.20.675) TILLABLE, IRRIGATED FARM LAND

(1) The following ~~are~~ is the schedule~~s~~ for the ~~classification and valuation of tillable, irrigated land, arranged by minimum, medium or maximum rotation~~ full reappraisal productive capacity values for tillable, irrigated farm land for the reappraisal cycle beginning January 1, 2003:

~~(2) The rotations are determined as follows:~~

~~(a) Minimum rotation is irrigated land with a normal growing season of 90 or less frost-free days. Production from~~

~~this land is normally limited to alfalfa hay and small grains. Growers would not have the option to profitably produce any other crops over a sustained period of years.~~

~~(b) Medium rotation is irrigated land with a normal growing season of 91 to 110 frost-free days. Lands are placed in this rotation when the grower has the option of producing a greater variety of crops than listed in the minimum rotation. Growers should be able to produce alfalfa hay, alfalfa seed, small grains, edible beans, sunflower seeds, safflowers and potatoes.~~

~~(c) Maximum rotation is irrigated land with a normal growing season of 110 or more frost-free days. These lands are capable of producing any crop which can typically be grown in Montana. Examples are all crops grown in minimum and medium rotations and, also, corn for silage, corn for grain, and sugar beets.~~

(a) Productive capacity values are calculated by using the formula defined in 15-7-201, MCA.

Tons ASSESSED VALUE PER ACRE BY WATER CLASS (WC)

Alfalfa Per Acre	Grade	WC 1 Under $19.99	WC 2 $20.00 $24.99	WC 3 $25.00 $29.99	WC 4 $30.00 $34.99	WC 5 $35.00 $40.00
4.5+	1A	863.19	788.19	710.06	631.94	553.51
4.0-4.4	1B	741.94	666.92	588.81	510.69	432.56
3.5-3.9	2	620.69	545.69	467.56	389.44	311.31
3.0-3.4	3	499.44	424.44	346.31	268.19	218.25
2.5-2.9	4	378.19	303.19	225.06	218.25	218.25
2.0-2.4	5	256.94	218.25	218.25	218.25	218.25
<2.0	6	218.25	218.25	218.25	218.25	218.25

(2) The department will apply a phase-in percentage as defined in 15-7-111, MCA, and ARM 42.20.503 to the full reappraisal productive capacity values for tillable, irrigated farm land for the reappraisal cycle beginning January 1, 2003, if the values are higher than the base values in effect for tax year 2002.

(3) The phase-in formula for each year of the reappraisal cycle is as follows:

(a) change in value = full reappraisal value - value before reappraisal;

(b) phase-in value (year 1) = value before reappraisal + (change in value * .1667);

(c) phase-in value (year 2) = value before reappraisal + (change in value * .3334);

(d) phase-in value (year 3) = value before reappraisal + (change in value * .5000);

(e) phase-in value (year 4) = value before reappraisal + (change in value * .6667);

(f) phase-in value (year 5) = value before reappraisal + (change in value * .8333); and

(g) phase-in value (year 6) = value before reappraisal + (change in value * 1.000).

(4) The following examples demonstrate how the phase-in formula calculates the assessed value for irrigated land:

(a) The 2002 full reappraisal value for irrigated grade 1A in water class five is $518.63:

(b) The full reappraisal value for the same irrigated grade in water class five in 2003 is $553.51.

(c) The change in value is $34.88 ($553.51 - $518.63).

(d) The 2003 phase-in value = $518.63 + (34.88 *.1667) = $518.63 + $5.81 or $524.44.

(e) The 2007 full reappraisal value for irrigated grade 1A in water class five is $518.63.

(f) The full reappraisal value for the same irrigated grade in water class five in 2007 is $553.51.

(g) The change in value is $34.88 ($553.51 - $518.63).

(h) The 2007 phase-in value = $518.63 + (34.88 * .8333) = $518.63 + $29.07 or $547.70.

(5) The department will not apply a phase-in percentage calculation to the full reappraisal productive capacity values for tillable, irrigated farm land values for the reappraisal cycle beginning January 1, 2003, if the values are lower than the base values in effect for tax year 2002. If the full reappraisal productive capacity values for tillable, irrigated farm land are lower than the base values in effect for tax year 2002, the full reappraisal productive capacity values for tillable, irrigated farm land will be fully implemented on January 1, 2003, and remain in effect for each year of the reappraisal cycle.

~~(3)~~(6) Water costs are the combination of allowable labor costs, on-farm energy costs, and a ~~$5.50~~ $10 base water cost which is applicable to every acre of irrigated land. Total allowable water costs may not exceed ~~$35~~ $40 for each acre of irrigated land.

~~(4)~~(7) Allowable labor costs which pertain to this rule are provided in 15-7-201, MCA.

~~(5) For tax years 1994 through 1996, allowable energy costs, expressed as cost per acre, are the actual costs incurred in 1992 for energy to provide water from a definitive source to identifiable fields by use of commonly accepted irrigation system practices.~~

(8) ~~For tax years 1997 and thereafter allowable~~ Allowable energy costs, expressed as cost per acre, are the actual costs incurred in the energy cost base year, which is the calendar year immediately preceding the year published by the department in ARM 42.18.124, for energy to provide water from a definitive source to identifiable fields by use of commonly accepted irrigation system practices.

~~(6)~~(9) Energy costs ~~may~~ shall be documented with electrical ~~statements~~ or fuel statements. The taxpayer shall furnish specific information about the irrigation system and pumps. If receipts for the taxpayer's irrigation energy costs cannot be separated from the overall farm operation, a letter to the department explaining how the irrigation energy costs were

calculated will be sufficient.

~~(7) For tax years 1994 through 1996, if no energy costs were incurred in 1992, the owner of irrigated land shall provide the department with energy costs from the most recent calendar year available. The department shall adjust the most recent calendar year's energy cost to reflect costs in 1992. The respective consumer price indices for energy purchases will be the basis for those adjustments. For tax years 1997 and thereafter, if no energy costs were incurred in the energy cost base year, the owner of irrigated land shall provide the department with energy costs from the most recent calendar year available. The department shall adjust the most recent calendar year's energy cost to reflect costs in the energy cost base year. The respective consumer price indices for energy purchases will be the basis for those adjustments.~~

~~(8)~~(10) By July 1 of the year following the energy cost base year, all irrigated land taxpayers must provide all required ~~labor cost and~~ irrigation type, irrigated acreage, and energy cost information incurred in ~~that~~ the energy ~~ocst abase~~ cost base year to the department on the prescribed forms. Failure to provide the required information will result in no ~~water~~ energy cost deduction to the irrigated land value calculated by the department for property tax purposes.

~~(9)~~(11) To make changes in the irrigated land values for tax years after the year published by the department in ARM 42.18.124, irrigated land taxpayers must provide to the department updated information by ~~March 1~~ the first Monday in June of the current tax year or within 30 days of receiving a notice of classification and appraisal, whichever is later. That information will be limited to land use ~~change information,~~ and irrigation system changes ~~and energy cost data~~. A change in ownership is not a basis for using energy costs from a different year other than the energy cost base year. Failure to provide the updated information by the deadline will result in no change being made in the irrigated land values previously calculated by the department.

~~(10)~~(12) The department may conduct field reviews and gather data on energy costs to ensure equality of treatment for all irrigated land taxpayers. The department may adjust the irrigated land values if information supports that action. The irrigated land taxpayer will be notified in writing of that action.

Tables for class 1 (a) through (d); class 2 (a) through (d); and class 3 (a) through (d), as found on pages 42-2045 through 42-2050, Administrative Rules of Montana, are deleted in their entirety.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-7-103, 15-7-201, and 15-7-221, MCA

REASONABLE NECESSITY: The department is proposing to transfer ARM 42.20.146 (42.20.675) to sub-chapter 6 and amend the rule to display the 2008 full reappraisal values for tillable, irrigated

farmland. A different tillable, irrigated farmland value may occur each year of the 2003-2008 reappraisal cycle because 15-7-111, MCA, and ARM 42.20.503 mandate that full reappraisal values be incrementally phased in over the length of an appraisal cycle if the full reappraisal value increases over that used in the base year. The rule explains the phase-in formula that is used each year of the 2003-2008 reappraisal cycle and provides two examples on how to calculate a phase-in value. The rule contains minor housekeeping changes and explains that the schedules are calculated using the formula defined in 15-7-201, MCA. The rule is amended to provide landowners with more flexibility in providing documentation for energy costs that cannot be separated from their overall farm expenses. The rule is amended to extend the deadline each year for landowners with irrigated land to provide the department with changes that affect their irrigated values. The rule clarifies that a change in ownership is not a basis for using energy costs other than those that occurred in the energy cost base year.

The 2002 Governor's Agricultural Advisory Committee on Land Valuation proposed that water classes be reduced from seven to five categories and the base water cost be increased from $5.50 to $10.00. The 2001 legislature amended 15-7-201, MCA, to stipulate that the highest allowable water cost shall be $40.00 per acre. The Advisory Committee recommended that tillable, irrigated grades 7 and 8 be eliminated and their production be combined with grade 6. The Committee recommended that the midpoint for the production range that represents irrigated grade 6 be 0.9 tons per acre. The Committee recommended that irrigated land rotations: maximum, medium and minimum, be eliminated. The Committee further recommended that the minimum alternative value for irrigated land shall be based on 0.9 tons of non-irrigated continuously cropped hay land. Because of the recommendations made by the Advisory Committee, adopted by the department, and the mandated changes by the legislature, this rule cannot provide specific tillable, irrigated schedules for each year of the 2003-2008 reappraisal cycle. Every phased-in tillable, irrigated value is calculated using the phase-in formula defined and calculated in the rule.

For irrigators that experience a decrease in their per acre tillable, irrigated value between tax years 2002 and 2003, the tillable, irrigated full reappraisal value for the 2003-2008 reappraisal cycle will be fully implemented in 2003, which is the first year of the 2003-2008 reappraisal cycle and remain in effect for each year of the reappraisal cycle.

42.20.147 (42.20.620) CRITERIA FOR AGRICULTURAL LAND VALUATION FOR LAND TOTALLING LESS THAN 20 ACRES (1) An applicant for agricultural land classification must prove that the land indicated in the application actually produced the livestock, poultry, honey and other products from bees, biological control insects, field crops, fruit, or other animal and vegetable matter raised for food or fiber or sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes. ~~Proof of production~~

~~shall be evidenced by:~~

~~(a) submission of a copy of the current year's county farm and ranch assessment filed by the owner, the owner's agent, employee, or lessee; and~~

~~(b) weight receipt from elevator or stockyard; or~~

~~(c) visual confirmation by the county appraiser.~~

(2) Contiguous parcels under one ownership must be actively devoted to agricultural use and meet all of the production and income qualification tests in these rules to be classified as agricultural land. Each noncontiguous parcel of land, as defined in [New Rule I], that is under one ownership and totals less than 20 acres in size must each meet agricultural eligibility criteria set forth in this rule.

(3) A county farm and ranch reporting form that reflects any livestock or personal property used on the land must have been filed at some time by the current landowner with the local department office.

(4) Poultry or game birds that are raised in a building, confined cage or enclosed area, are considered activities that are not supported and produced by the land. Land used for poultry and game birds raised under these conditions is not eligible for consideration as agricultural land.

(5) The sale of honey and other products from bees shall be considered agricultural income if the applicant meets the following requirements:

(a) the landowner is registered with the Montana department of agriculture as an apiary; and

(b) the apiary must have at least 25 bee colonies annually sited on the land from May 1 through August 31.

(6) The sale of biological control insects shall be considered agricultural income if the insects are supported solely from noxious weeds grown on the land indicated on the application.

(7) Plants or nursery stock that are not grown and nourished by the land are not acceptable forms of income or agricultural production for purposes of this rule. Examples include trees grown in self-contained pots or burlap bags placed in or on the ground and plants grown in flats located in a greenhouse.

(8) The sale of hobby animals, as defined in [New Rule I], shall not be considered agricultural income for the purposes of meeting the $1,500 income requirement found in 15-7-202, MCA. The production of hay or the grazing on land by a horse or other animals kept as a hobby and not part of a bona fide agricultural enterprise is not considered a bona fide agricultural operation. The following examples demonstrate use by hobby animals that are not eligible for agricultural classification and assessment.

(a) A landowner sells two horses for $2,500 that are kept on the landowner's property for personal entertainment and enjoyment. The landowner is not in the day-to-day business of raising and selling horses nor does the landowner own or operate any other income producing operation that used the horses in the day-to-day business. The sale of the horses is not eligible agricultural income.

(b) A landowner grows and harvests hay on the property that is fed to the landowner's llamas that are kept for personal entertainment and enjoyment. The landowner is not in the day-to-day business of raising and selling llamas nor does the landowner own or operate any other income producing operation that used the llamas in the day-to-day business. The hay is not eligible agricultural production when used to support hobby animals.

(9) If the land is used primarily to raise and market livestock, the land must support 30 or more animal unit months of grazing carrying capacity, with cattle as the base, and the applicant must provide proof that the parcel or contiguous parcels indicated in the application marketed at least $1,500 of gross income each year. A nine-month grazing season shall be the basis for calculating the number of animal units based on carrying capacity. The carrying capacity shall be based on information obtained from the United States natural resource and conservation service (NRCS) soil survey. If a soil survey does not exist, the carrying capacity shall be based on an estimate by the NRCS or the local county agricultural extension agent.

~~(2)~~(10) If agricultural products are marketed from land in the application, ~~The~~ the applicant must provide proof that the parcel(s) indicated in the application ~~marketed~~ produced at least $1,500 of gross agricultural income each year. Annual rental payments, government payments, or lease payments are not eligible agricultural income. Acceptable proof of income shall include:

(a) sales receipts~~,~~;

(b) canceled checks~~,~~;

(c) copy of income tax statements~~,~~; or

(d) other written evidence of sales transactions~~; and~~

~~(b) annual rental or lease payments of at least $1,500 provided there is demonstrated proof of agricultural activity on the land and the land is capable of sustaining that activity~~.

~~(3)~~(11) If the land is primarily used to grow crops or animals that are not marketed but consumed by humans, livestock, poultry, or other animals in the agricultural operation, the applicant must prove that the ~~parcel(s)~~ land on the application produce~~(s)~~d the equivalent of $1,500 in gross agricultural income each year from crops or animals that were consumed. ~~no less than 450 bushels of grain, with wheat as the base; 30 tons of hay or an equivalent measure of weight of any other field crop by comparison in the market for the year; or the parcel serves as grazing land supporting 40 or more animal unit months, with cattle as the base. Acceptable proof shall include:~~ A written estimate of the weight or quantity of food or animal fiber produced must be made by the applicant. The written estimate must include all proof set forth in this rule. The weight or quantity estimate will be multiplied by the current commodity price to determine whether the $1,500 annual gross income test has been met.

~~(a) a copy of the current year county farm and ranch assessment filed by the owner, the owner's immediate family members, the owner's agent, employee, or lessee; and~~

~~(b) a statement from the agricultural stabilization and conservation service (ASCS) indicating proven yield; or~~

~~(c) a statement from the soil conservation service (SCS) indicating that the parcel(s) is/are capable of producing the necessary animal unit months of grazing capacity; or~~

~~(d) a statement from the county brand inspector or meat packing plant (animal fiber) indicating that they inspected or slaughtered animals owned by the applicant; and~~

~~(e) a confirmation by the county appraiser.~~

~~(4) A written estimate of the weight or quantity of food or animal fiber produced must be made by the applicant. The written estimate must include all proof set forth in paragraph (3) above. The weight estimate will be multiplied by the current commodity price to determine whether the $1,500 annual gross income test has been met.~~

(12) If the consumption was from livestock, or the livestock was consumed by humans, the land must support 30 or more animal unit months of grazing carrying capacity, with cattle as the base.

(13) Acceptable proof of production shall include:

(a) a statement from the United States farm services agency (FSA) indicating estimated yield if crops are the basis for income;

(b) if livestock is the basis for income, a statement from the NRCS or the county agricultural extension agent indicating that the parcel(s) is/are capable of producing in its current state a minimum of 30 animal unit months of grazing capacity;

(c) a statement from the county brand inspector or meat packing plant (animal fiber) if they inspected or slaughtered animals owned by the applicant; or

(d) a confirmation by the department.

~~(5)~~(14) For valuation as agricultural land, the owner of land used as a Christmas tree farm must provide proof that:

(a) all trees are cultivated or under accepted, proven husbandry practices;

(b) all trees are sheared on a regular basis; ~~and~~

(c) the property contains a minimum of 2,000 trees~~.~~ ; and

(d) the Christmas tree operation continues to produce at least $1,500 in gross annual income once the initial crop of trees reaches salable maturity.

~~(6)~~(15) For valuation as agricultural land, the owner of land used as a ~~cherry~~ fruit tree orchard must provide proof that:

(a) there are a minimum of 100 trees; ~~and~~

(b) they are under ~~an~~ accepted ~~management~~ fruit tree husbandry practices~~.~~; and

(c) the fruit tree operation continues to produce at least $1,500 in gross annual income once the initial crop of trees begins to produce fruit.

~~(7)~~(16) Land qualifying in ~~(5)~~(14) and ~~(6)~~(15) will be graded and assessed as continuously cropped farm land, grade 1A4.

~~(8)~~(17) For contiguous and noncontiguous parcels of land under one ownership as defined in ARM ~~42.20.140~~ [New Rule I]

totaling less than 20 acres in size, any acreage in excess of that ~~set forth~~ stated in the forest land classification in ARM ~~42.20.160~~ 42.20.705 is classified as agricultural provided the acreage is actively devoted to agricultural use.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-7-201, 15-7-202, 15-7-203, 15-7-206, 15-7-207, 15-7-208, 15-7-209, 15-7-210, and 15-7-212, MCA

REASONABLE NECESSITY: The department is proposing to transfer ARM 42.20.147 to sub-chapter 6 and amend the rule for housekeeping changes. The rule will clarify that agricultural crops must be grown in the ground and not in self-contained pots or burlap bags. The State Tax Appeal Board (STAB) has previously ruled in the department's favor on this issue.

The rule clarifies that each noncontiguous parcel of land, less than 20 acres in size, must market at least $1,500 in agricultural income or produce agricultural products equivalent to $1,500 that are consumed rather than marketed for income. Noncontiguous parcels, less than 20 acres in size, cannot be declared part of a larger bona-fide agricultural operation. This clarification is based on 15-7-202, MCA.

Section 15-7-202, MCA, states that the grazing of a horse or other animals kept as a hobby are not part of a bona-fide agricultural operation. The rule clarifies that income from hobby animals isn't considered agricultural income. This rule refers to New Rule I to clarify by definition the meaning of a hobby animal and provides examples of non-eligible income and consumption by hobby animals.

The Governor's Agricultural Advisory Committee on Land Valuation recommended that properties with livestock production meet minimum income requirements and support at least 30 animal unit months of carrying capacity.

The rule clarifies that once cultivated Christmas tree plantations and fruit tree orchards reach maturity and begin producing agricultural income, they must continue to do so on an annual basis.

42.20.148 (42.20.630) PRODUCTION FAILURES (1) The following types of production failures will be considered to be beyond the control of the producer:

(a) drought;

(b) fire;

(c) hail;

(d) ~~grasshopper and other types of~~ insect infestation;

(e) frost~~, after the earliest frost-free day in the spring~~;

~~(f) frost, before the average first frost day in the fall;~~

~~(g)~~(f) flood; or

~~(h)~~(g) excessive rain.

(2) remains the same.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-7-201, 15-7-202, 15-7-203, 15-7-206, 15-7-207, 15-7-208, 15-7-209, 15-7-210, and 15-7-212, MCA

REASONABLE NECESSITY: The department is proposing to amend and transfer ARM 42.20.148 (ARM 42.20.630) to sub-chapter 6, the new agricultural sub-chapter. The amendments clarify production failures.

42.20.149 (42.20.635) MARKETING DELAY FOR ECONOMIC ADVANTAGE (1) The marketing of livestock, poultry, honey and other products from bees, biological control insects, field crops, fruit, and other animal and vegetable matter for food and fiber may be delayed by the producer in order to take advantage of economic conditions which will become more favorable to the producer during subsequent months. In no case may that delay exceed 12 months from the initial date of application for agricultural classification. The applicant must still be able to provide proof of production and qualification for the ~~current~~ previous tax year.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-7-201, 15-7-202, 15-7-203, 15-7-206, 15-7-207, 15-7-208, 15-7-209, 15-7-210, and 15-7-212, MCA

REASONABLE NECESSITY: The department is proposing to make minor housekeeping amendments and transfer ARM 42.20.149 (ARM 42.20.635) to sub-chapter 6 with other agricultural rules.

42.20.150 (42.20.625) CRITERIA FOR AGRICULTURAL LAND VALUATION FOR LAND TOTALING 20 TO 160 ACRES IN SIZE (1) An applicant for agricultural land classification must prove that the parcel(s) indicated in the application actually produced the livestock, poultry, honey and other products from bees, biological control insects, field crops, fruit, or other animal and vegetable matter raised for food or fiber or sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes. ~~Proof of production may be evidenced by:~~

~~(a) The current year's county farm and ranch assessment filed by the owner's immediate family members, the owner's agent, employee, or lessee; and~~

~~(b) Documents evidencing production, storage, or sale of agricultural products.~~

(2) ~~The applicant must provide proof that the parcel indicated in the application marketed at least $1,500 of gross income each year. Acceptable proof of income shall include:~~

~~(a) Sales receipts, canceled checks, copy of income tax statements, or other written evidence of sales transactions;~~

~~(b) Annual rental or lease payments of at least $1,500 provided there is demonstrated proof of agricultural activity on the land and the land is capable of sustaining that activity; and~~

~~(c) Annual rental payments of at least $1,500 made under the federal conservation reserve program (CRP), or a successor to that program.~~ Contiguous parcels under one ownership must be actively devoted to agricultural use and meet all of the production and income qualification tests in these rules to be classified as agricultural land. Each noncontiguous parcel of

land as defined in [New Rule I] that is under one ownership and totals between 20 and 160 acres in size must be part of a bona fide agricultural operation and meet agricultural eligibility criteria set forth in this rule. Each noncontiguous parcel of land that is under one ownership and totals between 20 and 160 acres in size that is not part of a bona fide agricultural operation must each meet agricultural eligibility criteria set forth in this rule.

(3) ~~If the land is primarily used to grow crops that are not marketed, the applicant must prove that the parcel on the application produces no less than 450 bushels of grain, with wheat as the base; 30 tons of hay; an equivalent measure of weight of any other field crop by comparison in the market for the year; or the parcel serves as grazing land supporting 40 or more animal unit months, with cattle as the base. Acceptable proof shall include:~~

~~(a) A copy of the current year county farm and ranch assessment filed by the owner, the owner's immediate family members, the owner's agent, employee, or lessee;~~

~~(b) Written statements or documents from:~~

~~(i) the agricultural stabilization and conservation service (ASCS) indicating proven yield;~~

~~(ii) the soil conservation service (SCS) indicating that the parcel(s) is capable of producing the necessary animal unit months of grazing capacity; or~~

~~(iii) the county brand inspector or meat packing plant (animal fiber) indicating that they inspected or slaughtered animals owned by the applicant;~~

~~(c) A written estimate of the weight or quantity of food or animal fiber produced must be made by the applicant. The weight estimate will be multiplied by the current commodity price to determine whether the $1,500 annual gross income test has been met; or~~

~~(d) A confirmation by the county appraiser.~~ A county farm and ranch reporting form that reflects any livestock or personal property used on the land must have been filed at some point by the current landowner with the local department office.

(4) ~~As provided in ARM 42.20.147.~~ Poultry or game birds that are raised in a building, confined cage, or enclosed area, are considered commercial activities that are not supported and produced by the land. Land used for poultry and game birds raised under these conditions is not eligible for consideration as agricultural land.

(5) The sale of honey and other products from bees shall be considered agricultural income if the applicant meets the following requirements:

(a) the landowner is registered with the Montana department of agriculture as an apiary; and

(b) the apiary must have at least 25 bee colonies annually sited on the land from May 1 through August 31.

(6) The sale of biological control insects shall be considered agricultural income if the insects are supported solely from noxious weeds grown on the land indicated on the application.

(7) Plants, or nursery stock that are not grown and nourished by the land are not acceptable forms of income or agricultural production for purposes of this rule. Examples include trees grown in self-contained pots or burlap bags placed in or on the ground and plants grown in flats located in a greenhouse.

(8) The sale of hobby animals, as defined in [New Rule I], shall not be considered agricultural income for the purposes of meeting the $1,500 income requirement found in 15-7-202, MCA. The production of hay or the grazing on land by a horse or other animals kept as a hobby and not part of a bona fide agricultural enterprise is not considered a bona fide agricultural operation. The following examples demonstrate use by hobby animals that are not eligible for agricultural classification and assessment:

(a) A landowner sells two horses for $2,500 that are kept on the landowner's property for personal entertainment and enjoyment. The landowner is not in the day-to-day business of raising and selling horses nor does the landowner own or operate any other income producing operation that used the horses in the day-to-day business. The sale of the horses is not eligible agricultural income.

(b) A landowner grows and harvests hay on the landowner's property that is fed to the landowner's llamas, which are kept for personal entertainment and enjoyment. The landowner is not in the day-to-day business of raising and selling llamas nor does the landowner own or operate any other income producing operation that used the llamas in the day-to-day business. The hay is not eligible agricultural production when used to support hobby animals.

(9) If the land is used primarily to raise and market livestock, the land must support 30 or more animal unit months of grazing carrying capacity, with cattle as the base and the applicant must provide proof that the land indicated in the application marketed at least $1,500 of gross income each year. A nine-month grazing season shall be the basis for calculating the number of animal units based on carrying capacity. The carrying capacity shall be based on the information obtained from the NRCS soil survey. If a soil survey does not exist, the carrying capacity shall be based on an estimate by the county agricultural extension agent.

(10) If agricultural products are marketed from land in the application, the applicant must provide proof that the parcel(s) indicated in the application produced at least $1,500 of gross agricultural income each year. The income must be from agricultural products marketed by, or from annual rental or lease payments received by the owners, owner’s family members, or the owner’s agent, employee, or lessee. Family members may include grandparents, parents, spouses, and children. Acceptable proof of income shall include:

(a) sales receipts;

(b) canceled checks;

(c) copy of income tax statements, or other written evidence of sales transactions;

(d) annual rental or lease payments of at least $1,500

provided there is demonstrated proof of agricultural activity on the land and the land is capable of sustaining that activity; or

(e) annual rental payments of at least $1,500 made under the federal conservation reserve program (CRP), or a similar program that reimburses the landowner to remove the land from the current agricultural use and place it in a different agricultural use.

(11) If the land is primarily used to grow crops that are not marketed but consumed by humans, livestock, poultry, or other animals in the agricultural operation, the applicant must prove that the land on the application produced the equivalent of $1,500 in gross agricultural income each year from the crops or animals that were consumed. A written estimate of the weight or quantity of food or animal fiber produced must be made by the applicant. The written estimate must include all proof set forth in this section. The weight or quantity estimate will be multiplied by the current commodity price to determine whether the $1,500 annual gross income test has been met.

(12) If the consumption was from livestock, the land must support 30 or more animal unit months of grazing carrying capacity, with cattle as the base. Acceptable proof of production shall include:

(a) a statement from the United States farm services agency (FSA) indicating estimated yield if crops are the basis for production; or

(b) a statement from the NRCS or the county agricultural extension agent indicating that the parcel(s) is/are capable of producing in its current state, a minimum of 30 animal unit months of grazing capacity if livestock is the basis for production; and

(c) a statement from the county brand inspector or meat packing plant (animal fiber) if they inspected or slaughtered animals owned by the applicant; or

(d) a confirmation by the department.

(13) For valuation as agricultural land, the owner of land used as a Christmas tree farm must provide proof that:

(a) all trees are cultivated or under accepted, proven husbandry practices;

(b) all trees are sheared on a regular basis; and

(c) the property contains a minimum of 2,000 trees.

(d) the Christmas tree operation continues to produce at least $1,500 in gross annual income once the initial crop of trees reaches salable maturity.

(14) For valuation as agricultural land, the owner of land used as a fruit tree orchard must provide proof that:

(a) there are a minimum of 100 trees;

(b) they are under accepted fruit tree husbandry practices; and

(c) the fruit tree operation continues to produce at least $1,500 in gross annual income once the initial crop of trees begins to produce fruit.

(15) Land qualifying in (13) and (14) will be graded and assessed as continuously cropped farm land, grade 1A4.

~~(5)~~(16) Land under the CRP, the integrated farm management

(IFM) program, or ~~a similar~~ any other program that reimburses the landowner to remove the land from the current agricultural use and places it in a different agricultural use shall be classified and valued in the same land use category the acreage was in when it became eligible for the programs.

~~(6)~~(17) For land between 20 to 160 acres, any acreage in excess of that ~~set forth~~ in the forest land classification ~~set forth~~ in ARM ~~42.20.160 and 42.20.161~~ 42.20.705 shall be classified pursuant to 15-6-133, 15-6-134, and 15-7-202, MCA.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-6-133, 15-6-134, 15-7-201, and 15-7-202, MCA

REASONABLE NECESSITY: The department is proposing to transfer ARM 42.20.150 to sub-chapter 6 and amend the rule with housekeeping changes. The rule clarifies that agricultural crops must be grown in the ground and not in self-contained pots or burlap bags. The State Tax Appeal Board has previously ruled in the department's favor on this issue.

The rule clarifies that noncontiguous parcels of land in the same ownership, which total between 20 and 160 acres in size, must be part of a bona fide agricultural operation and meet income or production requirements. Each noncontiguous parcel, in the same ownership that is not part of the bona fide agricultural operation, must individually meet the agricultural eligibility requirements. This clarification is based on the 15-7-202, MCA.

Section 15-7-202, MCA, states that the grazing of a horse or other animals kept as a hobby are not part of a bona fide agricultural operation. The rule clarifies that income from hobby animals isn't considered agricultural income. This rule refers to New Rule I for the definition of a hobby animal and provides examples of non-eligible income and consumption by hobby animals.

The rule allows the applicant to use landowner, family members, their agents, or employees' agricultural income to meet the minimum agricultural income requirements pursuant to 15-7-202, MCA. The applicant can also use rental or lease income for parcels in the same ownership that equal or exceed 20 acres in size.

The rule will clarify agricultural eligibility requirements for properties producing livestock and crops not grown in the ground. The Governor's Agricultural Advisory Committee on Land Valuation recommended that properties with livestock production meet minimum income requirements and support at least 30 animal unit months of carrying capacity.

The rule clarifies that once cultivated Christmas tree plantations and fruit tree orchards reach maturity and begin producing agricultural income, they must continue to do so on an annual basis.

42.20.152 (42.20.650) VALUATION OF ~~NONAGRICULTURAL~~ NONQUALIFIED AGRICULTURAL LAND FROM 20 TO 160 ACRES (1) Parcels of land that meet the criteria as nonqualified ~~not qualifying for~~ agricultural land ~~valuation~~ under ARM ~~42.20.150~~ 42.20.625

are valued at the productive capacity value of grazing land, grade G3.

(2) Parcels of land not qualifying for forest land under ARM 42.20.705 and that qualify as nonqualified agricultural land under ARM 42.20.625 are valued at the productive capacity value of grazing land, grade G3.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-6-133, 15-7-201, and 15-7-202, MCA

REASONABLE NECESSITY: The department is proposing to amend and transfer ARM 42.20.152 (ARM 42.20.650) to sub-chapter 6. The rule states that eligible land from 20 to 160 acres in size that does not meet eligibility requirements for forestland shall be valued as nonqualified agricultural land at the productive capacity of grazing land, grade 3.

42.20.153 (42.20.640) VALUATION OF AGRICULTURAL LAND EXCEEDING 160 ACRES (1) In accordance with the provisions of 15-7-202, MCA, contiguous ~~and noncontiguous~~ parcels of land under one ownership as defined in ARM ~~42.20.140~~ [New Rule I] exceeding 160 acres shall be valued as agricultural land. Provided there are no covenants, easements, deed restrictions, or operations of law that prohibit the land from being used as agricultural, or the land is not used for residential, commercial, or industrial purposes.

(2) For contiguous ~~and noncontiguous~~ parcels of land under one ownership as defined in ARM ~~42.20.140~~ [New Rule I] exceeding 160 acres in size, any acreage exceeding that which meets the criteria for forest land classification set forth in ARM ~~42.20.160 and ARM 42.20.161~~ 42.20.705 shall be ~~deemed to have qualified for agricultural classification subject~~ classified pursuant to the provisions of 15-6-133, 15-6-134, and 15-7-202, MCA.

(3) Land under the CRP, the integrated farm management (IFM) program, or ~~a similar~~ any other program that reimburses the landowner to remove the land from the current agricultural use and places it in a different agricultural use shall be classified and valued in the same land use category the acreage was in when it became eligible for the programs.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-6-133, 15-7-201, and 15-7-202, MCA

REASONABLE NECESSITY: The department is proposing to amend and transfer ARM 42.20.153 (42.20.640) to new sub-chapter 6. Many of the amendments are general housekeeping changes.

Additionally, the rule will clarify that noncontiguous parcels in the same ownership do not receive automatic agricultural classification if the noncontiguous parcels are less than 160 acres in size. This change is based on 15-7-202, MCA, that provides in part that contiguous parcels of land totaling 160 acres or more under one ownership are eligible for assessment as agricultural land. The law does not include noncontiguous parcels of land in this description.

The rule also stipulates that land that has covenants, easements, deed restrictions or other operations of law that precludes agricultural use cannot receive agricultural classification. Sections 15-7-201 and 15-7-103, MCA, require land to be classified based on use. Land that contains operations of law that exclude agricultural use must be classified to a use other than agriculture.

42.20.159 (42.20.645) ~~COMMERCIAL AND INDUSTRIAL USE~~ CLASSIFICATION AND ASSESSMENT OF LAND THAT DOES NOT MEET AGRICULTURAL, NONQUALIFIED AGRICULTURAL OR FOREST LAND ELIGIBILITY REQUIREMENTS (1) Any portion of any parcel of land ~~which~~ that is used as a residential, commercial, or industrial site (except for the one-acre area beneath the residence on agricultural land which is valued as agricultural land), shall not be classified as agricultural land, nonqualified agricultural land or forest land.

(2) Land in contiguous ownerships less than 160 acres in size that do not meet agricultural, nonqualified agricultural land or forest land eligibility requirements will be valued at market value.

AUTH: Sec. 15-1-201, MCA

IMP:, Sec. 15-7-201, 15-7-202, 15-7-203, 15-7-206, 15-7-207, 15-7-208, 15-7-209, 15-7-210, and 15-7-212, MCA

REASONABLE NECESSITY: The department is proposing to amend and transfer ARM 42.20.159 (42.20.645) to sub-chapter 6. The rule clarifies that residential land cannot be classified as agricultural, nonqualified agricultural or forest land, except for the one-acre under a residence on agricultural land which is valued as agricultural land.

Contiguous ownerships greater than 160 acres in size are automatically granted agricultural classification unless precluded by some operation of law as mandated in 15-7-202, MCA or explained in ARM 42.20.156. The rule clarifies that land less than 160 acres in size, that does not meet agricultural, nonqualified agricultural, or forestland shall be appraised at its market value. If land cannot be classified and valued on its productive capacity, the only alternative is market value.

6. The department proposes to amend and transfer the following rules to new sub-chapter 7 relating to forest land:

42.20.160 (42.20.705) FOREST LAND ASSESSMENT

(1) ~~Effective January 1, 1994, the~~ The department ~~of revenue~~ shall assess land as forest lands according to the following basic determinations.

(a) Forest lands are:

(i) contiguous land of 15 acres or more in the same ownership that is capable of producing timber that can be harvested in commercial quantity;

(ii) land ~~which~~ that is producing timber or land in which the trees have been removed by man through harvest, including clear-cuts, or by natural disaster, including, but not limited

to fire;

(iii) land ~~which~~ that is not classified as nonforest land. Nonforest land is used for agricultural, nonqualifying agricultural, industrial, commercial, or residential purposes.

AUTH: Sec. 15-44-105, MCA
IMP: Sec. 15-44-101, 15-44-102, and 15-44-103, MCA

REASONABLE NECESSITY: The department is proposing to make minor housekeeping amendments and transfer ARM 42.20.160 (ARM 42.20.705) to new sub-chapter 7.

42.20.162 (42.20.710) EXCEPTIONS TO FOREST LAND ASSESSMENT

(1) ~~Effective January 1, 1994, the~~ The following land shall not be classified and assessed as forest land:

(a) land that is incapable of yielding wood products because of adverse site conditions or ~~which are so~~ physical~~ly inaccessible~~ inaccessibility ~~as to be unavailable now or prospectively~~;

(b) land withdrawn from timber utilization by statute, ordinance, covenant, court order, or administrative order~~, or other operation of law~~;

(c) land used in the production of cultivated Christmas tree plantations which produce commercially marketable Christmas trees; ~~and~~ or

(d) land used in the production of fruit trees, ornamental trees and trees grown for the sole purpose as shade trees and windbreaks.

AUTH: Sec. 15-44-105, MCA
IMP: Sec. 15-44-101, 15-44-102, and 15-44-103, MCA

REASONABLE NECESSITY: The department is proposing to make minor housekeeping amendments and transfer ARM 42.20.162 (ARM 42.20.710) to new sub-chapter 7.

42.20.164 (42.20.715) FOREST SITE PRODUCTIVITY CLASSES

(1) ~~Effective January 1, 1994, the~~ The department ~~of revenue~~ shall assign all forest land to one of the following forest site productivity class designations:

(a) through (d) remain the same.

AUTH: Sec. 15-44-105, MCA
IMP: Sec. 15-44-101 and 15-44-102, MCA

REASONABLE NECESSITY: The department is proposing to make minor housekeeping amendments and transfer ARM 42.20.164 (ARM 42.20.715) to new sub-chapter 7.

42.20.165 (42.20.735) FOREST LAND ELIGIBILITY - GENERAL PRINCIPLES (1) All parcels under one ownership that are 15 contiguous acres or greater that meet the requirements of ARM ~~42.20.160 and 42.20.161~~ 42.20.705 shall be assessed and taxed as forest land.

(2) A party who owns two or more contiguous parcels with title in non-identical names may file an affidavit with the local department office to prove single ownership in the

parcels.

(a) Examples of a party with title to multiple parcels of land in non-identical names that may file an affidavit to prove single ownership include, but are not limited to:

(i) John Doe is the same person as John G. Doe; and

(ii) James Cole Smith is the same person as James C. Smith.

(b) Examples of a party with title to multiple parcels of land in non-identical names that are not "under one ownership" and may not file an affidavit to prove single ownership include, but are not limited to:

(i) John Doe has title to one ownership and John and Mary Doe have title to a different ownership;

(ii) John Doe has title to one ownership and John Doe corporation has title to a different ownership; and

(iii) John Doe has title to one ownership and John Doe trust has title to a different ownership.

~~(2)~~(3) The property owner of record or the owner's agent must provide proof of eligibility on an application form prescribed by the department.

(a) Forest land application forms shall be available at ~~each county appraisal/assessment~~ the local department office. Applications must be submitted to the ~~appraisal/assessment~~ local department office in the county in which the property ~~resides~~ is located prior to ~~March 1~~ the first Monday in June of the year for which the reclassification is being sought, or within 30 days after receiving the notice of classification and appraisal from the department, whichever is later.

(b) through (d) remain the same.

~~(3)~~(4) All terms and classification procedures pertaining to forest lands are ~~defined~~ in ARM ~~42.20.160, 42.20.161, 42.20.162, 42.20.163, 42.20.164, 42.20.166, 42.20.167, 42.20.168, 42.20.169, and 42.20.170~~ [New Rule II], 42.20.705, 42.20.710, 42.20.715, 42.20.720, 42.20.725, 42.20.730, 42.20.735, 42.20.740, and 42.20.745, and the "Forest ~~Productivity~~ Land Classification and Appraisal Manual" as compiled by the ~~property assessment division of the~~ department ~~of revenue~~ and available at a local department office or on the department's website, www.discoveringmontana.com/revenue.

AUTH: Sec. 15-1-201 and 15-44-105, MCA

IMP: Sec. 15-44-101, 15-44-102, 15-44-103, and 15-44-104, MCA

REASONABLE NECESSITY: The department is proposing to amend and transfer ARM 42.20.165 (ARM 42.20.735) to new sub-chapter 7. The text for ARM 42.20.163 is included in this rule and that rule is repealed. These amendments provide a better clarification of forestland eligibility. The rule also extends the deadline each year for landowners with commercial forestland to apply for forestland classification.

42.20.166 (42.20.720) FOREST LAND VALUATION ZONES

(1) through (1)(d) remain the same.

(e) Zone 5 - Eastern: Blaine, Big Horn, Carbon, Carter,

Chouteau, Custer, Daniels, Dawson, Fallon, Fergus, Garfield, Golden Valley, Hill, Judith Basin, Liberty, McCone, Musselshell, Petroleum, Phillips, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Sweet Grass, Stillwater, Toole, Treasure, Valley, Wheatland, Wibaux and Yellowstone counties.

AUTH: Sec. 15-1-201 and 15-44-105, MCA
IMP: Sec. 15-44-101, 15-44-102, 15-44-103, and 15-44-104, MCA

REASONABLE NECESSITY: The department is proposing to amend and transfer ARM 42.20.166 (ARM 42.20.720) to new sub-chapter 7. This rule is expanded to identify the forestland valuation zone for each county in Montana, even if no commercial forestland exists in that county.

42.20.167 (42.20.725) FOREST LAND VALUATION FORMULA

(1) and (2) remain the same.

(3) The valuation of forest land shall be based on a ~~5~~ five-year average of income, expense, and capitalization rate for the ~~years 1991 through 1995~~ most recent five-year period ending in the calendar year immediately preceding the year published by the department in ARM 42.18.124.

(4) through (7)(c) remain the same.

(d) GC is the percentage reflecting grazing costs ~~incurred by the landowner for maintaining fences, wells, corrals, roads and some part-time animal oversight~~ used by the department to value agricultural grazing land.

(8) The capitalization rate is the 15-year annual average interest rate on agricultural loans as reported by the northwest farm credit services, agricultural credit association of Spokane, Washington, or its successor, plus the effective tax rate.

(9) remains the same.

AUTH: Sec. 15-1-201 and 15-44-105, MCA
IMP: Sec. 15-44-101, 15-44-102, 15-44-103, and 15-44-104, MCA

REASONABLE NECESSITY: The department is proposing to amend and transfer ARM 42.20.167 (ARM 42.20.725) to new sub-chapter 7. The amendment addresses the base period that is used to calculate income and expense data as required by 15-44-103, MCA. The rule clarifies that the most recent 5-year period ending in the calendar year immediately preceding the year specified in ARM 42.18.124 applies. This amendment does not change current practice but may save potential administrative costs in the future because the department will not have to revise this rule for every reappraisal cycle.

The rule is amended to state that grazing costs will be 25% of the gross grazing income. This is current practice for grazing costs on forestland and is the same approach that is used to calculate grazing costs on agricultural lands. Other minor housekeeping amendments have been made too.

42.20.168 (42.20.730) FOREST COSTS (1) The determination

of forest costs in ARM ~~42.20.167~~ 42.20.725 represent the average costs for reforestation, fire assessment, slash disposal, timber stand improvement, timber harvest, forest practices, ~~and~~ administration and the severance tax over the base period specified in ARM ~~42.20.167~~ 42.20.725. Forest costs, with the exception of the fire assessment fee and ~~administrative cost~~ the severance tax, are calculated from the actual expenditures for those activities conducted by the department of natural resource and conservation, ~~division of~~ forestry division (DNRC~~-DOF~~). The average forest cost in each forest valuation zone is derived from ~~DOF~~ DNRC land management areas. The fire assessment fee will be the average fee the ~~DOF~~ DNRC charges landowners over the base period. ~~The administrative cost is 3 percent of the gross timber income in each valuation zone.~~ The severance tax is the average severance tax that is paid by landowners who harvest timber over the base period in each land management area. ~~Those~~ Forest costs shall be deducted from the per acre gross timber income.

AUTH: Sec. 15-1-201 and 15-44-105, MCA
IMP: Sec. 15-44-101, 15-44-102, 15-44-103, and 15-44-104, MCA

REASONABLE NECESSITY: The department is proposing to amend and transfer ARM 42.20.168 (ARM 42.20.730) to sub-chapter 7. The rule is amended to include severance taxes as a forest cost and define how the forest fire assessment fee is calculated. The rule eliminates how administrative costs were previously calculated because the Montana Department of Natural Resources and Conservation (DNRC), Forestry Division has made cost accounting changes within its organization. The department uses DNRC forest management costs in the forestland valuation formula.

42.20.169 (42.20.740) NATURAL DISASTER REDUCTION - GENERAL PRINCIPLES (1) Forest lands upon which, after December 31, 1993, trees are destroyed by fire, disease, insect infestation, or other natural disaster shall be eligible for a 50 ~~percent~~ % reduction in assessed value for 20 tax years beginning the first full tax year following the natural disaster.

(2) The property owner of record as of January 1 of the first full tax year for which the reduction in value is sought or that owner's agent must complete an application with the ~~appraisal~~ local department office in which the property is located. The application prescribed by the department will be the ~~Property Adjustment Form~~ property adjustment form (AB-26). The application must be made by ~~March 1~~ the first Monday in June or within ~~15~~ 30 days of receipt of the assessment ~~list~~ notice ~~of~~ for the first full year for which the reduction in value is requested.

(3) The department shall review the ~~Property Adjustment Form~~ property adjustment form and may conduct a field evaluation. The department will issue a written determination to the applicant.

(4) The applicant shall include on the ~~Property Adjustment~~

~~Form~~ property adjustment form:

(a) applicant's name~~,~~ ~~and~~ current mailing address and phone number;

(b) through (g) remain the same.

(5) Forest land shall be eligible for a 50 ~~percent~~ % reduction in assessed value provided:

(a) the forest land affected is 15 contiguous acres or larger in size and under one ownership;

(b) the forest land affected contained at least 10 ~~percent~~ % stocking of live trees prior to the natural disaster;

(c) the forest land affected contains 10 ~~percent~~ % stocking or less of live trees after the occurrence of the natural disaster; and

(d) the applicant has timely filed the request for valuation review, as required in (2), and the natural disaster occurred after December 31, 1993.

AUTH: Sec. 15-1-201 and 15-44-105, MCA

IMP: Sec. 15-44-101, 15-44-102, 15-44-103, and 15-44-104, MCA

REASONABLE NECESSITY: The department is proposing to amend and transfer ARM 42.20.169 to sub-chapter 7. The rule also extends the application deadline for taxpayers impacted by natural disasters on forestland to file an application each year.

42.20.170 (42.20.710) FOREST LAND (1) The following is the schedule for ~~the classification and valuation of~~ forest land productive capacity values for each year of the reappraisal cycle beginning January 1, 2003:

(a) ~~In effect from January 1, 1997, through December 31, 1999.~~ Productive capacity values are calculated by using the formula defined in 15-44-103, MCA.

~~Productivity Class~~	~~Zone 1 $/Ac~~	~~Zone 2 $/Ac~~	~~Zone 3 $/Ac~~	~~Zone 4 $/Ac~~	~~Zone 5 $/Ac~~
~~1~~	~~1333.82~~	~~1154.67~~	~~762.95~~	~~974.41~~	~~514.88~~
~~2~~	~~1038.06~~	~~900.84~~	~~595.36~~	~~761.46~~	~~403.95~~
~~3~~	~~742.30~~	~~647.00~~	~~427.77~~	~~548.50~~	~~293.03~~
~~4~~	~~446.54~~	~~393.16~~	~~260.18~~	~~335.54~~	~~182.10~~

(b) The department will apply a phase-in percentage as defined in 15-7-111, MCA, and ARM 42.20.503 to the full reappraisal productive capacity values for forest land for the reappraisal cycle beginning January 1, 2003.

(c) The department will not apply a phase-in percentage calculation to the full reappraisal productive capacity values for forest land values for the reappraisal cycle beginning January 1, 2003, if the values are lower than the base values in effect for tax year 2002. If the full reappraisal productive capacity values for forest land are lower than the base values in effect for tax year 2002, the full reappraisal productive capacity values for forest land will be fully implemented on January 1, 2003, and remain in effect for each year of the

reappraisal cycle.

(i) 2003 forest valuation zone phase-in schedule:

Grade	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5
1	1259.05	1145.39	799.49	1006.84	530.98
2	969.92	882.57	623.64	787.05	416.01
3	680.79	619.74	447.78	567.26	301.04
4	391.66	356.92	271.92	347.48	186.08

(ii) 2004 forest valuation zone phase-in schedule:

Grade	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5
1	1259.05	1145.39	836.04	1039.26	547.07
2	969.92	882.57	651.91	812.64	428.07
3	680.79	619.74	467.79	586.03	309.06
4	391.66	356.92	283.66	359.41	190.06

(iii) 2005 forest valuation zone phase-in schedule:

Grade	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5
1	1259.05	1145.39	872.59	1071.68	563.17
2	969.92	882.57	680.19	838.24	440.13
3	680.79	619.74	487.80	604.79	317.08
4	391.66	356.92	295.40	371.34	194.04

(iv) 2006 forest valuation zone phase-in schedule:

Grade	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5
1	1259.05	1145.39	909.13	1104.11	579.27
2	969.92	882.57	708.47	863.83	452.18
3	680.79	619.74	507.81	623.55	325.10
4	391.66	356.92	307.15	383.27	198.02

(v) 2007 forest valuation zone phase-in schedule:

Grade	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5
1	1259.05	1145.39	945.68	1136.53	595.36
2	969.92	882.57	736.75	889.40	464.24
3	680.79	619.74	527.82	642.32	333.12
4	391.66	356.92	318.89	395.21	202.00

(vi) 2008 forest valuation zone phase-in schedule:

Grade	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5
1	1259.05	1145.39	982.23	1168.96	611.46
2	969.92	882.57	765.03	915.02	476.30
3	680.79	619.74	547.83	661.08	341.14
4	391.66	356.92	330.63	407.14	205.98

AUTH: Sec. 15-1-201 and 15-44-105, MCA
IMP: Sec. 15-44-103, MCA

REASONABLE NECESSITY: The department is proposing to amend and transfer ARM 42.20.170 (ARM 42.20.710) to new sub-chapter 7. The amendments to the rule display each new forestland schedule that will be in effect for the 2003-2008 reappraisal cycle. Each year of the 2003-2008 reappraisal cycle has a different forestland schedule because 15-7-111, MCA, and ARM 42.20.503 mandate that full reappraisal values be incrementally phased in over the length of an appraisal cycle. The rule contains minor housekeeping changes and explains that the schedules are calculated using the formula defined in 15-44-103, MCA.

7. The Department proposes to repeal the following rules:

42.20.135 PROCEDURE FOR REMOVING ONE ACRE BENEATH AGRICULTURAL IMPROVEMENTS ON NONQUALIFIED AGRICULTURAL LAND AND IMPROVEMENTS ON FOREST LAND FROM PROPERTY LAND CLASSIFICATION which can be found on page 42-2025 of the Administrative Rules of Montana.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-6-133, 15-6-134, 15-6-143, 15-7-103, 15-7-201, 15-7-202, and 15-8-111, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.20.135 because the text previously found in this rule has been incorporated into ARM 42.20.655 and New Rule IV which address removal of acreage under residence for forest land.

42.20.140 DEFINITION OF TERMS FOR PARCELS LESS THAN 20 ACRES which can be found on page 42-2027 of the Administrative Rules of Montana.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-7-201, 15-7-202, 15-7-203, 15-7-206, 15-7-207, 15-7-208, 15-7-209, 15-7-210, and 15-7-212, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.20.140 because the text previously found in this rule has been moved to proposed New Rule I dealing with agricultural land.

42.20.151 DEFINITION OF TERMS FOR PARCELS BETWEEN 20 TO 160 ACRES which can be found on page 42-2054 of the Administrative Rules of Montana.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-6-133, 15-7-201, and 15-7-202, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.20.151 because the text previously found in this rule has been moved to proposed New Rule I dealing with agricultural land.

42.20.154 VALUATION OF ONE ACRE BENEATH AGRICULTURAL IMPROVEMENTS AND IMPROVEMENTS ON AGRICULTURAL LAND which can be found on page 42-2055 of the Administrative Rules of Montana.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-6-134 and 15-7-206, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.20.154 because the text previously found in this rule has been moved to proposed ARM 42.20.655 for better clarity.

42.20.155 PROCEDURE FOR REMOVING ONE ACRE BENEATH AGRICULTURAL IMPROVEMENTS FROM PROPERTY LAND CLASSIFICATION which can be found on page 42-2056 of the Administrative Rules of Montana.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-6-134 and 15-7-206, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.20.155 because the text previously found in this rule has been moved to ARM 42.20.655 for better clarity.

42.20.157 FILED AND PLATTED SUBDIVISIONS which can be found on page 42-2056.2 of the Administrative Rules of Montana.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-7-201, 15-7-202, 15-7-203, 15-7-206, 15-7-207, 15-7-208, 15-7-209, 15-7-210, and 15-7-212, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.20.157 because some of the text was moved to the eligibility rules for better clarity.

42.20.161 FOREST LAND CLASSIFICATION DEFINITIONS which can be found on page 42-2058 of the Administrative Rules of Montana.

AUTH: Sec. 15-44-105, MCA
IMP: Sec. 15-44-101, 15-44-102, and 15-44-103, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.20.161 because the text previously found in this rule has been moved to proposed New Rule II dealing with forest land matters for better clarity.

42.20.163 FOREST LAND OWNERSHIP which can be found on page 42-2060 of the Administrative Rules of Montana.

AUTH: Sec. 15-44-105, MCA
IMP: Sec. 15-44-101 and 15-44-102, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.20.163 because the text previously found in this rule has been moved to ARM 42.20.735 for better clarity and reduce redundancy.

8. 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:

Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 5805
Helena, Montana 59604-5805

and must be received no later than August 15, 2003.

9. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

10. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at http://www.state.mt.us/revenue/rules_home_page.htm, under the Notice of Rulemaking section. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

11. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 8 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

12. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Linda M. Francis
LINDA M. FRANCIS
Director of Revenue

Certified to Secretary of State July 7, 2003

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed adoption of New Rule I relating to the administrative fee to repay the bond debt for the new computer system	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On August 11, 2003, at 10:30 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption of New Rule I relating to the administrative fee necessary to repay the bond debt to the Montana board of investments for the costs incurred to develop the new computer system for the department.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue not later than 5:00 p.m., August 1, 2003, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax (406) 444-3696; or e-mail canderson@state.mt.us.

3. The proposed new rule does not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rule provides as follows:

NEW RULE I INTEGRATED REVENUE INFORMATION SYSTEM (IRIS) ADMINISTRATIVE FEE (1) Effective February, 2004, and each February and August thereafter through 2011, the department shall establish an administrative fee not to exceed:

(a) 0.45% of the individual income and corporation license taxes collected annually; or

(b) the amount of the department's loan payment that is due on that date to the Montana board of investments.

(2) The administrative fee will be adjusted bi-annually in February and August to provide sufficient funds to pay the principal and interest payments to the Montana board of investments as authorized by 15-1-141 and 17-5-2001, MCA, to pay for the department's integrated revenue information system.

(3) The administrative fee will be paid from individual income taxes, Title 15, chapter 30, MCA, and the corporation license taxes, Title 15, chapter 31, MCA, collected by the department.

AUTH: 15-1-141, MCA
IMP: 15-1-141 and 17-5-2001, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I because 15-1-141, MCA, requires the department to establish an administrative fee from certain taxes annually to repay the bond debt purchased from the Montana Board of Investments. The rule establishes which of the taxes will be used to repay this debt. The fee amount will vary depending on the amount of money borrowed at any given time. Additionally, the interest rate will vary over the life of the loan. Therefore, it is not possible to set an annual fee amount. The rule clarifies that the department will establish the fee based on the loan amount and interest, but it will not exceed the 0.45% allowed by law.

4. 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:

Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 5805
Helena, Montana 59604-5805

and must be received no later than August 15, 2003.

5. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at http://www.state.mt.us/revenue/rules_home_page.htm, under the Notice of Rulemaking section. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 4 above or

faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

/s/ Cleo Anderson	/s/ Linda M. Francis
CLEO ANDERSON	LINDA M. FRANCIS
Rule Reviewer	Director of Revenue

Certified to Secretary of State July 7, 2003

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed adoption of New Rules I through IV; and amendment of ARM 42.19.501, 42.19.506, 42.20.102, and 42.20.105 relating to property taxes	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On August 7, 2003, at 9:30 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption of New Rules I through IV and amendment of ARM 42.19.501, 42.19.506, 42.20.102, and 42.20.105 relating to property taxes.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue not later than 5:00 p.m., August 1, 2003, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax (406) 444-3696; or e-mail canderson@state.mt.us.

3. The proposed new rules do not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS The following definitions apply to rules found in this sub-chapter.

(1) "Entity" means a corporation, fiduciary, or pass-through entity, as defined in 15-30-101, MCA, and an association, joint-stock company, syndicate, trust or estate, or any other non-natural person.

(2) "Household" is an association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-6-193 and 15-30-101, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I because the 2003 legislature passed 15-6-193, MCA, which requires the department to develop and process an application form for determining if specific taxpayers are entitled to the property tax assistance program provided for in 15-6-193, MCA. This rule defines terms that are used in New Rule II regarding

the extended property tax assistance program.

NEW RULE II EXTENDED PROPERTY TAX ASSISTANCE PROGRAM

(1) The department will determine which taxpayers are potentially eligible for the extended property tax assistance program and will mail applications to those taxpayers. In addition, applications will be available at the local department office. In order to receive the tax rate adjustment, the property owner of record, the property owner's agent, or a qualifying entity must annually complete and forward an application to the Department of Revenue, P.O. Box 5805, Helena, Montana 59604-5805.

(a) In order for qualifying taxpayers to receive the tax rate adjustment for tax year 2003, the department mailed letters to taxpayers by June 30, 2003, advising them that completed applications must be postmarked on or before July 25, 2003, and returned to the department if they want to be considered for the tax rate adjustment. This notification also advised the applicants that applications postmarked after July 25, 2003, would not be considered for the tax rate adjustment.

(b) Beginning with tax year 2004 and all subsequent tax years, the completed applications must be postmarked on or before March 15 in order for applicants to receive the tax rate adjustment for the year the tax rate adjustment is sought. Applications postmarked after March 15 will not be considered for the tax rate adjustment provided for under this section.

(2) The applicant is required to list total household income from all sources, including:

(a) net business income;

(b) otherwise tax-exempt income of all types; and

(c) income from all other owners of the property.

(3) Total household income includes, but is not limited to:

(a) employment income;

(b) gross business income less ordinary operating expenses but before deducting depreciation and/or depletion allowance;

(c) social security;

(d) railroad pension;

(e) teacher's pension;

(f) employment pension;

(g) veteran's pension;

(h) any other pension;

(i) alimony;

(j) disability income;

(k) unemployment benefits;

(l) welfare payments;

(m) aid to dependent children;

(n) rentals;

(o) interest from investments;

(p) stock/bond interest or dividends;

(q) interest from banks; and

(r) any other income.

(4) Social security income paid directly to a nursing home, food stamps, or direct utility payments paid to the energy

share program are not included as income.

(5) Income for an entity includes those shown in (2) and also the income of any natural person or entity that is a trustee of, or controls, 25% or more of the entity.

(6) For single-family rental dwellings, total household income is income made by the property owner, not the income of the tenant.

(7) The completed application form must include:

(a) the applicant's social security number or federal identification number (FEIN); and

(b) copies of the applicant's most recent federal individual or state corporate income tax return.

(8) Failure to provide the required information in (2) through (7) will result in the application being denied. All tax return information will be treated as confidential by the department.

(9) The department may review income tax or corporate tax records in order to verify accuracy of information submitted in support of the application.

(10) The department will approve or deny the application and will advise the applicant in writing of the decision.

(11) For tax year 2003, assessment notices will be prepared and mailed for all parcels of real property without regard to whether parcels qualify for the program as provided in this rule. The property reappraisal values are not impacted by the provisions of the extended property tax assistance program, and in accordance with 15-7-102, MCA, the department will not issue or mail revised assessments for those parcels qualifying for the extended property tax assistance program.

(12) Beginning with tax year 2004, and in accordance with 15-7-102, MCA, the department will not mail assessment notices for parcels when a valuation change is due solely to successful qualification for the extended property tax assistance program, since the market value of the property is not impacted by the program.

(13) All parcels qualifying for the tax rate adjustment will see a reduction in the tax rate used to calculate the taxable valuation for each qualifying parcel.

(14) The new taxable value calculated due to the extended property tax assistance program will be available for review at the local department office.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-6-193, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule II because the 2003 legislature passed 15-6-193, MCA, which requires the department to develop and process an application form for determining if specific taxpayers are entitled to the property tax rate adjustment provided for in 15-6-193, MCA.

NEW RULE III PROPERTY TAX FEE APPRAISAL REQUIREMENTS

(1) The appraisal must be completed by an appraiser who is certified by the Montana board of real estate appraisers.

(2) The appraisal must be conducted in accordance with current uniform standards of professional appraisal practice (USPAP) set forth for certified real estate appraisers under 37-54-403, MCA.

(3) The appraisal must establish a separate market value for each improvement and the land.

(a) If the appraisal was conducted for a single family dwelling, the sales comparison approach and cost approach must be included. The cost approach must document the land value, the value of each single family residence, and all outbuildings. If the appraiser chooses the sales comparison approach as the best indicator of value, then the appraiser must specifically state the contributory value of the land to the reconciled value.

(b) If the appraisal was conducted for a commercial property, the income approach, sales comparison approach, and the cost approach must all be included. The cost approach must document the land value, the value of each commercial structure, and all ancillary buildings and site improvements. If the appraiser chooses either the income approach or the sales comparison approach as the best indicator of value, then the appraiser must specifically state the contributory value of the land to the reconciled value.

(4) The appraisal must be conducted within one year of the reappraisal base year provided for in 15-7-103, MCA, which means the appraisal must be adjusted to the market value as it would have been in the base year provided for in 15-7-103, MCA. This may require the appraiser to make a retrospective appraisal, in accordance with the uniform standards of professional appraisal practice, which means the effective date of the appraisal may be prior to the date of the appraisal report. If the appraisal has already been conducted, and it was conducted after the base year provided for in 15-7-103, MCA, then a re-certification or update of value will be required as an addendum to the original appraisal. The re-certification or update must be completed by the same appraiser who conducted the original appraisal.

AUTH: Sec. 15-1-201 and 15-7-139, MCA
IMP: Sec. 15-7-139, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule III because the law, 15-7-139, MCA, requires the department to clarify by rule the specific type of appraisal that is required to be presented by the property owner at an appeal before the county tax appeal board (CTAB) and the state tax appeal board (STAB). This applies primarily to appraisals that are conducted by department appraisers when access to the property has been denied because of "no trespassing" signs, locked gates, or similar means of denying access to the property.

NEW RULE IV INFLATION ADJUSTMENT FOR QUALIFIED DISABLED VETERAN PROPERTY TAX EXEMPTION PROGRAM (1) Section 15-6-211, MCA, provides a property tax exemption or partial exemption to qualified disabled veterans. Section 15-6-211, MCA, also

requires the department to annually adjust the income schedules used to determine the eligibility and the amount of exemption to account for the effects of inflation.

(2) The calculation of the inflation adjustment shall be made on a yearly basis as follows:

(a) Calculation of inflation factor: Section 15-6-211, MCA, specifies that the implicit price deflator for personal consumption expenditures (PCE), published quarterly in the survey of current business by the bureau of economic analysis of the U.S. department of commerce, is to be used in the calculation of the inflation factor.

(b) The formula for the calculation of the inflation factor is as follows:

$$IF_t = \frac{PCE_{(t-1)}}{PCE_{t\ o}}$$

where:

IF_t equals the inflation factor for property tax year t;

$PCE_{(t-1)}$ is the implicit price deflator for personal consumption expenditures for the second quarter of the year prior to the tax year in question;

$PCE_{t\ o}$ is the implicit price deflator for personal consumption expenditures for the second quarter of 2002.

(c) Updating the income schedules for inflation: The inflation factor, calculated per the previous subsection, is used to annually adjust the base-year income schedules for the effects of inflation.

Each income figure in the base-year table is multiplied by the inflation factor calculated for the tax year in question in order to update the table. The product is then rounded to the nearest whole dollar amount.

The base-year income schedule follows:

---------- Base Income Schedules ----------			
Single Person	Married Couple	Surviving Spouse	Percentage Multiplier
$0–$30,000	$0–$36,000	$0–$25,000	0%
30,001–33,000	36,001-39,000	25,001-28,000	20%
33,001-36,000	39,001-42,000	28,001-31,000	30%
36,001-39,000	42,001-45,000	31,001-34,000	50%

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-6-151 and 15-6-211, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule IV to comply with the provisions of 15-6-211, MCA, which was amended by the 2003 legislature in SB 65. New Rule IV provides for the annual inflationary adjustment calculations which are needed to determine the annual income levels necessary to qualify for the different levels of exemption provided for in the statute.

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

42.19.501 PROPERTY TAX EXEMPTION FOR ~~100%~~ QUALIFIED DISABLED VETERANS (1) The property owner of record or ~~his~~ the property owner's agent must make application through the Department of Revenue, P.O. Box 5805, Helena, Montana 59604-5805, in order to obtain a property tax exemption. An application must be filed, on a form available from the ~~county assessment~~ local department office, before March 15 of the year for which the exemption is sought. Applications postmarked after March 15 will not be considered for that tax year unless the agent of the department ~~or office manager~~ determines the following conditions are met:

(a) the applicant successfully qualified during the preceding 12 months prior to January 1 of the current tax year~~,~~; and

(b) the applicant was unable to apply for the current year due to hospitalization, physical illness, infirmity, or mental illness. These impediments must be demonstrated to have existed at significant levels from January 1 of the current year to the time of application. Telephone extensions and written extensions will be granted through July 1 of the current year for the above-listed reasons. Willful misrepresentation of facts pertaining to income or the impediments that prevent timely application filing will result in the automatic rejection of the application.

(2) The following documents must accompany the application:

(a) letter ~~of disability~~ from the veterans' administration which verifies that the applicant is currently rated 100% disabled or is paid at the 100% disabled rate; and

(b) copy of the applicant's latest federal or state income tax return.

(3) The department or its agent will review the application and the supporting documents and ~~it~~ may perform a field evaluation. The department or its agent will approve or deny the application. The applicant will be advised in writing of the decision.

(4) and (5) remain the same.

(6) Tax exemptions for ~~100% disabled~~ qualified veterans or their surviving spouses may not be prorated.

(7) remains the same.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-6-151 and 15-6-211, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.19.501 to ensure that the rule complies with the requirements of SB 65, which amended 15-6-211, MCA.

42.19.506 EXEMPTIONS INVOLVING A USE TEST (1) For property tax exemptions which require a use test, the following criteria apply:

(a) ~~The use of the property in the previous year is obtained from the applicant in the form of an affidavit, letter, or from a physical inspection by the county appraisal staff~~ the applicant must state the actual or proposed use of the property in the form of an affidavit or letter;

(b) ~~If there is no use history from the previous year, the intended use is obtained from the applicant in the form of an affidavit or letter~~ the applicant shall provide supporting documentation for the stated actual or proposed use of the property;

(c) ~~If there is no use history and the intended use is the determining factor in granting the exemption, the exemption is reviewed as of January 1 of the next year to determine if the property was placed in the intended use. If it was not placed in the intended use, the department will adjust the exemption to reflect the actual use during the preceding year; and~~ examples of supporting documentation include, but are not limited to:

(i) site plans;

(ii) soil surveys;

(iii) building permits;

(iv) sewer permits;

(v) environmental studies;

(vi) requests for zoning changes;

(vii) architectural planning;

(viii) grant applications for construction; and

(ix) physical inspections of the property by the county appraisal staff; and

(d) ~~The~~ the ratio of the exempt to non-exempt use is used to determine the portion of the property that will receive the exemption.

(2) The documentation shall be sufficient to demonstrate that the property is either currently in, or will be put to, the stated use within a reasonable time period.

(3) If the proposed use is the determining factor in granting the exemption, the exemption will be reviewed as of January 1 of the next year to determine if the property was placed in the proposed use within the prior year. If it was not placed in the proposed use, the department may adjust the exemption to reflect the actual use during the preceding year; and

(2) through (4) remain the same but are renumbered (4) through (6).

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-6-201, 15-6-203, 15-6-209, and 15-24-1208, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.19.506 because rules issued by the State Tax Appeal Board (STAB) and the Montana District Court state that the current

rule was arbitrary and capricious. The amendment incorporates language and criteria that was used by both STAB and District Court to justify the use of a property for tax exemption purposes. Examples are provided in the amendments that were included in both decisions from STAB and the District Court.

42.20.102 APPLICATIONS FOR PROPERTY TAX EXEMPTIONS

(1) through (3) remain the same.

(4) If the property is owned by a governmental entity (such as city, county, or state), the federal government (unless ~~Congress~~ congress has passed legislation allowing the state to tax property owned by a federal entity), nonprofit irrigation districts organized under Montana law, municipal corporations, public libraries, or rural fire districts and other entities providing fire protection under Title 7, chapter 33, MCA, the department will employ the following exemption criteria for real property when considering exemption claims based upon 15-6-201, MCA:

(a) the properties will be tax-exempt as of the purchase date that is reflected on the deed or security agreement ~~and~~;

(b) if a property is tax-exempt as of January 1 of the current tax year and is sold to a non-qualifying purchaser after January 1 of the current tax year, it becomes taxable upon the transfer of the property. The tax is prorated according to 15-16-203, MCA~~.~~; and

(c) if a property is tax-exempt, as stated in (4)(b), and is sold as tax-deed property to a non-qualifying purchaser after January 1 of the current tax year, it becomes taxable on January 1 following the execution of such contract or deed as provided in 7-8-2307, MCA.

(5) remains the same.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 7-8-2307, 15-6-201, 15-6-203, 15-6-209, and 15-7-102, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.102 because the date for the property to be added back onto tax rolls for these properties is stated in 7-8-2307, MCA. The current rule states that tax-exempt properties that are transferred to a taxable entity after January 1 of each year will be prorated from the date of transfer and are taxable for that part of the current year. Section 7-8-2307, MCA, states in part that tax deed properties will not be added back on tax rolls until the following January 1. Therefore, the rule is amended to comply with the law.

42.20.105 CONDOMINIUMS (1) It is the intention of the department to employ an appraisal methodology for condominiums which is consistent with 15-8-111~~,~~ and 15-8-511, MCA. The methodology must provide for a separate assessment of each condominium unit, and allocation of the percentage interest of common elements must meet the market value standard. The methodology must include the consideration, use, and where applicable, the reconciliation of the cost approach, the sales

comparison approach, and the income approach to valuation using accepted appraisal treatises and manuals.

(2) The department will employ the following appraisal and assessment methodology for the appraisal of condominiums, except for time-share condominiums.

(a) ~~The entire condominium project will be appraised using accepted appraisal techniques or methods and, as appropriate, the cost replacement manuals identified in rule.~~ The preferred approach for the appraisal of the residential condominium units is the sales comparison approach, where comparable sales are available. The common elements of residential condominiums are inherent in the individual unit values when the sales comparison approach is employed. When comparable sales are not available, the cost approach must be used. In that instance, the condominium declaration's percentage of ownership interest required by 15-8-511, 70-23-301, and 70-23-403, MCA, should be used to allocate the value. Allocation of value for each condominium unit will be determined by multiplying the percentage (expressed as a decimal) times the appraised value of the entire condominium project. The common elements are deemed to be inherent in the individual unit's declaration percentage when the cost approach value is determined and allocated as specified in this subsection.

(b) ~~Appraised value will be allocated to each unit according to its percentage of individual interest in condominium common elements. The allocation will be based on the percentage of undivided interest in the common elements set forth in the condominium declaration required by 15-8-111, 70-23-301, and 70-23-403, MCA. Allocation of appraised value will be determined by multiplying the percentage (expressed as a decimal) times the appraised value of the entire condominium project.~~ The preferred approach for the appraisal of commercial condominium units is the income approach where reliable condominium income and expense data are available. The common elements of income-producing condominiums are inherent in the individual unit values when the income approach is employed. When reliable income and expense data are not available, the cost approach must be used. In that instance, the condominium declaration's percentage of ownership interest required by 15-8-511, 70-23-301, and 70-23-403, MCA, should be used to allocate the value. Allocation of value for each condominium unit will be determined by multiplying the percentage (expressed as a decimal) times the appraised value of the entire condominium project. The common elements are deemed to be inherent in the individual unit's declaration percentage when the cost approach value is determined and allocated as specified in this subsection.

~~(c) The value of the individual units is calculated from the value of the entire condominium project divided by each unit's percentage of the common elements. The percentage expressed in the condominium project's declarations shall be considered by the department as the relation that the value of the unit at the date of the declaration bears to the then combined value of all the units having an interest in the~~

~~particular common elements.~~

(3) The department will employ the following appraisal and assessment methodology for the appraisal of time-share condominiums.

(a) The entire condominium project will be appraised using accepted appraisal techniques or methods and, as appropriate, the cost replacement manuals identified in rule. The use of accepted techniques or methods means the consideration, use, and where applicable, the reconciliation of the cost approach, the sales comparison approach, and the income approach to valuation.

(b) Any units in a condominium project which are not owned and operated as time-share condominium units will be valued pursuant to the methodology set forth in (2)(a) or (b).

(c) The total appraised value for all time-share condominium units comprising a condominium project will be calculated and assessed to the owner of record (time-share association). Thereafter, it will be incumbent upon the association to allocate its total tax liability among the various parties having interest in the time-share condominiums.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-7-103, 15-8-511, 70-23-301, and 70-23-403, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.105 to comply with a legal opinion issued by the department's office of legal affairs regarding the manner in which condominiums are to be valued and assessed. The amendments also allow the department to address issues that have been raised by appellants in recent tax appeals.

5. 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:

Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 5805
Helena, Montana 59604-5805

and must be received no later than August 15, 2003.

6. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

7. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at http://www.state.mt.us/revenue/rules_home_page.htm, under the Notice of Rulemaking section. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the

official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Linda M. Francis
LINDA M. FRANCIS
Director of Revenue

Certified to Secretary of State July 7, 2003

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 42.31.131, 42.31.202, and 42.31.221 relating to cigarette and tobacco taxes	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 13, 2003, at 10:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of ARM 42.31.131, 42.31.202, and 42.31.221, relating to cigarette and tobacco taxes.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue not later than 5:00 p.m., August 1, 2003, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax (406) 444-3696; or e-mail canderson@state.mt.us.

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

42.31.131 CIGARETTE TAX REFUNDS/DISTRIBUTIONS

(1) Cigarette tax refunds/distributions will be issued as provided in (2), (3) and (4) ~~below~~. All cigarette refunds will be calculated assuming a ~~3%~~ .83% discount rate unless documentation is provided supporting a higher discount rate.

(2) Refund claims by a cigarette manufacturer must contain a notarized affidavit that:

(a) the cigarette tax refund claimed is for state of Montana cigarette tax insignia which are affixed to the unsalable cigarettes;

(b) ~~that~~ credit or refund for the net cost of the tax insignia has been given to a Montana cigarette ~~dealer~~ wholesaler; and

(c) ~~that~~ the cigarettes will not be sold at any time.

(3) Refund claims must be accompanied by a copy of the credit memo or invoice issued to the Montana ~~dealer~~ wholesaler. In lieu of the credit memo or invoice, the manufacturer may ~~summit~~ submit a printout showing each customer name, customer credit invoice number, number of Montana stamped cigarettes, tax amount and the date the

cigarettes were returned for credit. Refunds will be allowed for stale or damaged merchandise during the first 90 days after a change in the tax rate at the previous rate of tax unless it can be verified conclusively that the new tax has been paid on the specific product for which such refund is claimed.

(3) remains the same but is renumbered (4).

~~(4)~~(5) Cigarette tax credits or refunds for indicia used in sales made on an Indian reservation are made to wholesalers pursuant to the established quota for a particular Indian reservation. The wholesaler can request a credit or a cash refund by filing form CT-207 with a copy of form CT-206. Upon receipt of forms CT-206 and CT-207 the department will approve the credit or mail the refund within ~~ten~~ 10 working days.

~~(5)~~(6) No credit or refund for non-taxed (quota) sales on an Indian reservation will be allowed to a wholesaler once the retailer/reservation has depleted the quota amount. (See ARM 42.31.107 for qualifying sales.) ~~Amounts on form CT-207 received during the month will be reconciled with amounts on form CT-206 filed at the appropriate time. Any discrepancies will be added to or subtracted from the amount requested for credit/refund of the current month. Added/subtracted amounts will be applied to the request of the wholesaler that causes the discrepancy to develop.~~

AUTH: Sec. 16-11-103, MCA
IMP: Sec. 15-1-503, 16-11-112, and 16-11-156, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.31.131 because the 2003 legislature passed SB 407 which changed the tax rates for cigarettes and other tobacco products. Further amendments to this rule include replacing the term "dealer" with "wholesaler" and adding the requirement to complete and file form CT-206. The department is deleting a portion of (5) because the text is no longer applicable.

42.31.202 PAYMENT OF TAX -- BOND (1) The wholesaler shall remit the appropriate tax calculated at the statutory rate on the wholesale price paid for tobacco products purchased and delivered from manufacturers, less ~~5%~~ 2 1/2% of the computed tax for collection.

(2) All wholesalers shall remit the tax on form TP-101, tobacco products tax reporting form, together with copies of the itemized invoices procured from the manufacturer or from another wholesaler of all tobacco products or a computerized print-out approved by the department that must contain roll-your-own product by the number of ounces received and the brand name, manufacturer name and address.

(3) All such remittance shall be made to the department by the ~~10th~~ 15th of each month covering purchases of tobacco products made during the previous month. Form TP-101 is hereby incorporated by reference and may be obtained by contacting the Department of Revenue at P.O. Box ~~5835~~ 1712, Helena, Montana 59604-~~5835~~ 1712.

(4) remains the same.

AUTH: Sec. 16-11-103, MCA
IMP: Sec. 16-11-203, MCA

REASONABLE NECESSITY: The department is proposing to amend (1) of ARM 42.31.202 to reflect the change in the tax rates as enacted by SB 407. The amendment to (2) reflects additional changes made in the law and (3) changes the due date for the remittance of the tax and corrects the post office box number and zip code.

42.31.221 CREDITS FOR UNSALABLE TOBACCO PRODUCTS OTHER THAN CIGARETTES (1)~~(a)~~ Credits of the ~~12 1/2%~~ 25% tobacco products tax, less the ~~5%~~ 2 1/2% collection expense discount, shall be granted in accordance with the provisions of 15-1-503, MCA, in cases where the tobacco products purchased and delivered become unsalable. A manufacturer's credit memo will be required for proof of returned merchandise. Credits or refunds will not be allowed for stale or damaged merchandise during the first 90 days the tobacco products tax is in effect unless it can be verified conclusively that the tax has been paid on the specific product for which such refund or credit is claimed.

~~(b)~~ (2) Credits will also be granted for tobacco products shipped from Montana and destined for retail sale and consumption outside Montana on which the tax has been paid. Duplicates or copies of the original sales slips or invoices will be required for proof of sales to out-of-state retailers.

(2) and (3) remain the same but are renumbered (3) and (4).

AUTH: Sec. 16-11-103, MCA
IMP: Sec. 16-11-206, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.31.221 to correct the tax and discount rates to reflect the changes made in the law by SB 407. The other amendments are housekeeping only.

4. 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:

Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 5805
Helena, Montana 59604-5805

and must be received no later than August 15, 2003.

5. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide

Web at http://www.state.mt.us/revenue/rules_home_page.htm, under the Notice of Rulemaking section. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Linda M. Francis
LINDA M. FRANCIS
Director of Revenue

Certified to Secretary of State July 7, 2003

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.21.3704, 2.21.3708, 2.21.3712, 2.21.3715, 2.21.3719, 2.21.3724, 2.21.3727, and 2.21.3728 regarding Recruitment and Selection, and the amendment of ARM 2.21.5007 regarding Reduction in Work Force	)	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On May 8, 2003, the Department of Administration published MAR Notice No. 2-21-326 regarding the public hearing on the proposed amendment of ARM 2.21.3704, 2.21.3708, 2.21.3712, 2.21.3715, 2.21.3719, 2.21.3724, 2.21.3727, and 2.21.3728 regarding the Recruitment and Selection rules, and the amendment of ARM 2.21.5007 regarding the Reduction in Work Force rules at page 859 of the 2003 Montana Administrative Register, issue number 9.

2. The Department has amended ARM 2.21.3708, 2.21.3712, 2.21.3715, 2.21.3719, 2.21.3724, 2.21.3727, 2.21.3728, and 2.21.5007 exactly as proposed.

3. The department has amended ARM 2.21.3704 as proposed with the following changes. Matter to be added is underlined. Matter to be deleted is interlined.

2.21.3704 JOB REGISTRY PROGRAM AND REEMPLOYMENT FOLLOWING LAY-OFF (1) through (6) remain as proposed.

(7) An employee's eligibility to participate in the job registry ends when:

(a) the employee secures employment at ~~a grade~~ an hourly salary equal to or higher than the position from which the employee was laid off. Acceptance of permanent employment at a lower ~~grade~~ hourly salary or acceptance of seasonal, temporary or short-term employment does not end an employee's right to continue participation on the job registry;

(b) through (d) remain as proposed.

AUTH: 2-18-102, MCA
IMP: 2-18-102 and 2-18-1201, MCA

4. No comments were received at the public hearing, which was held on June 5, 2003. The department has thoroughly considered all commentary received. Three written comments were received and the department's response to each is as follows:

Comment #1: [The language in] Rule 2.21.3704 Job Registry Program and Reemployment Following Layoff (13)(a) [talks about] the employee securing employment at a GRADE equal to... Possibly change grade to the same grade (or higher) or the same occupational pay band. [The] wording needs to reflect those agencies now under [the Broadband Pay Plan] 20.

Response: The department agrees and has amended subsection (7)(a) (formerly subsection (13)(a)) as shown above. This will address situations where a job registry participant accepts a lower salary. As amended, participation in the Job Registry will end when the participant accepts a position at the same or higher hourly salary.

Comment #2: ARM 2.21.3708(4) says Indian Community Colleges. I think it would be better to phrase it as universities and community colleges. Would that not include Indian Community Colleges? Is there a specific reason why it was stated this way because it indicates that we would only post to the Indian Community Colleges?

Response: The State of Montana has an equal employment opportunity policy at ARM 2.21.4005 that prohibits discrimination. To ensure access for all persons who may wish to work for the State, the department encourages agencies to send vacancy announcements to organizations serving minorities, women, and persons with disabilities in order to notify potentially qualified applicants about state jobs. The list in ARM 2.21.3708(4) summarizes the types of organizations in the EEO Referral Source list maintained by the department. Agencies are not required to limit their recruitment to these agencies, but it serves as a reminder of the types of organizations that may be included in any recruitment process. Therefore, this rule will not be further amended.

Comment #3: The RIF registry should be completely voluntary. No penalty by a RIF'd employee if we [an agency] check the registry and do not interview and or hire them.

Response: The department has proposed to repeal all of the mandatory job registry recruitment language found in ARM 2.21.3704, et al. The language in the proposed rules reflects the permissive nature of recruiting and hiring from the new job registry. The department believes the proposed rules are in alignment with the intent of House Bill 735, which states in part: "nothing in this section requires an agency to attempt to hire employees from the special job registry prior to seeking applications from the general public." The department believes it is unnecessary to repeat this statutory language. Therefore, the rules are sufficient as proposed.

5. These amendments will be applied retroactively to July 1, 2003.

BY: *Dal Smilie* *Scott Darkenwald*

Dal Smilie
Rule Reviewer

Scott Darkenwald
Director

Certified to the Secretary of State July 7, 2003.

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

In the matter of the repeal of an emergency rule closing Painted Rocks Reservoir	))))	NOTICE OF REPEAL OF A TEMPORARY EMERGENCY RULE

TO: All Concerned Persons

1. On June 3, 2003, the Fish, Wildlife and Parks Commission (commission) adopted a temporary emergency rule closing Painted Rocks Reservoir. High water flows rushing over the spillway and debris in the reservoir created a situation that constituted imminent peril to the public health, safety, and welfare. Within the rule, the commission delegated its authority to the Department of Fish, Wildlife and Parks (department) to determine when the reservoir was again safe for boating, sailing, floating and swimming. Notice of this rule action was published on June 12, 2003, at page 1189 of the 2003 Montana Administrative Register, Issue No. 11.

2. As of the evening of June 22, 2003, water flows at Painted Rocks Reservoir were three inches below the crest of the spillway. Barring unforeseen extreme weather conditions, the department now determines that Painted Rocks Reservoir in Ravalli County is safe for boating, sailing, floating, and swimming and repeals the emergency rule.

3. This repeal of the temporary emergency rule adopted June 3, 2003, is effective June 27, 2003.

BY: /s/ M. Jeff Hagener
M. Jeff Hagener, Director
Department of Fish, Wildlife and Parks

BY: /s/ Robert N. Lane
Robert N. Lane
Rule Reviewer

Certified to the Secretary of State June 27, 2003

BEFORE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 36.12.102, 36.12.103 and 36.12.105 and adoption of NEW RULES I and II relating to water rights forms and fees	))))))	NOTICE OF AMENDMENT AND ADOPTION

To: All Interested Persons

1. On May 22, 2003, the department published MAR Notice No. 36-12-94 regarding a public hearing on the proposed amendment and adoption of the above-stated rules relating to water rights forms and fees at page 1041 of the 2003 Montana Administrative Register, issue no. 10.

2. A public hearing was held on June 17, 2003, to consider the proposed amendment and adoption. No one appeared at the hearing to testify.

3. The department has amended ARM 36.12.102 and 36.12.105 and adopted NEW RULES I (36.12.107) and II (36.12.108) exactly as proposed.

4. The department has amended ARM 36.12.103 as proposed but with the following changes, stricken matter interlined, new matter underlined:

36.12.103 FORM AND SPECIAL FEES (1) through (1)(e) remain as proposed.

(i) the change application concerns a replacement well, greater than 35 gpm or 10 acre-feet or a municipal well ~~over~~ that does not exceed 450 gpm, or reservoir in the same source; or

(ii) remains as proposed.

(iii) There shall be a fee of $100.

(f) through (j) remain as proposed.

(k) For a Controlled Groundwater Area Petition, Form No. 630, there shall be a fee of $500 for filing this petition form, plus the petitioner shall also pay reasonable costs of giving notice including the newspaper and individual notice costs, printing and mailing costs, holding the hearing, conducting investigations or studies, and making records pursuant to 85-2-506 and 85-2-507, MCA, except the cost of salaries of the department personnel.

(l) For a Petition for Closure of a Highly Appropriated Basin, Form No. 631, there shall be a fee of $500 for filing this petition form, plus the petitioner shall also pay reasonable costs of giving notice including the newspaper and individual notice costs, printing and mailing costs, holding the hearing, conducting investigations or studies, and making records pursuant to 85-2-319, MCA, except the cost of salaries

of the department personnel.

(m) through (3)(f) remain as proposed.

5. The following comments were received and appear with the department's responses:

COMMENT NO. 1: Received comment that replacement well should be clearly defined in ARM 36.12.103(1)(e)(i) to be consistent with the statute so that it is clear that a replacement well is one that is greater than 35 gpm or 10 acre-feet or a municipal well that does not exceed 450 gpm.

RESPONSE NO. 1: The department agrees and has made the change in this notice.

COMMENT NO. 2: Received comment that the fee for the exception in ARM 36.12.103(1)(e) was omitted. New fee was to be $100.00.

RESPONSE NO. 2: The department agrees and has made the change in this notice.

COMMENT NO. 3: New amendatory language "including the newspaper and individual notice costs, printing and mailing costs" in ARM 36.12.103(1)(k) and (l) was not underlined in the proposed amendment.

RESPONSE NO. 3: Department agrees. Nevertheless, even without the proposed language the responsibility for "giving notice" would include the subject language. The rule will be adopted as proposed; the language is shown as new text in this notice.

COMMENT NO. 4: ARM 36.12.103(1)(k) and (l) should allow for collection of fees for investigative studies.

RESPONSE NO. 4: Department agrees. The rule will be adopted as proposed; the language is shown as new text in this notice.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

By: /s/ Bud Clinch
BUD CLINCH
Director

By: /s/ Donald D. MacIntyre
DONALD D. MACINTYRE
Rule Reviewer

The Rule Reviewer is of the opinion that an HB 2 consideration of an agency budget package is not a substantive legislative directive to require an applicant to pay the cost of a notice.

Certified to the Secretary of State July 7, 2003.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM 37.57.301, 37.57.304, 37.57.305, 37.57.306, 37.57.307, 37.57.315, 37.57.316 and 37.57.321 pertaining to newborn infant screening	)))))))	CORRECTED NOTICE OF AMENDMENT

TO: All Interested Persons

1. On May 8, 2003, the Department of Public Health and Human Services published MAR Notice No. 37-285 regarding the public hearing on the proposed amendment of the above-stated rules at page 890 of the 2003 Montana Administrative Register, issue number 9, and on June 26, 2003 published notice of the amendment on page 1298 of the 2003 Montana Administrative Register, issue number 12.

2. This corrected notice is being filed to correct an error in ARM 37.57.305.

3. The rule is corrected as follows:

37.57.305 INFANTS OTHER THAN THOSE WITH VERY LOW BIRTH WEIGHT: IN HOSPITAL (1) The hospital or institution wherein newborn care was rendered to a newborn weighing 1,500 grams or more must take the required specimen ~~on the third day of life~~:
(a) through (3) remain as amended.

AUTH: Sec. 50-19-202, MCA
IMP: Sec. 50-19-203, MCA

4. The text "on the third day of life" was inadvertently not interlined when the new text in (1)(a) was added for clarification from a comment that was received.

5. All other rule changes amended remain the same.

6. Replacement pages for the corrected notice of amendment were submitted to the Secretary of State on June 30, 2003.

Dawn Sliva
Rule Reviewer

John Chappuis for
Director, Public Health and Human Services

Certified to the Secretary of State July 7, 2003.

VOLUME NO. 50 OPINION NO. 2

CITIES AND TOWNS - Duration of payments to police officers injured in the line of duty;
EMPLOYEES, PUBLIC - Duration of payments to police officers injured in the line of duty;
MUNICIPAL GOVERNMENT - Duration of payments to police officers injured in the line of duty;
POLICE - Duration of payments to police officers injured in the line of duty;
WORKERS' COMPENSATION - Duration of payments to police officers injured in the line of duty;
MONTANA CODE ANNOTATED - Sections 7-32-4132, -4136, 19-9-207, 39-71-105(4), -701(3), -705(2);
MONT. REV. CODE ANN. (1977) - Section 92-838;
CALIFORNIA LABOR CODE – Sections 3202, 4850;
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 114 (1988), 42 Op. Att'y Gen. No. 69 (1988), 37 Op. Att'y Gen. No. 156 (1978).

HELD: When a police officer is injured in the line of duty, the employing city's obligation to supplement the officer's workers' compensation wage loss benefits by paying the difference between the benefits received and the officer's net salary pursuant to Mont. Code Ann. § 7-32-4132 ends after the city has paid benefits for a total of one year. That period may consist of aggregated periods of disability of less than one year resulting from the same injury and may extend beyond one calendar year from the date the disability begins.

July 8, 2003

Mr. Robert M. McCarthy
Butte-Silver Bow County Attorney
Room 104, Courthouse Building
155 West Granite Street
Butte, MT 59701

Dear Mr. McCarthy:

You have requested my opinion on the following question:

> When a municipal police officer receives salary and workers' compensation benefits pursuant to Mont. Code Ann. § 7-32-4132, how is the one-year period calculated for termination of the city's obligation to pay the difference between the officer's net salary and the amount received from worker's compensation benefits?

Your question requires interpretation of Mont. Code Ann. § 7-32-4132, which provides in pertinent part:

> (1) A member of a municipal law enforcement agency of a municipality contracting for retirement coverage pursuant to 19-9-207 who is injured in the performance of the member's duties and who requires medical or other remedial treatment for injuries that render the member unable to perform the member's duties must be paid by the municipality the difference between the member's net salary . . . and the amount received from workers' compensation until the disability has ceased, as determined by workers' compensation, or for a period not to exceed 1 year, whichever occurs first.

Several prior opinions of this office have addressed this statute, see 42 Op. Att'y Gen. No. 114 (1988), 42 Op. Att'y Gen. No. 69 (1988), and 37 Op. Att'y Gen. No. 156 (1978), but none addresses the specific issue presented by your question.

As your letter observes, at least three different interpretations of the term "period not to exceed 1 year" are possible. The term could refer to a period of one calendar year from the date of the onset of the disability. It could refer to a cumulative amount of time totaling one year during which the officer remained disabled from employment, made up of several periods of disability of less than one year's duration broken up by periods during which the officer was able to return to work. Or, it could refer to a new period of one year commencing each time the officer leaves employment due to disability connected with the injury. Since so many plausible meanings of the term are available, the term is ambiguous, its meaning cannot be determined solely by resort to statutory language, and resort to rules of statutory construction is therefore appropriate. Skinner Enters. v. Lewis and Clark County Bd. of Health, 286 Mont. 256, 273-74, 950 P.2d 733, 744 (1997). In my opinion, consideration of the rules of statutory construction leads to the conclusion that the second alternative is the one that is most consistent with the legislature's intent in adopting this provision.

The legislature adopted Mont. Code Ann. § 7-32-4132 for the purpose of assuring "that injured policemen should be fully compensated for up to one year after their [work-related] injuries." 42 Op. Att'y Gen. No. 69 at 273 (1988). The statute requires the employing city, "for a period not to exceed 1 year," to pay the officer the difference between the wage loss payments provided by workers' compensation, see 37 Op. Att'y Gen. No. 156 at 642 (1978), and the officer's "net salary, following adjustments for income taxes and pension contributions . . . ." In cases of disability arising from a work-related injury to a police officer in a city which contracts for retirement coverage under Mont. Code Ann.

§ 19-9-207, the statute, for a period of one year, fills a gap left by the workers' compensation laws that provide wage loss benefits equal to up to 66 2/3% of an employee's usual wages. Mont. Code Ann. § 39-71-701(3). See generally 42 Op. Att'y Gen. No. 69 (1988).

In cases in which the officer becomes disabled and the period of disability continues unbroken for a period of at least one year, the application of the statute is straightforward--the obligation of the city to supplement workers' compensation benefits expires one year after the date of the onset of the disability. Id. Where, however, the officer becomes disabled for a period of time less than one year, returns to work, and then becomes disabled again resulting in inability to work due to the same injury, situations may arise in which the officer's disability may extend beyond one year from the date of its original onset while not consuming an entire year of benefits under the statute.

In determining whether the benefits provided by the statute continue beyond the anniversary date of the onset of disability, I find no help in the legislative history materials related to the adoption of the statute. The committee minutes of the bill that became Mont. Code Ann. § 7-32-4132 and of the bills that later amended the statute shed no light on this particular question. Nor do the previous opinions of this office indicate an answer to your question. I am guided, however, by the obvious remedial objective of the statute, its relation with other laws in this area, and case law from another jurisdiction involving a similar question in holding that the most likely intention of the legislature was to provide benefits for a period of one year and to allow aggregating of periods of disability of less than one year's duration arising from the same injury in applying that limit.

First, I note that the legislature obviously intended the statute to confer a benefit on police officers injured in the line of duty over and above the benefits provided by workers' compensation by providing the officer the full level of salary earned prior to the injury during the period of disability. It is therefore appropriate to construe the statute in a manner that effectuates this intention if possible. An interpretation that allows an employee to aggregate periods of disability totaling up to one year, even if the duration of the disability has been interrupted by a return to work, advances the purpose of the statute.

Second, while the particular statute in question does not contain an interpretation clause, I note that such a clause does exist with reference to the workers' compensation statutes to which Mont. Code Ann. § 7-32-4132 clearly relates. Mont. Code Ann. § 39-71-705(2) provides:

> (2) A worker's removal from the work force due to a work-related injury or disease has a negative impact on the worker, the worker's family, the employer, and the general public. Therefore, it is an objective of the workers' compensation system to return a worker to work as soon as possible after the worker has suffered a work-related injury or disease.

Mont. Code Ann. § 7-32-4132 clearly embraces this idea by providing that the city's duty to supplement the workers' compensation benefit only applies when the employee is disabled from returning to work. A related statute, Mont. Code Ann. § 7-32-4136, addresses the city's obligation when the officer can be returned to work in a light or alternate duty capacity.

Statutes that are not inconsistent with each other and that relate to the same subject matter are in pari material, and such statutes should be read together if possible. City of Billings v. Smith, 158 Mont. 197, 212, 490 P.2d 221, 230 (1971). An interpretation disallowing aggregation of separate periods of disability totaling one year arising from the same injury runs contrary to the legislative intent to promote an early return to work by forcing the injured officer to choose to accept light duty or alternate employment, or even to return to full duty, within one year of the date of onset of the disability, only at the cost of forfeiting any further wage benefits under the statute, even in the event the officer's original disability returns. This Hobson's choice provides a disincentive to early return to work that is inconsistent with the public policy of the state as announced in Mont. Code Ann. § 39-71-705(2).

In Eason v. City of Riverside, 43 Cal Rptr. 408, 233 Cal. App. 2d 190 (1965), the California Court of Appeals construed a statute similar in pertinent respects to Mont. Code Ann. § 7-32-4132. The case concerned a police officer injured in the line of duty who suffered five distinct periods of disability resulting from the injury, the aggregate of which did not exceed one year, and culminated in a finding of permanent disability that commenced more than a year and a half after the date of the original injury. The statute at issue provided, similarly to Mont. Code Ann. § 7-32-4132, that the officer was entitled to "leave of absence while so disabled without loss of salary, in lieu of temporary disability payment . . . for the period of such disability but not exceeding one year . . . ." Cal. Labor Code § 4850. The city contended that the officer's entitlement to paid leave of absence ended one year after the onset of disability, while the officer contended that he was entitled to an aggregate of one year's benefits under the statute, thus framing the identical issue presented by your request.

The California Court of Appeals held that the officer's interpretation of the statute was correct. The court first noted that the Labor Code contained a provision requiring that the statutes be construed liberally "with the purpose of extending their benefits for the protection of persons injured in the course of their employment." Cal. Labor Code § 3202. The court next concluded that "fair play and logic" compelled the conclusion that "an injured employee who works between intervals of disability should not be penalized by having such periods of employment charged against his right to compensation resulting from temporary disability." Conversely, the court believed that in fairness employers should not be allowed credit against the statutory one-year benefit for periods when the employee was providing services to the employer and receiving compensation therefore. 233 Cal. App. 2d at 193. Finally, the court held that the public policy favoring return to work was best advanced by allowing the employee to aggregate periods of disability.

In our case, Montana has abandoned the practice of construing the workers' compensation laws favorably to the employees, Mont. Code Ann. § 39-71-105(4) (2001), although such a practice was in effect by statute when the legislature enacted Mont. Code Ann. § 7-32-4132, see Mont. Rev. Code Ann. § 92-838 (1977). Additionally, however, as discussed above, the construction of the statute I adopt here is consistent with the public policy of the state with respect to the return of injured workers to the work force. And, the same practicality and fairness arguments that impressed the Eason court apply to the statute at issue here. On balance, the analysis in Eason is persuasive as to the construction of the statute at issue here.

THEREFORE, IT IS MY OPINION:

> When a police officer is injured in the line of duty, the employing city's obligation to supplement the officer's workers' compensation wage loss benefits by paying the difference between the benefits received and the officer's net salary pursuant to Mont. Code Ann. § 7-32-4132 ends after the city has paid benefits for a total of one year, which may consist of aggregated periods of disability of less than one year resulting from the same injury and may extend beyond one year from the date the disability begins.

Very truly yours,

/s/ Mike McGrath
MIKE McGRATH
Attorney General

mm/jym

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- **Department of Agriculture;**
- **Department of Commerce;**
- **Department of Labor and Industry;**
- **Department of Livestock;**
- **Department of Public Service Regulation; and**
- **Office of the State Auditor and Insurance Commissioner.**

Education and Local Government Interim Committee:

- **State Board of Education;**
- **Board of Public Education;**
- **Board of Regents of Higher Education; and**
- **Office of Public Instruction.**

Children, Families, Health, and Human Services Interim Committee:

- **Department of Public Health and Human Services.**

Law and Justice Interim Committee:

- **Department of Corrections; and**
- **Department of Justice.**

Revenue and Transportation Interim Committee:

- **Department of Revenue; and**

- Department of Transportation.

State Administration, and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife, and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is PO Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

Known Subject	1. Consult ARM topical index. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.
Statute Number and Department	2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2003. This table includes those rules adopted during the period April 1, 2003 through June 30, 2003 and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2003, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 2002 and 2003 Montana Administrative Registers.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

GENERAL PROVISIONS, Title 1

1.2.419 and other rule - Scheduled Dates for the Montana Administrative Register - Official Version of the Administrative Rules of Montana, p. 3041, 3429

ADMINISTRATION, Department of, Title 2

2.21.3704 and other rules - Recruitment and Selection - Reduction in Work Force, p. 859
2.59.307 and other rule - Examination Fees for Consumer Loan Businesses - Dollar Amounts to Which Consumer Loan Rates are to be Applied, p. 1147

(Public Employees' Retirement Board)
2.43.201 and other rules - Procedural Rules - Appeal of Administrative Decisions - Contested Case Procedures for the Public Employees' Retirement Board, p. 266, 972
2.43.404 To Change the Required Time for Agencies to Submit Their Payroll Contribution Reports to the Public Employees' Retirement Board, p. 611, 1186
2.43.441 and other rules - Public Employees' Retirement System Defined Contribution Retirement Plan Administered by the Public Employees' Retirement Board, p. 1143

(Board of Public Education)

10.55.602 and other rules - Criminal History Background Check - Substitute Teachers - Teacher License Classification - Definition of "Immoral Conduct" - Investigation - Reporting of the Surrender, Denial, Revocation or Suspension of a License - Accreditation - Teacher Certification - Hearing Procedures, p. 2489, 3309

10.55.1003 and other rules - Accreditation and Educator Licensure - Substitute Teachers, p. 76, 554

10.57.218 Renewal Unit Verification, p. 508, 977

10.57.410 and other rules - Educator Licensure, p. 510, 978

(State Library)

10.101.201 and other rules - Montana State Library Commission - Model Rules - Grants - Loans - Circulation Records - Selection of Materials - Lost or Damaged Books - Graduate Scholarship Program, p. 3192, 8

FISH, WILDLIFE, AND PARKS, Department of, Title 12

12.10.103 and other rules - Shooting Range Development Grants, p. 1217

(Fish, Wildlife, and Parks Commission)

I Emergency Adoption - Painted Rocks Reservoir Closure, p. 1189

I Variable Priced Outfitter Sponsored B-10 and B-11 Licenses, p. 686

I Authorizing the Director to Extend Deadlines for Purchasing or Applying for a License or Permit, p. 3198, 303

I-V Regulating and Distributing Recreational Use on the Beaverhead and Big Hole Rivers, p. 3462, 83, 759

12.3.140 and other rules - Bonus Point Program, p. 3201, 298

12.9.203 Abandonment of the Green Meadow Game Preserve, p. 1224

12.11.501 and other rules - Closing Cochrane, Morony, and Ryan Reservoirs to All Boating, Sailing, Floating, Swimming, Personal Watercraft Use, and Waterfowl Hunting - List of Water Bodies to Include Cochrane, Morony, and Ryan Reservoirs, p. 276

(Department of Fish, Wildlife, and Parks and the Fish, Wildlife, and Parks Commission)

I Cooperative Agreements with Landowners to Allow Fishing Access on Private Property, p. 3459, 304

ENVIRONMENTAL QUALITY, Department of, Title 17

I-XI Alternative Energy - Alternative Energy Revolving Fund Loan Program, p. 3498, 233

17.36.101 and other rules - Subdivisions - Definitions - Storm Drainage - Sewage Systems - Water Supply Systems -

Non-public Water Supply Systems - Alternate Water Supply Systems - Lot Sizes - Adoption by Reference of DEQ-4, p. 2785, 221

17.36.340 Subdivisions - Minimum Lot Size Requirements for Subdivisions, p. 1257

17.40.201 and other rules – Wastewater Operators – Wastewater Treatment Operators, p. 1839, 3148, 10

17.40.301 and other rules - Water Pollution Control State Revolving Fund - Purpose - Definitions - Eligible Activities - Types of Financial Assistance - Criteria for Financial Assistance to Municipalities - Criteria for Loans to Private Persons - Application Procedures - Project Priority List - Intended Use Plan--Ranking for Funding Purposes - Public Participation, p. 3125, 232

17.53.105 Incorporation by Reference of Current Federal Regulations into Hazardous Waste Rules, p. 2139, 3044

17.53.111 and other rules - Hazardous Waste - Registration of Hazardous Waste Generators and Transporters - Registration Fees, p. 2967, 3397

17.56.101 and other rules - Underground Storage Tanks - Petroleum Storage Tank Release Compensation, p. 513, 1079

17.56.502 and other rules - Underground Storage Tanks - Release Reporting - Investigation, Confirmation and Corrective Action Requirements for Tanks Containing Petroleum or Hazardous Substances, p. 2792, 3122

17.74.401 Asbestos - Fees for Asbestos Project Permits, p. 3123, 3599

(Board of Environmental Review)

I-X Water Quality - Storm Water Discharges, p. 2717, 219

17.8.101 and other rules - Air Quality - Definitions - Incorporation by Reference of Current Federal Regulations and Other Materials into Air Quality Rules, p. 3468, 645

17.8.101 and other rules - Issuance of Montana Air Quality Permits, p. 2076, 3567, 106

17.8.302 Incorporation by Reference of Hazardous Air Pollutants Emission Standards, p. 2124, 3585, 9

17.8.501 and other rules - Air Quality - Definitions - Permit Application Fees - Operation Fees - Application/ Operation Fee Assessment Appeal Procedures - Open Burning Fees, p. 1242

17.8.601 and other rules - Open Burning, p. 2118, 3586

17.8.749 and other rules - Air Quality - Conditions for Issuance or Denial of Permits - Review of Permit Applications - Revocation of Permits - Administrative Amendment to Permits, p. 1252

17.24.101 and other rules - Metal Mine Reclamation Act, p. 2059, 3590

17.30.502 and other rules - Water Quality - Definitions - Incorporation by Reference - Criteria for

Determining Nonsignificant Changes in Water Quality, Standards for Ground Water - Sample Collection, Preservation and Analysis Methods, p. 2713, 217

17.30.602 and other rules - Water Quality - Standards for Electrical Conductivity and Sodium Adsorption Ratio - Classifications for Constructed Coal Bed Methane Water Holding Ponds - Definitions for Water Quality Standards - Informational Requirements for Nondegradation Significance/Authorization Review - Nonsignificance Criteria, p. 2269, 3489, 779, 1274

17.30.716 Water Quality - Categories of Activities that Cause Non-significant Changes in Water Quality, p. 1233

17.30.1301 and other rules - Water Quality - Montana Pollutant Discharge Elimination System Permits, p. 2749, 220, 648

17.36.901 and other rules - Water Quality - Subsurface Wastewater Treatment Systems, p. 2761, 222

17.38.101 and other rules - Public Water Supply and Wastewater System Requirements - Ground Water Under the Direct Influence of Surface Water Determinations, p. 622, 1279

17.38.101 and other rule - Public Water Supply - Public Water and Sewage System Requirements, p. 2780, 230

17.38.602 and other rule - Public Water and Sewage System Requirements - Definitions - Enforcement Procedures, p. 1227

(Petroleum Tank Release Compensation Board)

17.58.311 and other rule - Reimbursable Expenses from the Petroleum Tank Release Compensation Fund, p. 3204, 11, 557

CORRECTIONS, Department of, Title 20

20.9.301 and other rules - Parole - Agreement Violation, Initial Investigation and Detainer - Scheduling and Notice of Hearing - Hearing Procedures - Appeal - Waiver of Right to Hearing - Failure to Appear for Hearing, p. 2809, 108

JUSTICE, Department of, Title 23

23.16.120 and other rules - Determination of Annual Permit Surcharge - Change in Designation of Number of Machines for Annual Permit Surcharge - Implementation of the Video Gambling Machine Permit Fee Surcharge - Regulation of Gambling, p. 874, 1282

(Board of Crime Control)

I & II Authorizing Establishing the Minimum Qualifications for Commercial Vehicle Inspectors - Establishing the Requirements for a Commercial Vehicle Inspector Basic Certificate, p. 2379, 3601

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order following the department rules.

Registered Nurses - Standards Related to Nurses as Members of the Nursing Profession - Method of Referral, p. 1952, 3399, 3602

8.32.303 and other rules - Nursing Licensure, p. 1621, 2315, 3320

8.32.801 and other rules - Nursing Education Programs - Approval Requirements, p. 3207, 1080, 1192

8.32.1408 and other rule - LPN IV Procedures, p. 2294, 3149

(Board of Nursing Home Administrators)

8.34.418 Fees, p. 2817, 306

(Board of Optometry)

8.36.409 Fee Schedule, p. 88, 558

(Board of Outfitters)

8.39.804 and other rule - Net Client Hunter Use, p. 356, 1193

(Board of Pharmacy)

24.174.301 and other rules – Definitions – Foreign Graduates – Preceptor Requirements – Technician Ratio – Pharmacy Security Requirements – Licensing – Personnel – Absence of Pharmacist – Use of Emergency Drug Kits – Drug Distribution – Pharmacist Responsibility – Sterile Products – Return of Medication from Long Term Care Facilities – Pharmacist Meal/Rest Breaks – Health Care Facility Definition – Class I Facility – Class II Facility – Class III Facility, p. 1868, 2159, 3605, 109

(Board of Physical Therapy Examiners)

8.42.404 and other rules - Temporary, Out-of-State and Renewal Licenses - Foreign-trained Applicants - Continuing Education, p. 1027

(Board of Professional Engineers and Land Surveyors)

I Fire Protection System Shop Drawings, p. 1968, 3152

(Board of Psychologists)

8.52.604 and other rules - Psychology Matters - Application Procedures - Fee Schedule - Definition of One Year's Residency, p. 3507, 307

(Board of Public Accountants)

8.54.410 Fees, p. 2820, 3415

8.54.802 and other rules - Basic Requirements and Credit for Formal Study Programs - Professional Monitoring, p. 2141, 12

(Board of Radiologic Technologists)

8.56.409 and other rules - Fee Schedule - Temporary Permits - Permits - Practice Limitations - Course Requirements for Limited Permit Applicants - Permit Examinations - Permit Fees - Fee Abatements, p. 1033

8.56.409 and other rules - Fee Schedule - Temporary Permits - Permits - Practice Limitations - Course Requirements for Limited Permit Applicants - Permit Examinations - Permit Fees - Fee Abatements, p. 3140

(Board of Real Estate Appraisers)
24.207.402 Adoption of USPAP by Reference, p. 91, 651
24.207.502 and other rules - Real Estate Appraisers, p. 2827, 110, 235

(Board of Respiratory Care Practitioners)
8.59.101 and other rules - Transferred from the Department of Commerce, p. 1286

(Board of Social Work Examiners and Professional Counselors)
8.61.404 and other rule - Fee Schedules, p. 1, 559
8.61.1201 Licensure Requirements, p. 1388, 2906, 14

(Board of Speech-Language Pathologists and Audiologists)
8.62.413 and other rules - Speech-Language Pathologists and Audiologists Fees, p. 2536, 3325

(Board of Veterinary Medicine)
8.64.501 and other rule - Application Requirements - Continuing Education, p. 166, 1288

LIVESTOCK, Department of, Title 32

32.2.401 and other rules - Fees Charged by the Department for Various Licenses, Permits and Services Performed by the Department, p. 879, 1289

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36.12.102 and other rules - Water Rights Forms and Fees, p. 1041

(Board of Land Commissioners)
I-L State Forest Land Management, p. 2540, 397

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

I-V Safety Devices in Long Term Care Facilities, p. 2382, 3159
I-XXI Child and Adult Care Food Program, p. 3524, 981
I-XXVII and other rules - Bed and Breakfast Establishments, p. 897, 1338
I-XXXIX and other rules - Intermediate Care Facilities for the Developmentally Disabled (ICF/DD), p. 935, 1322
37.5.125 and other rules - Vocational Rehabilitation - Independent Living Services, p. 2618, 3628
37.14.1002 and other rule - Radiation General Safety Provisions, p. 710, 1291

42.12.104 and other rules - Liquor Licenses and Permits, p. 3282, 21
42.14.101 and other rules - Lodging Facility Use Taxes, p. 3551, 311
42.14.103 Diplomatic Exemption Regarding the Lodging Facilities Use Tax, p. 295, 671
42.15.514 and other rule - Charitable Endowment Credits Made by Taxpayers, p. 2983, 3722
42.17.504 Rates for New Employers, p. 2424, 3060
42.20.101 and other rules - Valuation of Real Property, p. 2388, 3723
42.20.501 and other rule - New Construction for Class Four Commercial and Residential Property, p. 3381, 315
42.20.501 and other rules - Property Phase-in Valuation, p. 2410, 3424
42.21.113 and other rules - Personal Property - Centrally Assessed Property Tax Trend Tables, p. 3019, 3728
42.22.101 and other rule - Taxation of Railroad Car Companies, p. 100, 565
42.25.1813 Quarterly Reporting and Distribution of Oil and Gas Production Taxes, p. 97, 489
42.29.101 and other rules - Miscellaneous Fees Collected by the Department, p. 965, 1352
42.31.501 and other rules - Telephone License - Telecommunication Excise Tax - Universal Access Fund Surcharges, p. 3306, 25
42.31.702 Reporting Requirements for Montana Tobacco Wholesalers and Retailers, p. 1168

SECRETARY OF STATE, Title 44

I Requirements for Filing Trademark Applications, Renewals, and Assignments, p. 1183
1.2.419 and other rule - Scheduled Dates for the Montana Administrative Register - Official Version of the Administrative Rules of Montana, p. 3041, 3429
44.5.114 and other rules - Corporations - Profit and Nonprofit Fees - Limited Liability Partnership Fees - Assumed Business Name Fees - Miscellaneous Fees Regarding the Reduction or Elimination of Business Document Filing Fees, p. 1179
44.6.101 and other rules - Uniform Commercial Code Filing Fees - UCC Refiling Fees - Agriculture Filing Fees - Federal Tax Lien Fees - UCC Filing Fees - Title 71 Lien Requirements - UCC Filings - Farm Bill Master List - On-line UCC Lien Filings, p. 1170

CROSS REFERENCE INDEX

Montana Code Annotated to Administrative Rules of Montana

January 2003 - June 2003

MCA	Rule or A.G.'s Opinion No.	Register Page No.
2-4-201	2.43.201, 202	266
2-4-201	24.5.301, 310, 312, 318	170
2-4-201	37.86.2801	241
2-4-201	37.86.2801	363
2-4-201	37.86.2801	1054
2-4-307	2.43.201	266
2-4-307	24.17.127	1155
2-4-621	Rule I (Revenue)	94
2-4-621	42.2.115	487
2-4-623	Rule I (Revenue)	94
2-4-623	42.2.115	487
2-4-631	Rule I (Revenue)	94
2-4-631	42.2.115	487
2-15-112	Rule I (Revenue)	94
2-15-112	42.2.115	487
2-15-405	44.5.121	1179
2-15-1302	Rule I (Revenue)	94
2-15-1302	42.2.115	487
2-15-1816	8.119.101	619
2-18-102	2.21.3704, 3708, 3712, 3715, 3719, 3724, 3727, 3728, 5007	859
2-18-501	42.14.103	295
2-18-501	42.14.105	311
2-18-1201	2.21.3704, 5007	859
7-22-2101	4.5.202 - 204	867
10-4-201	42.31.401	965
10-4-203, 204	42.31.401	965
10-4-211, 212	42.31.401	965
15-1-201	Rule I (Revenue)	965
15-1-201	Rules I - VI (Revenue)	382
15-1-201	42.20.501	315
15-1-201	42.31.401	965
15-1-201	42.31.902	1352
15-1-211	Rule IV (Revenue)	969
15-1-216	Rule III (Revenue)	969
15-1-216	42.31.802	1354
15-1-217	Rule I (Revenue)	94
15-1-217	42.2.115	487
15-1-501	42.25.1813	97
15-2-302	Rule I (Revenue)	94
15-2-302	42.2.115	487
15-6-156	42.22.101	100

MCA	Rule or A.G.'s Opinion No.	Register Page No.
15-6-201	42.20.501	315
T. 15, Ch. 7, Pt. 1	Rule I (Revenue)	392
15-7-107	Rules I - VI (Revenue)	382
15-7-111	Rules I - VI (Revenue)	382
15-7-111	42.20.501	315
15-10-420	42.20.501	315
15-23-101	42.22.101	100
15-23-104	42.22.101	100
15-23-108	42.22.101, 121	100
15-23-108	42.22.121	565
15-23-211	42.22.101, 121	100
15-23-211	42.22.121	565
15-23-213	42.22.101, 121	100
15-23-213	42.22.121	565
15-36-322	42.25.1813	97
15-36-324	42.25.1813	97
15-53-145	42.22.101	100
15-53-147	42.22.101	100
15-53-155	42.31.503	965
15-53-202	42.31.503	965
15-60-104	Rules I - IV (Revenue)	969
15-60-104	42.31.802	1354
15-60-201	Rules I - III (Revenue)	969
15-60-201	42.31.802	1354
15-60-202	Rule II (Revenue)	969
15-60-204, 205	Rule III (Revenue)	969
15-60-204, 205	42.31.802	1354
15-60-206	Rule IV (Revenue)	969
15-65-101	42.14.101	311
15-65-101, 102	42.14.103	295
15-65-102	42.14.101, 105	311
15-65-111	42.14.103	295
15-65-111	42.14.105	311
15-65-113	42.14.105	311
15-72-104	42.22.101	100
16-1-302, 303	Rule I (Revenue)	94
16-1-302, 303	42.2.115	487
16-4-411	Rule I (Revenue)	94
16-4-411	42.2.115	487
16-11-402, 403	42.31.702	1168
17-2-302, 303	Rule I (Labor & Industry - Radiologic Technologists)	1033
18-2-401 - 403	24.17.127	1155
18-2-406	24.17.127	1155
18-2-409	24.17.127	1155
18-2-411, 412	24.17.127	1155
18-2-422	24.17.127	1155
18-2-431	24.17.127	1155

MCA	Rule or A.G.'s Opinion No.	Register Page No.
19-2-403	Rule I (Administration - PERB)	1139
19-2-403	2.43.201 - 205	266
19-2-403	2.43.404	611
19-2-403	2.43.441	1143
19-2-403	2.43.1104	1139
19-2-506	2.43.404	611
19-2-704	2.43.441	1143
19-2-710	2.43.1015	1143
19-3-315	2.43.404	611
19-3-1106	2.43.404	611
19-3-2103	2.43.1104	1139
19-3-2104	2.43.404	611
19-3-2104	2.43.441, 1015, 1040	1143
19-3-2111	2.43.1015	1143
19-3-2115	2.43.441, 1015	1143
19-3-2141	2.43.1040	1143
19-9-1203	Rule I (Administration - PERB)	1139
19-9-1203, 1204	2.43.1104	1139
19-9-1208	Rule I (Administration - PERB)	1139
19-17-103	2.43.803, 804	615
19-17-201	2.43.801 - 804	615
19-17-203	2.43.801 - 804	615
19-17-401	2.43.801	615
19-17-402	2.43.802	615
19-17-506	2.43.804	615
20-2-114	10.55.1003, 57.611	76
20-2-121	10.55.1003, 57.215, 604, 611	76
20-2-121	10.57.410	510
20-3-106	10.55.1003	76
20-4-102	10.55.716, 57.107, 110, 113, 201, 201A, 215, 220, 411, 418, 419, 431, 432, 436, 604	76
20-4-102	10.57.218	508
20-4-102	10.57.410, 411, 413	510
20-4-103	10.57.110, 201, 201A, 220, 436	76
20-4-103	10.57.410	510
20-4-104	10.57.201A	76
20-4-106	10.57.220, 411, 418, 419, 431, 432, 436	76
20-4-106	10.57.410, 411, 413	510
20-4-108	10.57.215, 411, 418, 419, 431, 432	76
20-4-108	10.57.218	508
20-4-108	10.57.410, 411, 413	510
20-4-110	10.57.604, 611	76
20-4-111	10.57.107	76
20-7-101	10.55.1003	76
20-7-502	10.13.307, 312	1152
23-1-106	Rules I - III (FWP Commission)	276

MCA	Rule or A.G.'s Opinion No.	Register Page No.
23-1-106	12.11.501	276
23-1-106	12.11.1403, 1405, 1407	773
23-5-112	23.16.3501	874
23-5-115	Rules I, II (Justice)	874
23-5-115	23.16.120, 125, 1803, 1805, 1806, 1823, 1901, 3501	874
23-5-118	23.16.125	874
23-5-136	23.16.1901	874
23-5-152	23.16.3501	874
23-5-176	23.16.125	874
23-5-602	23.16.1901	874
23-5-605	23.16.1803, 1805, 1806, 1823	874
23-5-606	23.16.1901	874
23-5-609, 610	23.16.1901	874
23-5-612	Rules I, II (Justice)	874
23-5-612	23.16.1803, 1805, 1806, 1823	874
23-5-621	23.16.1901	874
23-5-637	23.16.1901	874
30-9A-102	Rule I (Secretary of State)	1170
30-9A-302	Rule IV (Secretary of State)	1170
30-9A-501	Rules I, III (Secretary of State)	1170
30-9A-501	44.6.102	1170
30-9A-502	Rules I, III, V (Secretary of State)	1170
30-9A-502	44.6.101, 107, 110	1170
30-9A-519	44.6.104	1170
30-9A-525	Rule II (Secretary of State)	1170
30-9A-525	44.6.104, 105	1170
30-9A-526	Rules I, III - V (Secretary of State)	1170
30-9A-526	44.6.104, 105, 110	1170
30-10-107	6.10.126	273
30-10-201	6.10.126	273
30-13-217	44.5.116, 119	1179
30-13-311	Rule I (Secretary of State)	1183
30-13-331	Rule I (Secretary of State)	1183
32-5-104	2.59.307	1147
32-5-201	2.59.307	1147
32-5-301, 302	2.59.307	1147
32-5-306	2.59.307	1147
32-5-401 - 403	Rule I (Administration)	1147
33-1-313	Rules I, II (State Auditor)	504
33-1-501, 502	Rules I, II (State Auditor)	504
33-15-304	Rules I, II (State Auditor)	504
33-37-101	37.108.301	1161
33-37-102	37.108.305, 310, 315, 507	1161
33-37-103	37.108.305	1161
33-37-105	37.108.301, 305, 310, 315, 507	1161
35-1-1206, 1207	44.5.114	1179
35-1-1307	44.5.114	1179

MCA	Rule or A.G.'s Opinion No.	Register Page No.
35-6-201	44.5.114	1179
37-1-101	Rule I (Labor & Industry - Radiologic Technologists)	1033
37-1-131	Rule I (Labor & Industry - Outfitters)	356
37-1-131	8.11.101, 115	281
37-1-131	8.12.607	1021
37-1-131	8.39.804	356
37-1-131	8.42.404, 409, 410	1027
37-1-131	8.61.1201	14
37-1-131	8.64.501, 505	166
37-1-131	24.207.2101	235
37-1-134	Rule I (Labor & Industry - Radiologic Technologists)	1033
37-1-134	8.11.101	281
37-1-134	8.12.615	1021
37-1-134	8.36.409	88
37-1-134	8.56.409	1033
37-1-134	8.61.404, 1203	1
37-1-134	24.129.401	360
37-1-304	8.36.409	88
37-1-304	8.42.406	1027
37-1-305	8.42.405	1027
37-1-306	8.42.416	1027
37-1-306	8.54.816	12
37-1-306	8.64.505	166
37-1-306	24.174.2106	109
37-1-306	24.207.2101	235
37-1-316	Rule I (Labor & Industry - Chiropractors)	1021
37-1-316	8.12.607	1021
37-1-319	Rule I (Labor & Industry - Chiropractors)	1021
37-1-319	8.12.607	1021
37-1-319	8.54.816	12
37-1-319	8.64.505	166
37-1-319	24.174.2106	109
37-1-319	24.207.2101	235
37-3-203	24.156.606	1158
37-3-306 - 308	24.156.606	1158
37-3-311	24.156.606	1158
37-8-202	8.32.802	1192
37-8-202	8.32.802, 807, 808, 1110	1080
37-8-301	8.32.802, 807, 808, 1110	1080
37-8-301, 302	8.32.802	1192
37-8-302	8.32.802, 807, 808	1080
37-10-202	8.36.409	88
37-10-302	8.36.409	88
37-10-307	8.36.409	88
37-11-105	8.42.409	1027
37-11-201	8.42.404 - 406, 409, 410, 416	1027

MCA	Rule or A.G.'s Opinion No.	Register Page No.
37-11-307	8.42.406	1027
37-11-308	8.42.404	1027
37-11-309	8.42.405	1027
37-11-310	8.42.410	1027
37-12-104	8.12.403	1021
37-12-201	Rule I (Labor & Industry - Chiropractors)	1021
37-12-201	8.12.403, 607, 615	1021
37-12-302	8.12.615	1021
37-12-304	8.12.615	1021
37-12-307	8.12.615	1021
37-14-202	Rule I (Labor & Industry - Radiologic Technologists)	1033
37-14-202	8.56.409, 413, 602A - 602C, 607	1033
37-14-301	8.56.602A, 602B	1033
37-14-306	8.56.602A - 602C, 607	1033
37-14-307	8.56.413	1033
37-14-309	8.56.409, 607	1033
37-14-310	Rule I (Labor & Industry - Radiologic Technologists)	1033
37-14-310	8.56.409, 607	1033
37-14-322	8.56.413	1033
37-18-202	8.64.501, 505	166
37-18-302, 303	8.64.501	166
37-18-307	8.64.505	166
37-22-201	8.61.404	1
37-22-301, 302	8.61.404	1
37-22-304	8.61.404	1
37-23-103	8.61.1201	14
37-23-103	8.61.1203	1
37-23-202	8.61.1201	14
37-23-206	8.61.1203	1
37-34-201	24.129.401	360
37-34-305	24.129.401	360
37-35-103	8.11.101, 115	281
37-35-202	8.11.101	281
37-35-203	8.11.101, 115	281
37-47-201	Rule I (Labor & Industry - Outfitters)	356
37-47-201	8.39.804	356
37-47-316	Rule I (Labor & Industry - Outfitters)	356
37-47-316	8.39.804	356
37-50-201	8.54.816	12
37-50-203	8.54.816	12
37-54-105	24.207.402	91
37-54-105	24.207.2101	235
37-54-210	24.207.2101	235
37-54-303	24.207.2101	235
37-54-310	24.207.2101	235
37-54-403	24.207.402	91
39-3-202	24.17.127	1155

MCA	Rule or A.G.'s Opinion No.	Register Page No.
39-71-2901	24.5.301, 310, 312, 318	170
40-4-234	37.80.201	748
40-4-234	37.80.201	1306
41-3-503	37.97.524	374
41-3-503	37.97.524	979
41-3-1103	37.37.108, 111, 115, 97.524	374
41-3-1103	37.50.320	4
41-3-1103	37.97.524	979
41-3-1122	37.50.320	4
41-3-1142	37.37.108, 111, 115, 97.524	374
41-3-1142	37.97.524	979
50-1-202	37.57.102, 105, 106, 109 - 112, 117, 118, 125	180
50-5-103	Rules I - XXXVII (DPHHS)	935
50-5-103	37.5.116, 106.2115, 2117, 2118, 2132, 2138, 2140, 2144, 2145, 2163, 2180	1322
50-5-103	37.106.302, 401	962
50-5-103	37.106.2805, 2816, 2824	17
50-5-201	Rules I - XXXVII (DPHHS)	935
50-5-201	37.5.116, 106.2115, 2117, 2118, 2132, 2138, 2140, 2144, 2145, 2163, 2180	1322
50-5-201	37.106.302	962
50-5-204	37.106.302, 401	962
50-5-225 - 227	37.106.2805, 2816, 2824	17
50-5-238	37.5.116, 106.2115, 2117, 2118, 2132, 2138, 2140, 2144, 2145, 2163, 2180	1322
50-5-404	37.106.401	962
50-16-603	Rule XXIII (DPHHS)	897
50-19-202, 203	37.57.301, 304 - 307, 315, 316, 321	890
50-19-202, 203	37.57.305	1298
50-19-204	37.57.316	890
50-51-102	Rule II (DPHHS)	897
50-51-102	37.111.302	1338
50-51-103	Rules I - XXVI (DPHHS)	897
50-51-103	37.111.301, 302, 305, 306, 315, 326, 327, 336	1338
50-51-108	Rules I - XXVI (DPHHS)	897
50-51-108	37.111.301, 302, 305, 306, 315, 326, 327, 336	1338
50-51-201, 202	Rule IV (DPHHS)	897
50-51-201, 202	37.111.306	1338
50-51-204	Rules IV, XXVII (DPHHS)	897
50-51-204	37.111.306	1338
50-51-303	Rule XXVII (DPHHS)	897
50-79-101 - 103	37.14.1002, 1003	710

MCA	Rule or A.G.'s Opinion No.	Register Page No.
50-79-101 - 103	37.14.1002, 1003	1291
50-79-104 - 108	37.14.1003	710
50-79-104 - 108	37.14.1003	1291
50-79-201	37.14.1002, 1003	710
50-79-201	37.14.1002, 1003	1291
50-79-202 - 204	37.14.1003	710
50-79-202 - 204	37.14.1003	1291
52-1-103	37.50.320	4
52-2-111	37.37.108, 111, 115, 97.524	374
52-2-111	37.80.204	748
52-2-111	37.97.524	979
52-2-113	37.97.524	374
52-2-113	37.97.524	979
52-2-602	37.37.108, 111, 115	374
52-2-603	37.37.108, 111, 115, 97.524	374
52-2-603	37.50.320	4
52-2-603	37.97.524	979
52-2-611	37.50.320	4
52-2-622	37.37.108, 111, 115, 97.524	374
52-2-622	37.97.524	979
52-2-702	37.80.101	748
52-2-702	37.80.101	1306
52-2-704	37.75.101, 102, 105, 109, 201, 205, 206, 301 - 303, 401 - 403, 501, 502, 601 - 603	981
52-2-704	37.80.101, 102, 201, 202, 204, 205, 301, 316, 502	748
52-2-704	37.80.101, 201, 205	1306
52-2-713	37.80.101, 102, 201, 202, 204, 205, 301, 316, 502	748
52-2-713	37.80.101, 201, 205	1306
52-2-721 - 723	37.80.102, 201, 202, 301	748
52-2-721 - 723	37.80.201	1306
52-2-731	37.80.101, 102, 201, 202, 301	748
52-2-731	37.80.101, 201	1306
53-2-201	Rule I (DPHHS)	115
53-2-201	Rule I (DPHHS)	540
53-2-201	Rule I (DPHHS)	1054
53-2-201	37.37.108, 111, 115, 97.524	374
53-2-201	37.40.302, 330, 337, 345, 360	739
53-2-201	37.49.101, 102, 108, 112, 401, 405, 406, 412, 414, 701	725
53-2-201	37.49.101, 102, 108, 401, 414	1196
53-2-201	37.80.101, 102, 201, 202, 204	748
53-2-201	37.80.101, 201	1306
53-2-201	37.82.101	692
53-2-201	37.82.101, 417	175

MCA	Rule or A.G.'s Opinion No.	Register Page No.
53-2-201	37.82.101, 417	236
53-2-201	37.85.212	721
53-2-201	37.85.212	1311
53-2-201	37.85.207, 86.606, 1806, 1807, 2405, 2801, 2905	241
53-2-201	37.85.207, 406, 86.606, 1806, 1807, 2405, 2801, 2905	363
53-2-201	37.85.406	111
53-2-201	37.85.406, 86.2605, 2801, 2901, 2905, 3001, 3002, 3005, 3007, 3009, 3011, 3014, 3016, 3018, 3020	1054
53-2-201	37.86.805, 1506, 1802, 1807, 2207, 2405, 2505, 2605	715
53-2-201	37.86.1101	284
53-2-201	37.86.1802	1314
53-2-201	37.86.2201, 2206, 2207	638
53-2-201	37.86.2207	1316
53-2-201	37.86.2207, 2221, 3506, 3507, 3515, 3705 - 3707, 3715, 88.101, 1106	115
53-2-201	37.86.2213	200
53-2-201	37.86.2221, 3506, 3507, 3515, 3705 - 3707, 3715, 88.101, 1106	540
53-2-201	37.86.2505	289
53-2-201	37.86.5104, 5110	689
53-2-201	37.97.524	979
53-2-601	37.82.417	175
53-2-601	37.82.417	236
53-2-613	37.49.401	725
53-2-613	37.49.401	1196
53-4-111	37.97.524	374
53-4-111	37.97.524	979
53-4-113	37.97.524	374
53-4-113	37.97.524	979
53-4-211	37.80.101, 102, 201, 202	748
53-4-211	37.80.101, 201	1306
53-4-211, 212	37.78.102, 406	692
53-4-211, 212	37.78.420	1048
53-4-212	37.37.108, 111, 115, 97.524	374
53-4-212	37.80.101, 102, 201, 202, 204, 205, 502	748
53-4-212	37.80.101, 201, 205	1306
53-4-212	37.97.524	979
53-4-241	37.78.420	1048
53-4-601	37.78.102, 406	692
53-4-601	37.78.420	1048
53-4-601	37.80.101, 102, 201, 202	748
53-4-601	37.80.101, 201	1306

MCA	Rule or A.G.'s Opinion No.	Register Page No.
53-4-611	37.80.101, 102, 201, 202	748
53-4-611	37.80.101, 201	1306
53-4-612	37.80.101	1306
53-4-612	37.80.101, 102	748
53-6-101	Rule I (DPHHS)	115
53-6-101	Rule I (DPHHS)	540
53-6-101	Rule I (DPHHS)	1054
53-6-101	Rules I - IV (DPHHS)	638
53-6-101	Rules I - IX (DPHHS)	200
53-6-101	37.40.302, 307, 311, 330, 337, 345, 360	739
53-6-101	37.82.101	692
53-6-101	37.82.101, 417	236
53-6-101	37.82.101, 417, 423	175
53-6-101	37.85.207, 86.606, 1102, 1806, 1807, 2405, 2801, 2905	241
53-6-101	37.85.207, 406, 86.606, 1102, 1806, 1807, 2405, 2801, 2905	363
53-6-101	37.85.212	721
53-6-101	37.85.212	1311
53-6-101	37.85.406	111
53-6-101	37.85.406, 86.2605, 2801, 2901, 2905, 3001, 3002, 3005, 3007, 3009, 3011, 3014, 3016, 3018, 3020	1054
53-6-101	37.86.805, 1004, 1506, 1802, 1807, 2207, 2405, 2505, 2605	715
53-6-101	37.86.1004, 1802	1314
53-6-101	37.86.1101	284
53-6-101	37.86.2201, 2206, 2207	638
53-6-101	37.86.2207, 2221, 3506, 3507, 3515, 3705 - 3707, 3715, 88.101, 1106, 1110	115
53-6-101	37.86.2207, 2230 - 2233	1316
53-6-101	37.86.2213	200
53-6-101	37.86.2221, 3506, 3507, 3515, 3705 - 3707, 3715, 88.101, 1106, 1110	540
53-6-101	37.86.2401, 2402, 2501, 2502, 2505, 2601, 2602	289
53-6-101	37.86.5110	689
53-6-103	37.85.207	241
53-6-103	37.85.207	363
53-6-111	Rule I (DPHHS)	115
53-6-111	Rule I (DPHHS)	540
53-6-111	Rule I (DPHHS)	1054
53-6-111	Rules I - IV (DPHHS)	638
53-6-111	37.40.302, 307, 311, 330, 337, 360	739
53-6-111	37.85.212	721
53-6-111	37.85.212	1311
53-6-111	37.85.406	111

MCA	Rule or A.G.'s Opinion No.	Register Page No.
53-6-111	37.85.406, 86.606, 1806, 1807, 2801, 2905	363
53-6-111	37.85.406, 86.2801, 2901, 2905, 3001, 3002, 3005, 3007, 3009, 3011, 3014, 3016, 3018, 3020	1054
53-6-111	37.86.606, 1806, 1807, 2801, 2905	241
53-6-111	37.86.1101	284
53-6-111	37.86.1807, 2207	715
53-6-111	37.86.2201, 2206, 2207	638
53-6-111	37.86.2207, 2221, 3507, 3706, 3707, 88.101, 1106	115
53-6-111	37.86.2207, 2230 - 2233	1316
53-6-111	37.86.2213	200
53-6-111	37.86.2221, 3507, 3706, 3707, 88.101, 1106	540
53-6-111	37.86.5110	689
53-6-113	Rule I (DPHHS)	115
53-6-113	Rule I (DPHHS)	540
53-6-113	Rule I (DPHHS)	1054
53-6-113	Rules I - IV (DPHHS)	638
53-6-113	Rules I - IX (DPHHS)	200
53-6-113	37.40.302, 307, 311, 330, 337, 345, 360	739
53-6-113	37.49.101, 102, 108, 112, 401, 405, 406, 412, 414, 701	725
53-6-113	37.49.101, 102, 108, 401, 414	1196
53-6-113	37.82.101	692
53-6-113	37.82.101, 417, 418, 423	175
53-6-113	37.82.101, 417, 423	236
53-6-113	37.85.212	721
53-6-113	37.85.212	1311
53-6-113	37.85.207, 86.606, 1102, 1806, 1807, 2405, 2801, 2905	241
53-6-113	37.85.207, 406, 86.606, 1102, 1806, 1807, 2405, 2801, 2905	363
53-6-113	37.85.406	111
53-6-113	37.85.406, 86.2605, 2801, 2901, 2905, 3001, 3002, 3005, 3007, 3009, 3011, 3014, 3016, 3018, 3020	1054
53-6-113	37.86.805, 1004, 1506, 1802, 1807, 2207, 2405, 2505, 2605	715
53-6-113	37.86.1004, 1802	1314
53-6-113	37.86.1101	284
53-6-113	37.86.2201, 2206, 2207	638
53-6-113	37.86.2207, 2221, 3506, 3507, 3515, 3705 - 3707, 3715, 88.101, 1106, 1110	115
53-6-113	37.86.2207, 2230 - 2233	1316
53-6-113	37.86.2213	200

MCA	Rule or A.G.'s Opinion No.	Register Page No.
53-6-113	37.86.2221, 3506, 3507, 3515, 3705 - 3707, 3715, 88.101, 1106, 1110	540
53-6-113	37.86.2401, 2402, 2501, 2502, 2505, 2601, 2602	289
53-6-113	37.86.5104, 5110	689
53-6-116	37.85.207	241
53-6-116	37.85.207	363
53-6-116	37.86.5104, 5110	689
53-6-131	37.49.101, 102, 108, 112, 401, 405, 406, 412, 414, 701	725
53-6-131	37.49.101, 102, 131, 401, 414	1196
53-6-131	37.82.101	692
53-6-131	37.82.101, 418, 423	175
53-6-131	37.82.101, 423	236
53-6-131	37.85.207	241
53-6-131	37.85.207, 406	363
53-6-131	37.85.406	111
53-6-131	37.85.406	1054
53-6-141	37.82.101	692
53-6-141	37.82.101, 418	175
53-6-141	37.82.101, 423	236
53-6-141	37.85.207, 86.1102, 1806, 1807, 2405, 2801, 2905	241
53-6-141	37.85.207, 406, 86.1102, 1806, 1807, 2405, 2801, 2905	363
53-6-141	37.85.406	111
53-6-141	37.85.406, 86.2605, 2801, 2901, 2905, 3001, 3002, 3005	1054
53-6-141	37.86.805, 1802, 1807, 2207, 2405, 2505, 2605	715
53-6-141	37.86.1802	1314
53-6-141	37.86.2401, 2402, 2501, 2502, 2505, 2601, 2602	289
53-6-142	37.82.418	175
53-6-142	37.82.423	236
53-6-143	37.82.417	175
53-6-143	37.82.417	236
53-6-402	37.85.207	241
53-6-402	37.85.207	363
53-21-201	37.88.1110	115
53-21-201	37.88.1110	540
53-24-204	Rules I - IX (DPHHS)	200
53-24-204	37.27.102	200
53-24-208, 209	Rules I - IX (DPHHS)	200
53-24-208, 209	37.27.102	200
53-24-215	Rules I - IX (DPHHS)	200
53-24-215	37.27.102	200

MCA	Rule or A.G.'s Opinion No.	Register Page No.
69-1-223	Rule I (Revenue)	965
69-1-223	42.31.902	1352
69-1-402	42.31.902	1352
69-3-822	38.5.3001 - 3009	1261
69-3-856 - 860	38.5.3001 - 3009	1261
69-3-1301 - 1303	Rule I (PSR)	1261
69-3-1301 - 1304	38.5.3801, 3802, 3805, 3901, 3904	1261
69-3-1304	Rules I - III (PSR)	1261
69-3-1305	Rules II, III (PSR)	1261
69-3-1308 - 1311	Rules II, III (PSR)	1261
69-3-1315, 1316	Rules II, III (PSR)	1261
69-8-201	38.5.8227	654
69-8-210	38.5.8227	654
69-8-402	42.29.101	965
69-8-403	38.5.8201 - 8204, 8209 - 8213, 8218 - 8221, 8225 - 8227	654
69-8-413	42.29.101	965
71-3-125	Rules III, V (Secretary of State)	1170
71-3-125	44.6.105, 107	1170
71-3-205	44.6.104	1170
75-2-111	17.8.501, 504, 505, 511, 514, 515	1242
75-2-111	17.8.749, 759, 763, 764	1252
75-2-204	17.8.749, 759, 763, 764	1252
75-2-211	17.8.501, 504, 505, 511, 514, 515	1242
75-2-211	17.8.749, 759, 763, 764	1252
75-2-220	17.8.504, 505, 514, 515	1242
75-3-201	37.14.1002, 1003	710
75-3-201	37.14.1002, 1003	1291
75-3-204	37.14.1003	710
75-3-204	37.14.1003	1291
75-5-301	17.30.716	1233
75-5-303	17.30.716	1233
75-5-317	17.30.716	1233
75-6-103	Rule I (DEQ - Environmental Review)	622
75-6-103	17.38.101, 201A, 202, 203, 206, 208, 216, 229, 234, 239, 249, 302	622
75-6-103	17.38.602, 603	1227
75-6-109	17.38.602, 603	1227
75-6-110	17.38.603	1227
75-6-112	17.38.101	622
75-6-121	17.38.101	622
75-10-405	17.56.103	513
75-11-204	17.56.1301, 1304, 1305, 1402	513
75-11-209	17.56.1301, 1304, 1305	513
75-11-210	17.56.1301, 1402	513
75-11-211	17.56.1402	513
75-11-212	17.56.1301, 1304, 1305	513
75-11-214	17.56.1402	513
75-11-302	17.56.101, 402, 1104	513
75-11-309	17.56.502, 504, 602, 604, 1101 - 1104	513

MCA	Rule or A.G.'s Opinion No.	Register Page No.
75-11-319	17.56.101, 102, 502, 504, 602, 604, 1101 - 1104	513
75-11-505	17.56.101, 102, 201, 202, 221, 301, 302, 304, 305, 308, 309, 401, 402, 407 - 409, 502, 504, 602, 604, 902, 1301, 1305, 1402	513
75-11-509	17.56.308, 309, 1301, 1402	513
76-1-305, 306	Opinion No. 1	317
76-4-104	17.36.340	1257
80-7-802	4.5.202 - 204	867
80-11-204 - 206	4.9.401	871
81-1-102	32.2.401, 403	879
81-1-301, 302	32.2.403	879
81-2-102	32.2.403	879
81-2-502	32.2.401	879
81-3-107	32.2.401	879
81-3-205	32.2.401	879
81-3-211	32.2.401	879
81-3-214	32.2.401	879
81-5-112	32.2.401	879
81-7-504	32.2.401	879
81-8-256	32.2.401	879
81-8-276	32.2.401	879
81-8-304	32.2.401, 15.601	879
81-9-112	32.2.401	879
81-9-201	32.2.401	879
81-9-301	32.2.401	879
81-9-411	32.2.401	879
81-20-201	32.2.401	879
81-21-102	32.2.401	879
81-22-102	32.2.401	879
81-22-204, 205	32.2.401	879
81-22-208	32.2.401	879
81-23-103, 104	32.23.301	879
81-23-202	32.2.401, 23.301	879
85-2-113	Rules I, II (DNRC)	1041
85-2-113	36.12.102, 103, 105	1041
85-2-307	Rule II (DNRC)	1041
85-2-312	36.12.103	1041
87-1-201	12.10.101, 103	1217
87-1-268	Rule I (FWP Commission)	686
87-1-276, 277	12.10.104 - 106	1217
87-1-277	Rule II (FWP)	1217
87-1-278, 279	Rules I, II (FWP)	1217
87-1-278, 279	12.10.103 - 106	1217
87-1-285	12.7.1401	304

MCA	Rule or A.G.'s Opinion No.	Register Page No.
87-1-301	Rules II - V (FWP Commission)	83
87-1-301	12.9.203	1224
87-1-301	12.11.202, 215, 220	759
87-1-303	Rule I (FWP Commission)	1189
87-1-303	Rules I - III (FWP Commission)	276
87-1-303	Rules II - V (FWP Commission)	83
87-1-303	12.11.202, 215, 220	759
87-1-303	12.11.501	276
87-1-303	12.11.1403, 1405, 1407	773
87-1-305	12.9.203	1224
87-2-105	12.10.101, 103	1217
87-5-402, 403	12.9.203	1224
Opinion 39-75	Opinion No. 1	317
Ch. 4, L. 2003	Rule I (Revenue)	392
Ch. 5, L. 2003	Rule I (Revenue)	392
Ch. 403, Sec. 5, L. 2003	Rules I - XXXVII (DPHHS)	935