

# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 20

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after print publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end 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 Secretary of State's Office, Administrative Rules Services, at (406) 444-2055.

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BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 2.59.308 pertaining to	)	AMENDMENT AND REPEAL
examination fees and the repeal of	)	
ARM 2.59.307 pertaining to dollar	)	
amounts to which consumer loan	)	NO PUBLIC HEARING
rates are to be applied	)	CONTEMPLATED

TO: All Concerned Persons

1. On December 3, 2009, the Department of Administration proposes to amend and repeal the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on November 23, 2009, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 444-1421; facsimile (406) 841-2930; or e-mail to wjohnston@mt.gov.

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

2.59.308 EXAMINATION FEES (1) A consumer loan business shall pay the Division of Banking and Financial Institutions a fee in the amount of ~~\$300 a day~~ \$37.50 per hour for each examiner required to conduct an investigation or examination under 32-5-402 or 32-5-403, MCA.

AUTH: 32-5-401, 32-5-403, MCA  
IMP: 32-5-402, 32-5-403, MCA

STATEMENT OF REASONABLE NECESSITY: In the 2009 session, the Montana Legislature amended the Montana Title Loan Act and the Montana Deferred Deposit Loan Act to provide that the division shall charge an examination fee of \$37.50 per hour instead of \$300 per day. It was more equitable to businesses to charge the actual number of hours worked by examiners instead of \$300 per day. For instance, in some cases, an examination took one day and two hours the next day. But the department was required to charge \$300 for the second day, instead of \$75.

Several of the businesses licensed with the department hold more than one license. For instance, some businesses are licensed as consumer lenders and title lenders, or consumer lenders and deferred deposit lenders. Some businesses hold

three licenses: consumer, title, and deferred deposit lender. The department calls this dual licensure.

This sets up a situation in which the department, in examining a dual licensee, would have to charge the licensee \$300 for the consumer loan portion of the examination, regardless of how long it took, and an additional \$37.50 per hour per examiner for the actual time spent examining the title loan or deferred deposit loan portion of the business.

In order to remedy this inequity, the department proposes to amend the rule on examination fees for consumer loan licensees to provide that the business shall pay \$37.50 per hour instead of \$300 per day. This will allow the department to charge dual licensees \$37.50 per hour per examiner for examinations and equalize the billing for all three types of licensees.

The amendment to this rule would likely result in a slight decrease in examination revenue to the department. The exact amount of this decrease is impossible to project because of the variables which determine the amount of time required to conduct consumer loan examinations. These variables include the licensee's compliance with applicable state law and rules since the date of the last examination as well as the amount and number of loans originated by the licensee, the completeness and accuracy of the licensee's records, and the organization of the licensee's files.

4. The department proposes to repeal the following rule:

2.59.307 DOLLAR AMOUNTS TO WHICH CONSUMER LOAN RATES ARE TO BE APPLIED, found on ARM page 2-5970.

AUTH: 32-5-104, MCA

IMP: 32-5-104, 32-5-201, 32-5-301, 32-5-302, 32-5-306, MCA

STATEMENT OF REASONABLE NECESSITY: The 2007 Legislature made significant amendments to the Montana Consumer Loan Act, which included the repeal of 32-5-104, 32-5-201(4), and 32-5-306(7), MCA. The purpose of ARM 2.59.307 was to set forth certain dollar amounts which were subject to change according the Consumer Price Index for Urban Wage Earners and Clerical Workers: U.S. City Average, All Items, 1967 = 100 compiled by the Bureau of Labor Statistics, U.S. Department of Labor. This rule is no longer necessary because all relevant statutes have been repealed.

5. Concerned persons may present their data, views, or arguments, concerning the proposed action to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to kosullivan@mt.gov. The data, views or arguments must be received no later than 5:00 p.m., December 1, 2009.

6. If persons who are directly affected by the proposed action wish to express their data, views, or 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 to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, MT 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to kosullivan@mt.gov. The requests and comments must be received no later than 5:00 p.m., December 1, 2009.

7. If the Division of Banking and Financial Institutions receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons 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 directly affected has been determined to be 12 persons based on the number of consumer loan licensees which is currently 115 as of the publication of this notice.

8. An electronic copy of this Proposal Notice is available through the department's web site at <http://doa.mt.gov/administrativerules.mcp>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the if a discrepancy exists 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 works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. 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 division rulemaking actions. Such written requests may be mailed or delivered to Wayne Johnston, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to wjohnston@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

By: /s/ Janet R. Kelly  
Janet R. Kelly, Director  
Department of Administration

By: /s/ Michael P. Manion  
Michael P. Manion, Rule Reviewer  
Department of Administration

Certified to the Secretary of State October 19, 2009.

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )  
4.12.1427, 4.12.1428, and 4.12.1429, )  
relating to produce )

NOTICE OF PUBLIC HEARING ON  
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 23, 2009, at 1:00 p.m., the Montana Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, 303 N. Roberts at Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on November 12, 2009, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; phone: (406) 444-3144; fax: (406) 444-5409; or e-mail: agr@mt.gov.

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

4.12.1427 SHIPPING POINT INSPECTION FEES (1) Regular shipping point inspection fees are as follows:

(a) All produce - ~~7.5¢~~ 9.5 cents per unit.

(b) Inspection tags - 20 cents per tag.

(2) Minimum fee per requested inspection trip - \$20 per trip Cost Recovery: Regular inspection fees are established in an amount reasonably necessary to cover the cost of providing the services and administration of the inspection program. Cost recovery charges may be necessary when the regular inspection fee is not applicable or adequate to cover the cost of the service provided.

(a) Cost Recovery charges may apply to all inspections involving:

(i) shipping point inspections of seed potatoes when the volume of work is less than 500 cwt per hour;

(ii) shipping point inspections of cherries, apples, and all other produce;

(iii) receiving inspections of any produce.

(b) Cost Recovery fees will include the produce inspection fee of 9.5 cents per unit and may include the hourly charge of the time required to conduct the inspection, the time required to prepare for the inspection, the time to complete any reports related to the inspection, and any time required for travel to and from the inspection.

(i) The hourly rate will be set by the department on an annual basis to ensure that all anticipated costs are recovered. In establishing the hourly rate, the



department will consider the hourly wage of inspector(s) and program staff, benefits, administrative costs, and costs related to the department's cooperative agreement with USDA.

(c) Cost Recovery fees will include per diem and mileage per ARM Title 2, chapter 4.

(3) ~~Inspection tags - 20¢ per tag.~~ USDA Good Agricultural Practices (GAP) and Good Handling Practices (GHP) Audit Fee: GAP and GHP Audits will be on a first come, first served basis as auditing staff is available. GAP and GHP Audit fees will be applied when an applicant requests a mock audit or an audit review of practices based on the voluntary FDA Standards for Minimizing Microbial Contamination to Fresh Fruits and Vegetables or other audit-based standards as requested by the industry. The cost of such services will include:

(a) an hourly charge of the time required to conduct the inspection, the time required to prepare for the inspection, the time to complete any reports related to the inspection, and any time required for travel to and from the inspection.

(i) the hourly rate will be set by the department on an annual basis to ensure that all anticipated costs are recovered. In establishing the hourly rate, the department will consider the hourly wage of inspector(s) and program staff, benefits, administrative costs, and costs related to the department's cooperative agreement with USDA.

(b) per diem and mileage per ARM Title 2, chapter 4.

(4) ~~Fees may be charged as follows for services other than the inspection and issuance of a grade inspection certificate:~~

(a) ~~hourly charge - \$20 per hour; and~~

(b) ~~per diem and mileage per ARM Title 2, chapter 4~~ Minimum fee per inspection - \$50.00.

(5) All fees are due within 30 days after billing. The department may assess a collection fee of ~~40~~ 18% annual percentage rate of any amount past due, ~~after providing written notice of the past due status, with or~~ a minimum charge of \$10. The department may require past due payment of fees prior to providing inspection services.

AUTH: 80-3-303, MCA

IMP: 80-3-315, MCA

REASON: The Shipping Point Inspection program does not receive general fund money and must be self supporting through fees assessed for services. Inspection fees are required by statute to be commensurate with the cost of providing the inspection. FY 09 expenditures exceeded revenue by nearly \$40,000, including \$12,000 of indirect charges that were not charged to the program. The proposed changes in the shipping point inspection fees primarily affect seed potato inspections. Based on the number of seed potatoes shipped in 2009 (2,669,652 cwt), a 2-cent fee increase would generate approximately \$53,400 in revenue to cover operating costs, wages, and indirect charges. Any revenue collected that exceed expenses will be deposited in the special revenue account established by 80-3-304, MCA.

The regular inspection fee is meant to cover inspection expenses when the inspection involves routine amount of travel, time, and volume of product. The proposed inspection rate and the old hourly rate do not cover program costs for inspections that require more than the ordinary amount of time and travel, or when the volume of inspected product is less than ordinary. The Cost Recovery language, and the resulting hourly rate, and the minimum inspection fee, are to be used to recover costs when the regular inspection fee is not adequate to pay inspectional expenses.

The department has recently begun conducting Good Agricultural Practices/Good Handling Practices (GAP/GHP) Verification Audits under a federal Cooperative Agreement with USDA. The department currently has no fee structure to charge for such inspections. The proposed language will allow the department to charge and recover inspectional costs for GAP/GHP Verification Audits.

Language for the assessment of the 10% collection fee did not state if the collection fee was to be assessed as a one time fee, or if it was to be assessed monthly. This language will clarify that the collection fee is assessed at 18% (1.5% per month on any outstanding monthly balance).

Financial Impact: The fee increase from 7.5 cents to 9.5 cents per hundred weight (cwt) shipped is a 26.7% increase. However, the financial impact is considerably different for small producers as compared to large producers. The small producer who ships 10,000 cwt will have a financial impact of \$200.00 and a large producer who ships 100,000 cwt will have a financial impact of \$2,000.00. The financial impact on the average size producer would be approximately \$1,160.00.

Department internal reviews have indicated the Cost Recovery rate for FY 2010 will be established at \$45.00 per hour for GAP/GHP Verification Audits and produce inspections. The increased hourly rate, based on a 4-hour inspection, would increase the cost to facilities requesting inspection services by \$100.00. The increased revenue to the department would be \$1000.00 per year based on ten inspections requiring the Cost Recovery program.

4.12.1428 ASSESSMENT FEES ON ALL PRODUCE (1) The assessment fee on all produce except produce grown in Montana and inspected at shipping point shall be ~~6¢~~ cents per each produce unit.

AUTH: 80-3-303, MCA

IMP: 80-3-314, MCA

REASON: Changed to be consistent with rest of produce rules.

4.12.1429 PRODUCTS DESIGNATED AS PRODUCE--PRODUCE UNIT QUANTIFIED (1) The following fruits, vegetables, and natural products are designated as produce. This list is not all inclusive. Any product commonly recognized as a fruit or vegetable shall also be considered to be produce for assessment purposes but does not include those perishable fruits and vegetables which have been manufactured into articles of food of a different kind or character. The effects of the following operations shall not be considered as changing a

commodity into a food of a different kind or character: water, steam, or oil blanching, battering, coating, chopping, color adding, curing, cutting, dicing, drying for the removal of surface moisture; fumigating, gassing, heating for insect control, ripening and coloring; removal of seed, pits, stems, calyx, husk, pods, rind, skin, peel, et cetera; polishing, pre-cooling, refrigerating, shredding, slicing, trimming, washing with or without chemicals; waxing, adding of sugar or other sweetening agents; adding ascorbic acid or other agents to retard oxidation; mixing of several kinds of sliced, chopped, or diced fruit or vegetables for packaging in any type of containers; or comparable methods of preparation.

(2) The following quantities shall be used as the standard produce unit for the produce listed below. Containers of approximately the same quantity may be considered a produce unit for each container.

PRODUCE	POUNDS OR ITEMS PER UNIT
Asian pears	20 lbs.
Apples	40 lbs.
Apricots	28 lbs.
Asparagus	30 lbs.
Artichokes	15 lbs.
Avocados	60-70 count
Bananas	40 lbs.
Beans, green	28 lbs.
Beets	24 bunches
Blackberries	12--½ pint baskets
Boysenberries	12--½ pint baskets
Blueberries	12--1 pint baskets
Broccoli	25 lbs.
Broccoflower	25 lbs.
Bok choy	12 count
Brussels sprouts	25 lbs.
Cabbage	50 lbs.
Cantaloupes	35 lbs.
Carrots	50 lbs.
Cauliflower	28 lbs.
Cilantro	12 lbs.
Celery	45 lbs.
Cherries	20 lbs.
Chicory	10 lbs.
Coconuts	25 lbs.
Collard greens	24 count
Corn	60 ears
Cranberries	25 lbs.
Cucumbers	30 lbs.
PRODUCE	POUNDS OR ITEMS PER UNIT
Currants	12--½ pint baskets
Eggplant	25 lbs.

Endive	_____	24 count
Garlic	_____	10 lbs.
Ginger Root	_____	10 lbs.
Grapefruit	_____	35 lbs.
Grapes	_____	20 lbs.
Honeydew Melons	_____	20 lbs.
Horseradish Roots	_____	10 lbs.
Jicama	_____	20 lbs.
Kale greens	_____	24 count
Kiwifruit	_____	10 lbs.
Leeks	_____	24 count
Lemons	_____	35 lbs.
Lettuce		
Head	_____	24 count
Butter	_____	24 count
Endive	_____	24 count
Escarole	_____	24 count
Green Leaf	_____	24 count
Red Leaf	_____	24 count
Romaine	_____	24 count
Limes	_____	35 lbs.
Mangos	_____	12 lbs.
Mushrooms	_____	10 lbs.
Mustard greens	_____	24 count
Nectarines	_____	20 lbs.
Okra	_____	10 lbs.
Onions, Dry	_____	50 lbs.
Onions, Green	_____	48 bunches
Oranges	_____	37 lbs.
Papayas	_____	12 lbs.
Parsley	_____	60 bunches
Parsnips	_____	25 lbs.
Peaches	_____	20 lbs.
Pears	_____	35 lbs.
Peas, Green/Sweet	_____	12 lbs.
Peppers	_____	28 lbs.
Pineapple	_____	35 lbs.
Plums	_____	24 lbs.
Potatoes	_____	100 lbs.

PRODUCE	POUNDS OR ITEMS PER UNIT
Prunes	_____ 24 lbs.
Pumpkins	_____ 100 lbs.
Radishes	_____ 48 bunches
Raspberries	_____ 12-½ pint baskets
Rhubarb	_____ 20 lbs.
Rutabagas	_____ 25 lbs.

Shallots	_____	10 lbs.
Spinach	_____	24 count
Sprouts	_____	12 count
Squash		
Summer type	_____	20 lbs.
Winter type	_____	50 lbs.
Star fruit	_____	15 lbs.
Strawberries	_____	12--1 pint baskets
Sweet Potatoes	_____	40 lbs.
Tangelos	_____	35 lbs.
Tangerines	_____	35 lbs.
Tomatoes	_____	28 lbs.
Turnips	_____	25 lbs.
Watermelons	_____	100 lbs.
Yams	_____	40 lbs.
Miscellaneous	_____	50 lbs.

<u>PRODUCE</u>	<u>REPORTING UNIT</u>	<u>PRODUCE</u>	<u>REPORTING UNIT</u>
<u>Apples</u>	<u>40 lbs.</u>	<u>Lemons</u>	<u>35 lbs.</u>
<u>Apricots</u>	<u>28 lbs.</u>	<u>Lettuce</u>	
<u>Asian pears</u>	<u>20 lbs.</u>	<u>Head</u>	<u>24 count</u>
<u>Asparagus</u>	<u>30 lbs.</u>	<u>Butter</u>	<u>24 count</u>
<u>Artichokes</u>	<u>15 lbs.</u>	<u>Endive</u>	<u>24 count</u>
<u>Avocados</u>	<u>60-70 count</u>	<u>Escarole</u>	<u>24 count</u>
<u>Bananas</u>	<u>40 lbs.</u>	<u>Green Leaf</u>	<u>24 count</u>
<u>Beans, green</u>	<u>28 lbs.</u>	<u>Red Leaf</u>	<u>24 count</u>
<u>Beets</u>	<u>24 bunches</u>	<u>Romaine</u>	<u>24 count</u>
<u>Blackberries</u>	<u>12--½ pint baskets</u>	<u>Limes</u>	<u>35 lbs.</u>
<u>Boysenberries</u>	<u>12--½ pint baskets</u>	<u>Mangos</u>	<u>12 lbs.</u>
<u>Blueberries</u>	<u>12--1-pint baskets</u>	<u>Mushrooms</u>	<u>10 lbs.</u>
<u>Broccoli</u>	<u>25 lbs.</u>	<u>Mustard greens</u>	<u>24 count</u>
<u>Broccoflower</u>	<u>25 lbs.</u>	<u>Nectarines</u>	<u>20 lbs.</u>
<u>Bok choy</u>	<u>12 count</u>	<u>Okra</u>	<u>10 lbs.</u>
<u>Brussel</u>			
<u>Sprouts</u>	<u>25 lbs.</u>	<u>Onions, dry</u>	<u>50 lbs.</u>
<u>Cabbage</u>	<u>50 lbs.</u>	<u>Onions, green</u>	<u>48 bunches</u>
<u>Cantaloupes</u>	<u>35 lbs.</u>	<u>Oranges</u>	<u>37 lbs.</u>
<u>Carrots</u>	<u>50 lbs.</u>	<u>Papayas</u>	<u>12 lbs.</u>
<u>Cauliflower</u>	<u>28 lbs.</u>	<u>Parsley</u>	<u>60 bunches</u>
<u>Celery</u>	<u>45 lbs.</u>	<u>Parsnips</u>	<u>25 lbs.</u>
<u>Cherries</u>	<u>20 lbs.</u>	<u>Peaches</u>	<u>20 lbs.</u>
<u>Chicory</u>	<u>10 lbs.</u>	<u>Pears</u>	<u>35 lbs.</u>
		<u>Peas,</u>	
<u>Cilantro</u>	<u>12 lbs.</u>	<u>green/sweet</u>	<u>12 lbs.</u>
<u>Coconuts</u>	<u>25 lbs.</u>	<u>Peppers</u>	<u>28 lbs.</u>
<u>Collard greens</u>	<u>24 count</u>	<u>Pineapple</u>	<u>35 lbs.</u>

<u>Corn</u>	<u>60 ears</u>	<u>Plums</u>	<u>24 lbs.</u>
<u>Cranberries</u>	<u>25 lbs.</u>	<u>Potatoes</u>	<u>100 lbs.</u>
<u>Cucumbers</u>	<u>30 lbs.</u>	<u>Prunes</u>	<u>24 lbs.</u>
<u>Currants</u>	<u>12--½ pint baskets</u>	<u>Pumpkins</u>	<u>100 lbs.</u>
<u>Eggplant</u>	<u>25 lbs.</u>	<u>Radishes</u>	<u>48 bunches</u>
<u>Endive</u>	<u>24 count</u>	<u>Raspberries</u>	<u>12--½ pint baskets</u>
<u>Garlic</u>	<u>10 lbs.</u>	<u>Rhubarb</u>	<u>20 lbs.</u>
<u>Ginger root</u>	<u>10 lbs.</u>	<u>Rutabagas</u>	<u>25 lbs.</u>
<u>Grapefruit</u>	<u>35 lbs.</u>	<u>Shallots</u>	<u>10 lbs.</u>
<u>Grapes</u>	<u>20 lbs.</u>	<u>Spinach</u>	<u>24 count</u>
<u>Honeydew melons</u>	<u>20 lbs.</u>	<u>Sprouts</u>	<u>12 count</u>
<u>Horseradish roots</u>	<u>10 lbs.</u>	<u>Squash</u>	
<u>Jicama</u>	<u>20 lbs.</u>	<u>    Summer type</u>	<u>20 lbs.</u>
<u>Kale greens</u>	<u>24 count</u>	<u>    Winter type</u>	<u>50 lbs.</u>
<u>Kiwifruit</u>	<u>10 lbs.</u>	<u>Star fruit</u>	<u>15 lbs.</u>
<u>Leeks</u>	<u>24 count</u>	<u>Strawberries</u>	<u>12--1-pint baskets</u>
<u>Sweet potatoes</u>	<u>40 lbs.</u>	<u>Turnips</u>	<u>25 lbs.</u>
<u>Tangelos</u>	<u>35 lbs.</u>	<u>Watermelons</u>	<u>100 lbs.</u>
<u>Tangerines</u>	<u>35 lbs.</u>	<u>Yams</u>	<u>40 lbs.</u>
<u>Tomatoes</u>	<u>28 lbs.</u>	<u>Miscellaneous</u>	<u>50 lbs.</u>

AUTH: 80-3-303, MCA

IMP: 80-3-302, MCA

Reason: Fruits and vegetables are sold in ready to eat consumer packs and have undergone some processing at the manufacturer. This designation will align state definitions with definitions used in the Federal Perishable Agricultural Commodities Act (PACA) to describe fruits and vegetables as they are currently being sold, and will clarify when an assessment fee is due on what products.

Formatting change to make produce reporting units more user friendly.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action either orally or in writing at the hearing. Written data, views, or arguments may be submitted to: Cort Jensen at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; telephone (406) 444-3144; fax (406) 444-5409; or e-mail agr@mt.gov. Any comments must be received no later than 5:00 p.m., November 26, 2009.

5. Cort Jensen, Department of Agriculture, has been designated to preside over and conduct this hearing.

6. The Department of Agriculture 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, e-mail, and mailing address of the person and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; fax: (406) 444-5409; or e-mail: agr@mt.gov or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

7. An electronic copy of this Notice of Proposed Amendment is available through the department's web site at [www.agr.mt.gov](http://www.agr.mt.gov), under the Administrative Rules section. The department strives to make the electronic copy of the Notice 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 web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

DEPARTMENT OF AGRICULTURE

/s/ Ron de Yong  
Ron de Yong, Director

/s/ Cort Jensen  
Cort Jensen, Rule Reviewer

Certified to the Secretary of State, October 19, 2009.

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BEFORE THE DEPARTMENT OF COMMERCE  
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rule I pertaining to the administration	)	PROPOSED ADOPTION
of the Quality Schools Grant Program	)	
– Planning Grants, and New Rule II	)	
pertaining to the administration of the	)	
Quality Schools Grant Program –	)	
Emergency Grants	)	

TO: All Concerned Persons

1. On November 18, 2009, at 1:30 p.m., the Department of Commerce will hold a public hearing in Room B18 of the Park Avenue Building at 301 South Park Avenue, at Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m., November 6, 2009, to advise us of the nature of the accommodation that you need. Please contact Penney Clark, Department of Commerce, Quality Schools Grant Program, 301 South Park Avenue, P.O. Box 200549, Helena, Montana 59620-0549; telephone (406) 841-2800; TDD 841-2702; fax (406) 841-2878; or e-mail pclark2@mt.gov.

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

NEW RULE I INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE QUALITY SCHOOLS GRANT PROGRAM – PLANNING GRANTS (1) The Department of Commerce adopts and incorporates by reference the Quality Schools Grant Program Application and Guidelines for Planning Grants as rules for the administration of the Quality Schools Grant Program – Planning Grants program.

(2) The rules incorporated by reference in (1) relate to the scope and procedures for the award, administration, monitoring, and close-out of matching planning grants to public school districts.

(3) Copies of the regulations adopted by reference in (1) may be obtained from the Department of Commerce, Quality Schools Grant Program, 301 South Park Avenue, P.O. Box 200549, Helena, Montana 59620-0549, or on the Quality Schools Grant Program web site at <http://commerce.mt.gov/QualitySchools>.

AUTH: 90-6-819, MCA  
IMP: 90-6-819, MCA



NEW RULE II INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE QUALITY SCHOOLS GRANT PROGRAM – EMERGENCY GRANTS

(1) The Department of Commerce adopts and incorporates by reference the Quality Schools Grant Program Guidelines for Emergency Grants as rules for the administration of the Quality Schools Grant Program – Emergency Grants program.

(2) The rules incorporated by reference in (1) relate to the scope and procedures for the award, administration, monitoring, and close-out of emergency grants to public school districts.

(3) Copies of the regulations adopted by reference in (1) may be obtained from the Department of Commerce, Quality Schools Grant Program, 301 South Park Avenue, P.O. Box 200549, Helena, Montana 59620-0549, or on the Quality Schools Grant Program web site at <http://commerce.mt.gov/QualitySchools>.

AUTH: 90-6-819, MCA

IMP: 90-6-819, MCA

REASON: It is reasonably necessary to adopt these new rules to initiate the department's administration of the planning and emergency grants components of the newly established Quality Schools Grant Program, 90-6-801, *et seq.*, MCA. Public school districts must have these guidelines available before the entities may apply to the department for financial assistance under the Quality Schools program. The guidelines describe the department requirements with which public school districts must comply in order to apply for, receive, and administer Quality School planning or emergency grant funds.

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 the Department of Commerce, Quality Schools Grant Program, 301 South Park Avenue, P.O. Box 200549, Helena, Montana 59620-0549; telephone (406) 841-2800; TDD 841-2702; fax (406) 841-2878; or e-mail [pclark2@mt.gov](mailto:pclark2@mt.gov), and must be received no later than 5:00 p.m., November 26, 2009.

5. Kelly Casillas, Deputy Chief Legal Counsel, Department of Commerce, has been designated to preside over and conduct this hearing.

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 list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501, by fax to (406) 841-2701, by e-mail to [lgregg@mt.gov](mailto:lgregg@mt.gov), or by completing a request form at any rules hearing held by the department.

7. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the Notice 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 Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by e-mail and telephone on October 15, 2009, and a copy of the proposed rules were sent to the primary bill sponsor's address on October 15, 2009.

/s/ KELLY A. CASILLAS  
KELLY A. CASILLAS  
Rule Reviewer

/s/ ANTHONY J. PREITE  
ANTHONY J. PREITE  
Director  
Department of Commerce

Certified to the Secretary of State October 19, 2009.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.17.127 related to prevailing	)	PROPOSED AMENDMENT
wage rates for public works projects -	)	
building construction services, heavy	)	
construction services, highway	)	
construction services, and	)	
nonconstruction services	)	

TO: All Concerned Persons

1. On November 23, 2009, at 1:30 p.m., the Department of Labor and Industry (department) will hold a public hearing to be held in the first floor conference room (room 104), 1327 Lockey Avenue, Walt Sullivan Building, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The department 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., on November 17, 2009, to advise us of the nature of the accommodation that you need. Please contact the Labor Standards Bureau, Employment Relations Division, Department of Labor and Industry, Attn: Mike Smith, P.O. Box 6518, Helena, MT 59604-6518; telephone (406) 444-1741; fax (406) 444-7071; TDD (406) 444-0532; or e-mail MikeSmith@mt.gov.

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

24.17.127 ADOPTION OF STANDARD PREVAILING RATE OF WAGES

(1) remains the same.

(a) A notice of proposed adoption of the commissioner's determination is published in the Montana Administrative Register ~~30~~ approximately 45 to 45 60 days prior to adoption according to regular publication dates scheduled in ARM 1.2.419.

(b) through (1)(d) remain the same.

(e) The current building construction services rates are contained in the ~~2009~~ 2010 version of "The State of Montana Prevailing Wage Rates - Building Construction Services" publication.

(f) The current nonconstruction services rates are contained in the ~~2009~~ 2010 version of "The State of Montana Prevailing Wage Rates - Nonconstruction Services" publication.

(g) The current heavy ~~and highway~~ construction services rates are contained in the ~~2009 revised~~ 2010 version of "The State of Montana Prevailing Wage Rates - Heavy ~~and Highway~~ Construction Services" publication.

(h) The current highway construction services rates are contained in the 2010 version of "The State of Montana Prevailing Wage Rates - Highway Construction Services" publication.

(2) The commissioner maintains a mailing list of interested persons and agencies. A copy of any notice, proposed rate of wages, adopted rates, wages or other information are distributed to each addressee. All others may obtain a copy or be included on the mailing list upon request to the ~~Office of Research and Analysis, Workforce Services Division, Department of Labor and Industry, 840 Helena Avenue, Helena, MT 59601~~ address listed in (3). Copies of adopted wage rates are available at reproduction cost for a period of five years following their effective date.

(3) The standard prevailing rates of wages publications are hereby adopted and incorporated by reference. Copies of the rates are available upon request from the Labor Standards Bureau, Employment Relations Division, Department of Labor and Industry, 1805 Prospect Avenue, P.O. Box 201503, Helena, MT 59620-1503, (406) 444-1741, or on-line at <http://erd.dli.mt.gov/laborstandard/prevwage/state.asp> or [www.mtwagehourbopa.com](http://www.mtwagehourbopa.com).

AUTH: 2-4-307, 18-2-409, 18-2-431, ~~39-3-202~~, MCA

IMP: 18-2-401, 18-2-402, 18-2-403, 18-2-406, 18-2-411, 18-2-412, 18-2-413, 18-2-414, 18-2-415, 18-2-422, 18-2-431, MCA

4. The department believes there is reasonable necessity to amend ARM 24.17.127 to update the various prevailing wage rates. Payment of prevailing wage rates is required in most public works contracts by 18-2-422, MCA. The department is proposing the rates at this time following completion of its wage surveys, in order to have as current a set of rates as is feasible. The proposed wage rates will apply to public works projects let for bid on or after the effective date of the rate changes.

The department emphasizes that the proposed rates for building construction services and nonconstruction services are based upon survey responses and applicable collective bargaining agreements. The methodology for surveys and rate computations is described in ARM 24.17.121. The department relies upon the information provided by employers and labor organizations during the survey process to set the proposed rates. The final rates are based upon the preliminary rates, as modified by including any relevant information provided during the public comment period.

There is reasonable necessity to provide for separate publications of the heavy construction rates from the highway construction rates, in that various rate users have expressed confusion regarding the distinction between the two batches of rates. The department believes that by separating heavy construction rates from highway construction rates, workers, construction companies, and government agencies are more likely to use the correct rates for the bidding process, and that proper wage rates will be paid on public works projects. The rates for heavy construction and for highway construction are based upon the Davis-Bacon Act rates adopted for Montana by the federal government, rather than based upon a department survey. The adoption by reference of federal rates is provided for by

18-2-414 (2)(a), MCA. The department believes that republication of those rates in its own rate publication is more convenient for its customers than merely citing a reference to a federal rate publication, and more likely to lead to the use of the correct rate by the affected parties.

There is also reasonable necessity to update the correct contact address information in paragraph (2) and to make minor grammatical changes in (3) while the rule is otherwise being amended. In addition, there is reasonable necessity to update the language in paragraph (1)(a) to more accurately reflect the department's recent experience with how long it takes to take final action following publication of proposed rate changes.

Finally, there is reasonable necessity to amend the IMP citations to the rule to reflect the enactment of Chap. 277, Laws of 2009 (Senate Bill 308) and the statutory changes contained in the legislation, and correctly reflect the codification of the statutes which are being implemented by the rule. There also is reasonable necessity to amend the AUTH citations to delete the reference to an inappropriate statutory reference while the rule is otherwise being amended.

5. A copy of the proposed 2010 publications, identified as "preliminary building construction rates", "preliminary heavy construction rates", "preliminary highway construction rates", and "preliminary nonconstruction rates", are available and can be accessed on-line via the internet at: [www.mtwagehourbopa.com](http://www.mtwagehourbopa.com).

6. A printed version of the proposed 2010 publications is also available by contacting Mike Smith, at the address, e-mail, or telephone numbers listed in paragraph 2 of this notice.

7. 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: Labor Standards Bureau, Employment Relations Division, Department of Labor and Industry, Attn: Mike Smith, P.O. Box 6518, Helena, MT 59604-6518; fax (406) 444-7071; TDD (406) 444-0532; or e-mailed to [MikeSmith@mt.gov](mailto:MikeSmith@mt.gov), and must be received no later than 5:00 p.m., November 30, 2009.

8. An electronic copy of this Notice of Public Hearing is available through the department's web site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings 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 web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

9. 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 list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program or areas of law the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1327 Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to [mcadwallader@mt.gov](mailto:mcadwallader@mt.gov), or may be made by completing a request form at any rules hearing held by the agency.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The bill's primary sponsor was contacted telephonically on June 17, 2009.

11. The department's Hearings Bureau has been designated to preside over and conduct this hearing.

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 19, 2009

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 24.301.161, model energy code ) PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 30, 2009, at 10:00 a.m., a public hearing will be held in room B-07, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rule.

2. The Department of Labor and Industry (department) 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., on November 23, 2009, to advise us of the nature of the accommodation that you need. Please contact David Cook, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2053; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2050; e-mail dcook@mt.gov.

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

24.301.161 INCORPORATION BY REFERENCE OF INTERNATIONAL ENERGY CONSERVATION CODE (1) The Department of Labor and Industry adopts and incorporates by reference the International Code Council's International Energy Conservation Code, ~~2003~~ 2009 Edition, referred to as the International Energy Conservation Code, unless another edition is specifically stated, together with the following amendments:

(a) Subsection ~~404.4~~ 103.1, General, is deleted and replaced with the following: "With each application for a building permit, and when required by the building official, plans and specifications shall be submitted. The building official may require plans and specifications be prepared by an engineer or architect licensed to practice by the state, except for owner-occupied, single-family dwelling houses. ~~All designs submitted under the provisions of Chapter 4 shall be prepared by an engineer or architect licensed to practice by the state.~~

(i) "Exceptions:

~~"1. The code official is authorized to waive the submission of construction documents and other supporting data not required to be prepared by an engineer or architect licensed to practice by the state if it is found the nature of the work applied for is such that reviewing of construction documents is not necessary to obtain compliance with this code.~~

"The code official is authorized to waive the requirements for construction documents or other supporting data if the code official determines they are not necessary to confirm compliance with this code."

~~"2. For residential buildings having a conditioned floor area of 5000 square feet (465m<sup>2</sup>) or less, designs submitted under the provisions of Chapter 4 shall be prepared by anyone having qualifications acceptable to the code official."~~

(b) Subsection ~~105.2, 104.2, Approvals Required, Required Approvals~~, is deleted in its entirety when the code is used by the Building Codes Bureau of the Department of Labor and Industry. It remains undeleted and available for use for certified local governments using the code.

(c) ~~Subsection 502.2.3.6, Basement Walls~~, is amended by adding the following: "Basement wall insulation below uninsulated floors, except for rim joists and perimeter cripple walls, may be delayed until such time as the basement is actually finished for occupancy."

(c) Section 202, General Definitions, the definition for "Air Barrier" is deleted and replaced with a new definition for "Air Barrier" as follows: "Air Barrier: Material(s) assembled and joined together to provide a barrier to air leakage through and into the building envelope. An air barrier may be a single material or a combination of materials."

(d) ~~Subsection 502.2.4.1, Walls~~, is amended by adding the following: "Lesser R value may be allowed for log building walls."

(d) Table 402.1.1, INSULATION AND FENESTRATION REQUIREMENTS BY COMPONENT, is amending footnote c for climate zone "6" and is adding footnote k as follows:

Footnotes: "c." "15/19" means R-15 continuous insulated sheathing on the interior or exterior of the home or R-19 cavity insulation at the interior of the basement wall. "15/19" shall be permitted to be met with R-13 cavity insulation on the interior of the basement wall plus R-5 continuous insulated sheathing on the interior or exterior of the home. "10/19" means R-10 continuous insulated sheathing on the interior or exterior of the home or R-19 cavity insulation at the interior of the basement wall.

"k." Fenestration U-Factor is 0.33 after January 1, 2010."

<u>Climate Zone</u>	<u>Fenestration U-Factor(b)</u>	<u>Skylight(b) U-Factor</u>	<u>Glazed Penetration SHGC(b,d)</u>	<u>Ceiling R-Value</u>	<u>Wood Framed Wall R-Value</u>	<u>Mass Wall R-Value(i)</u>	<u>Floor R-Value</u>	<u>Basement(c) Wall R-Value</u>	<u>Slab(b) R-Value &amp; Depth</u>	<u>Crawl Space Wall(c) R-Value</u>
<u>6</u>	<u>0.35(k) 0.33(l)</u>	<u>0.60</u>	<u>NR</u>	<u>49</u>	<u>21 or 13+5(h)</u>	<u>15/19</u>	<u>30(g)</u>	<u>15/19</u>	<u>10, 4 ft</u>	<u>10/19</u>

(e) ~~Subsection 503.3.3.1, Piping Insulation~~, is amended by adding a fourth exception as follows: "4. Pipe insulation is not required in heated or conditioned areas."

(e) Subsection 402.2.2, Ceilings Without Attic Spaces, is deleted and replaced with the following: "Where Section 402.1.1 would require insulation levels above R-30 and the design of the roof/ceiling assembly does not allow sufficient space for the required insulation, the minimum required insulation for such roof/ceiling assemblies shall be R-30. This reduction of insulation from the requirements of Section 402.1.1, shall be limited to 250 square feet or ten percent of the total insulated ceiling area, whichever is less. This reduction shall not apply to the U-factor alternative approach in Section 402.1.3, and the total UA alternative in Section 402.1.4."



~~(f) Table 503.3.3.3, Minimum Duct Insulation, is amended by adding footnote e as follows: "e. In locations where annual heating degree days exceeds 7500, minimum R-value for ducts in all areas need not exceed R-8."~~

(f) Subsection 402.2.9, Crawl Space Walls, is deleted and replaced with the following: "As an alternative to insulating floors over crawl spaces, crawl space walls shall be permitted to be insulated when the crawl space is not vented to the outside. Temporary crawl space vent openings are allowed during construction for crawl spaces that have insulated crawl space walls. These temporary crawl space vent openings shall be closed, sealed, and insulated to the same R-value of the surrounding crawl space wall insulation once construction is complete and prior to the time that the final building inspection would occur. Crawl space wall insulation shall be permanently fastened to the wall and shall extend downward from the floor, the entire height of the crawl space wall. Exposed earth in unvented crawl space foundations shall be covered with a continuous Class I vapor retarder. All joints of the vapor retarder shall overlap six inches and be sealed or taped. The edges of the vapor retarder shall extend at least six inches up the stem wall and shall be attached and sealed to the stem wall."

(g) Subsection 402.4.2.1, Testing Option, is deleted and replaced with the following: "Building envelope tightness and insulation installation shall be considered acceptable when tested air leakage is less than four air changes per hour (ACH), when tested with a blower door at a pressure of 33.5 psf (50Pa). Testing shall occur after rough in and after installation of penetrations of the building envelope, including penetrations for utilities, plumbing, electrical, ventilation and combustion appliances. During testing:

"(i) exterior windows and doors, fireplace and stove doors shall be closed, but not sealed;

"(ii) dampers shall be closed, but not sealed, including exhaust, intake, makeup air, back draft and flue dampers;

"(iii) interior doors shall be open;

"(iv) exterior openings for continuous ventilation systems and heat recovery ventilators shall be closed and sealed;

"(v) heating and cooling system(s) shall be turned off;

"(vi) "B" or "L" vents, combustion air vents, and dryer vents shall be sealed;

"(vii) HVAC ducts shall not be sealed; and

"(viii) supply and return registers shall not be sealed."

(h) Table 502.2(1), BUILDING ENVELOPE REQUIREMENTS OPAQUE ASSEMBLIES, is deleted for climate zone "6" and replaced, with all footnotes remaining the same as in the original text of the code, as follows:

<u>Climate Zone</u>	<u>6</u>	<u>6</u>
	<u>All Other</u>	<u>Group R</u>
<u>Roofs</u>		
<u>Insulation Entirely Above Deck</u>	<u>R-20ci</u>	<u>R-20ci</u>

<u>Metal Buildings (with R-5 Thermal Blocks) a, b</u>	<u>R13+R19</u>	<u>R-19</u>
<u>Attic and Other</u>	<u>R-49</u>	<u>R-49</u>
<u>Walls, Above Grade</u>		
<u>Mass</u>	<u>R-13.3ci</u>	<u>R-15.2ci</u>
<u>Metal Buildings (b)</u>	<u>R-13+R-5.6ci</u>	<u>R-13+R-5.6ci</u>
<u>Metal Framed</u>	<u>R-13+R-7.5ci</u>	<u>R-13+R-7.5ci</u>
<u>Wood Framed and Other</u>	<u>R-13+R-7.5ci</u> or <u>R-21</u>	<u>R-13+R-7.5ci</u> or <u>R-21</u>
<u>Walls, Below Grade</u>		
<u>Below Grade Wall (d)</u>	<u>R-7.5ci</u>	<u>R-7.5ci</u>
<u>Floors</u>		
<u>Mass</u>	<u>R-12.5ci</u>	<u>R-14.6ci</u>
<u>Joist/Framing Steel/Wood</u>	<u>R-30</u>	<u>R-30(e)</u>
<u>Slab-on-Grade Floors</u>		
<u>Unheated Slabs</u>	<u>R-10 for 24 in. below</u>	<u>R-15 for 24 in. below</u>
<u>Heated Slabs</u>	<u>R-15 for 24 in. below</u>	<u>R-20 for 48 in. below</u>
<u>Opaque Doors</u>		
<u>Swinging</u>	<u>U-0.70</u>	<u>U-0.50</u>
<u>Roll-up or sliding</u>	<u>U-0.50</u>	<u>U-0.50</u>

(2) remains the same.

(a) The department encourages owners, design professionals, and builders to voluntarily implement greater levels of energy efficiency in building design and construction than those required by the International Energy Conservation Code. Information regarding voluntary building standards for greater levels of energy efficiency can be obtained from the department by contacting the department at the address listed in (3), by telephone at 406-841-2053, or at the department's web site, <http://mt.gov/dli/bsd/bc/bs>.

(3) The International Energy Conservation Code is a nationally recognized model code for energy efficient construction of buildings. A copy of the International Energy Conservation Code may be obtained from the Department of Labor and Industry, Building Codes Bureau, P.O. Box 200517, Helena, MT 59620-0517, at cost plus postage and handling. A copy may also be obtained by writing to the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795, or visiting the International Code Council web site at [www.ICCsafe.org](http://www.ICCsafe.org).

AUTH: 50-60-203, 50-60-803, MCA  
IMP: 50-60-201, 50-60-203, 50-60-803, MCA

4. The department is required by law to adopt, via rulemaking, a state building code. The department, in consultation with the building codes council, periodically updates the state building code by adopting nationally-recognized standards and requirements for construction and construction materials on an as-needed basis. Energy efficiency standards are currently part of the state building code. Improvements and innovations in construction materials and building techniques, along with improvements in energy efficiency techniques, have led to creation of a 2009 edition of the International Energy Conservation Code ("IECC"). In order to provide Montanans with the advantages of those improvements and innovations in building construction standards, the department believes that there is reasonable necessity to amend ARM 24.301.161 by adopting by reference virtually all of the provisions in the 2009 edition of the IECC.

The 2009 edition of the IECC is the most recent version of the IECC. The department believes that the adoption of the most recent version of the IECC, as opposed to the most recent version of standards created by another author of building code standards, will minimize confusion and disruption for project owners, design professionals, builders, building code inspectors, and other building code officials. In addition, the department believes that adoption of the 2009 IECC, as opposed to continuing with the existing 2003 version of the IECC, is consistent with the legislative intent for the use of modern energy efficiency codes, as expressed in 50-61-201 and 50-61-202, MCA. The department notes that although the IECC is updated on a three year cycle, the department consciously did not adopt the 2006 version of the IECC, on the grounds that the department (in consultation with various stakeholders) did not believe that the 2006 edition of the IECC promoted greater energy efficiency than the 2003 version of the code.

The department further believes that there is reasonable necessity to make certain modifications to the 2009 IECC in order to adapt it to the needs of Montanans, based upon the input of the building codes council and various stakeholders. The department notes that the existing version of the IECC also contains similar modifications. An explanation of each of the proposed modifications follows:

(1)(a): It is reasonably necessary to modify the subsection due to formatting changes within the new edition. In addition, exception 1 and 2 are deleted, since the new edition no longer has exception 2. Listing an "exception" tracks with the overall format of the IECC, and thus is shown in manner.

(1)(b): It is reasonably necessary to modify the subsection and title due to formatting changes within the new edition.

[existing] (1)(c): It is reasonably necessary to no longer modify this subsection to allow basements to be noninsulated, until such time as the basement is finished.

This is primarily due to the energy loss experienced through the basement walls, the ability to utilize insulating systems that can be incorporated into the finishing process, and the higher utility costs for not insulating the basement walls that have a more pronounced negative impact to the monthly energy bills of those in the affordable housing market.

[new] (1)(c): It is reasonably necessary to modify the definition of "Air Barrier" by the addition of the words "and into" which adds clarity to the extent that the air barrier must perform within the building envelope.

[existing] (1)(d): It is reasonably necessary to remove this modification to the previous edition due to the inclusion of log walls as "mass walls" in the new edition, with provisions included for stipulating the required R-Values or *U*-Factors of mass walls.

[new] (1)(d): It is reasonably necessary to modify this table to stipulate changes requested by various stakeholders and confirmed by the Building Codes Council (BCC) for certain R-Values and *U*-Factor for fenestration of the building envelope. It was determined by the BCC that the existing R-21 R-Value for wood framed walls would be carried over to this edition since designers, builders, and owners are already utilizing this factor for walls under the 2003 edition. Crawl space walls are increased from R-13 to R-19 R-Value when utilizing cavity insulation, which allows for greater thermal protection to crawl space walls. The BCC determined it was reasonably necessary to increase the *U*-Factor from 0.35 to 0.33 effective January 1, 2010, to increase the efficiency of windows in residential buildings and because information from window manufacturers relayed that *U*-Factors would be increasing to those levels at that time anyway. The department concurs with the BCC determination.

[existing] (1)(e): It is reasonably necessary to remove this modification to the previous edition since the exception no longer applies, due to the fact that the new edition has already placed the exception language in the body of the code.

[new] (1)(e): The BCC determined it is reasonably necessary to modify this subsection to allow less ceiling area than the code allows in a residential building to have less than the R-Value of insulation that is required in areas with attic space. The BCC determined that the difference between the required R-49 ceiling R-Value in areas with attic space and that of the R-30 R-Value of nonattic space ceiling areas was too great and therefore reduced the allowable area of ceiling where the lower R-value ceiling insulation would be permitted. The department concurs with the BCC determination.

[existing] (1)(f): It is reasonably necessary to remove this modification to the previous edition since the footnote is no longer needed, due to the fact that the new edition has already stipulated the R-Value for ducts in all locations and no longer uses a table for specifying under what conditions, and to what R-Value, ducts shall be insulated.

[new] (1)(f): It is reasonably necessary to delete the current subsection language and replace with language that adds a provision for temporary crawl space vents. The BCC determined from information presented to it during its meetings that there was the need for temporary vents to control moisture during the construction process and reduce the possibility of mold growth from moisture build-up in the crawl space during construction. The department concurs with the BCC determination.

[new] (1)(g): It is reasonably necessary to delete the subsection and replace with new language, which modifies the number of air changes allowed during an air leakage test from seven air changes per hour (ACH) to four ACH. In addition, the BCC determined, from information presented to it during its meetings that it is necessary to add item #6 under "During Testing" which is the sealing of "B" or "L" vents, combustion air vents, and dryer vents. The department concurs with the BCC determination.

[new] (1)(h): It is reasonably necessary to modify this table to stipulate changes requested by various stakeholders and confirmed by the BCC for certain R-Values of the building envelope. It was determined by the BCC that the existing R-21 R-Value for wood framed walls would be carried over to this edition since designers, builders and owners are already utilizing this factor for walls under the 2003 edition. It was determined by the BCC that attic and other areas under a roof should have an R-Value of R-49 for those areas, which is the same R-Value stipulated for residential buildings. It was determined that this consistency between commercial and residential attics would be beneficial for installers, designers, and owners. The department concurs with the BCC determination.

The department notes that in addition to consulting with the building codes council, and receiving its advice and consent as provided for in 50-60-201, MCA, the department has met with a variety of stakeholders prior to proposing the amendments. The department recognizes that while some stakeholders have suggested that greater energy efficiency levels be required by rule, the department concludes that building codes, by their nature, set mandatory minimum standards for construction. The department believes that the efficiency levels required by the 2009 IECC represent levels that are consistent with accepted standards for mandatory standards. The department encourages project owners, design professionals, and builders to voluntarily implement greater levels of energy efficiency, and supports the use of higher levels of efficiency. The department finds there is reasonable necessity to articulate that encouragement as part of the rule, in (2)(a), and that such a statement is consistent with the provisions of 50-60-201(6) and (7), MCA.

Finally, the department believes there is reasonable necessity to amend the rule in (3) to include a web site address of the International Code Council, given the increasingly widespread use of web sites as a means of purchasing publications and documents.

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 the department, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2050, or by e-mail to dcook@mt.gov, and must be received no later than 5:00 p.m., December 14, 2009.

6. An electronic copy of this Notice of Public Hearing is available through the department on the World Wide Web at [www.buildingcodes.mt.gov](http://www.buildingcodes.mt.gov). The department strives to make the electronic copy of this Notice 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 web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that 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. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program or areas of law the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be sent or delivered to the department, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2050, e-mailed to dcook@mt.gov, or made by completing a request form at any rules hearing held by the agency.

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

9. The Department's Hearings Bureau has been designated to preside over and conduct this hearing.

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 19, 2009

BEFORE THE DEPARTMENT OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 32.3.104, 32.3.106, 32.3.212,	)	AMENDMENT AND ADOPTION
32.3.501 through 32.3.506, and	)	
adoption of NEW RULES I and II	)	NO PUBLIC HEARING
pertaining to Trichomoniasis and	)	CONTEMPLATED
NEW RULES III through VI pertaining	)	
to Deputy State Veterinarians	)	

TO: All Concerned Persons

1. On November 30, 2009, the Department of Livestock proposes to amend and adopt the above-stated rules.

2. The Department of Livestock 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 Department of Livestock no later than 5:00 p.m. on November 27, 2009 to advise us of the nature of the accommodation that you need. Please contact Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-4316; e-mail: cmackay@mt.gov.

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

32.3.104 SUBJECT DISEASES OR CONDITIONS (1) through (2)(l) remain the same.

(m) Trichomoniasis (Tritrichomonas [Trichomonas] foetus (quarantine));  
(n) through (11) remain the same.

AUTH : 81-2-102, 81-2-103, 81-20-101, MCA  
IMP: 81-2-102, 81-20-101, MCA

32.3.106 QUARANTINE - WHO MAY ISSUE (1) Any ~~licensed~~ Montana deputy state veterinarian or any authorized quarantine agent of the Department of Livestock may issue a quarantine.

AUTH: 81-2-102, 81-20-101, MCA  
IMP: 81-2-102, 81-20-101, MCA

32.3.212 ADDITIONAL REQUIREMENTS FOR CATTLE (1) through (2)(c) remain the same.

(d) virgin bull as defined in ARM 32.3.201(h);

(e) those imported for exhibition or rodeo purposes and held in confined facilities. They shall not be used for semen collection or natural breeding;

(f) those imported to a CSS (certified semen services) bull stud or its equivalent (ARM 32.3.220);

(f) remains the same but is renumbered (g).

(3) Any Trichomoniasis test eligible bovine used for sporting or exhibition purposes that breaches a fence and commingles with other bovine shall be tested for Trichomoniasis. The owner of the trespassing bovine shall bear all costs for the requested test on that bovine.

(4) Any Trichomoniasis test eligible bull that remains in Montana for breeding purposes, change of ownership, or grazing must adhere to the conditions in ARM 32.3.502.

(3) remains the same but is renumbered (5).

AUTH: 81-2-102, 81-2-103, 81-2-707, MCA

IMP: 81-2-102, 81-2-703, MCA

32.3.501 DEFINITIONS In this subchapter:

(1) through (4) remain the same but are renumbered (10) through (13).

~~(5) "Hold order" means a restriction placed on test positive animals, test positive herds, or exposed herds prohibiting their movement from a premises or a portion of a premises to minimize exposure to other animals or herds.~~

~~(6) "Individual identification" means an official United States Department of Agriculture (USDA) eartag, a breed registry tattoo, an official state-issued trichomoniasis eartag, or any other means of permanent identification approved by the state veterinarian.~~

~~(7) "Official trichomoniasis test" means the sampling procedure conducted by a licensed veterinarian of the preputial content of a sexually intact male bovine and submitted to a laboratory accredited by the American Association of Veterinary Laboratory Diagnosticians or a laboratory approved by the state veterinarian to identify Tritrichomonas foetus by direct microscopic examination, in vitro cultivation, PCR testing, or other test approved by the state veterinarian.~~

~~(8) "Test positive animal" means an animal in which a laboratory accredited by the American Association of Veterinary Laboratory Diagnosticians or a laboratory approved by the state veterinarian has identified Tritrichomonas foetus by direct microscopic examination, in vitro cultivation, PCR testing, or other test approved by the state veterinarian.~~

~~(9) "Test positive herd" means a herd of cattle in which a licensed veterinarian or an approved laboratory has identified Tritrichomonas foetus in one or more animals by direct microscopic examination, in vitro cultivation, PCR testing, or other test approved by the state veterinarian.~~

~~(10) "Trichomoniasis" means a sexually transmitted disease of cattle caused by the protozoan organism Tritrichomonas (Trichomonas) foetus.~~

(1) "Acceptable specimen" means a specimen determined to be satisfactory for diagnostic testing by an approved laboratory, which was collected by a Trichomoniasis certified veterinarian and submitted with a completed and signed lab form.



(2) "Accredited veterinarian" means an individual who is currently licensed to practice veterinary medicine and is accredited by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services in accordance with the current 9 Code of Federal Regulations, Chapter 1, § 161 in the state where that veterinarian practices.

(3) "Approved laboratory" means a laboratory accredited by the American Association of Veterinary Laboratory Diagnosticians (AAVLD) or a laboratory approved by the state veterinarian to identify Trichostrongylus axei.

(4) "Board" means the Montana Board of Livestock.

(5) "Bovine" means any sexually intact male and female animal of the genus Bos.

(6) "Certificate of veterinary inspection" (CVI) means the form issued by the state of origin that records the consignor, consignee, identity, origin, destination, and health status of animals, issued by an accredited veterinarian of that state for interstate shipment. It is commonly known as a health certificate.

(7) "Commingle" means animals of opposite sex and belonging to the same or different owners in the same enclosure or pasture with a reasonable opportunity for sexual contact.

(8) "Complete herd Trichostrongylosis test" means an official T. axei test from each nonvirgin bull in the herd.

(9) "Direct to a licensed slaughterhouse" means transporting an animal to a state or federally licensed slaughterhouse without unloading prior to arrival at the slaughterhouse.

(14) "Individual Trichostrongylosis identification" means a Montana Official Trichostrongylosis Tag placed in the ear at the time of the first test. Other acceptable means of identification are one of the following:

(a) an official United States Department of Agriculture (USDA) ear tag and a readable ranch tag; or

(b) a unique breed registry tattoo and a readable ranch tag; or

(c) any other means of official identification approved by the state veterinarian.

(15) "Licensed Trichostrongylosis approved feedlot" means any facility which is licensed, annually, by the state veterinarian's office where:

(a) all T. axei positive animals must be individually identified;

(b) there will be no commingling of intact male and female cattle;

(c) no animals entering the feedlot will be allowed back into the Montana breeding herd;

(d) all T. axei positive animals must be kept for a minimum of 30 days before being sold directly to slaughter or through a licensed livestock market and then to slaughter;

(e) all T. axei positive animals will be branded with a "V" on the right tailhead;

(f) all feedlots are subject to inspection;

(g) animals may be castrated or spayed at any time and verified by an accredited veterinarian.

(16) "Negative T. foetus bull" is a bull that T. foetus has not been detected in a preputial scraping, which has not commingled with female cattle since that test, and which qualifies by one of the following:

(a) originate from a herd not known to be infected and has had a negative official T. foetus bull test within the last 90 days;

(b) originate from a positive herd, but has a series of three negative official T. foetus bull tests at intervals of at least seven days; or

(c) has a negative official T. foetus import bull test;

(d) virgin bull.

(17) "Official Trichomoniasis test" means the sampling procedure conducted by a deputy state Trichomoniasis certified veterinarian of the preputial content of a sexually intact male bovine and submitted to an approved laboratory to identify Tritrichomonas foetus by in vitro cultivation, PCR testing, or other test approved by the state veterinarian.

(18) "Official Trichomoniasis retest" means an official Trichomoniasis test conducted at least seven days, but not more than twenty-one days apart, after any previous official Trichomoniasis test.

(19) "Premises" means the ground, area, building and/or equipment occupied by one or more bovine.

(20) "Quarantine" means movement restriction issued by a deputy state veterinarian or an agent of the department that shall be placed on one or more cattle in a positive T. foetus herd. Such restriction shall specify the identity of the animals and the premises where the animals shall be confined per ARM 32.3.108.

(21) "Quarantine release" means that all quarantined animals have completed all regulatory requirements to eliminate T. foetus infection in that herd and is no longer classified a positive herd.

(22) "Ranch Tag" is a dangle ear tag which is readable without restraint of the animal.

(23) "Seasonal grazing permit" means a permit issued by the Montana State Veterinarian's office to Montana livestock producers who utilize pasture lands and other livestock operations in one or multiple states that are contiguous with Montana.

(24) "Test eligible bull" is a nonvirgin bull 12 months of age or older, or any bull over 24 months of age.

(25) "Test positive animal" means an animal in which an approved Trichomoniasis laboratory has identified Tritrichomonas foetus by an official Trichomoniasis test.

(26) "Test positive herd" means a herd of cattle in which an approved laboratory has identified Tritrichomonas foetus in one or more animals by an official Trichomoniasis test.

(27) "Trichomoniasis" means a sexually transmitted disease of cattle caused by the protozoan organism Tritrichomonas (Trichomonas) foetus (T. foetus) that causes infertility, pyometra, abortions, and reproductive inefficiency in female cattle.

(28) "Trichomoniasis certified veterinarian" means a deputy state veterinarian who has attended a Montana Trichomoniasis training and has been certified by the Montana State Veterinarian and is able to provide an acceptable specimen to the approved laboratory.

(29) "Unacceptable sample" means a sample that is deemed not diagnostic due to compromised sample quality by an approved laboratory.

(30) "V Brand" means a 2"X3" hot iron single "V" character brand applied to the right tail-head of a bovine signifying that the bovine has tested positive for the venereal disease, Trichomoniasis (applied within 14 days of diagnosis).

(31) "Virgin bull" is defined in ARM 32.3.201 (h).

AUTH: 81-2-102, 81-2-103, MCA

IMP: 81-2-102, MCA

32.3.502 OFFICIAL TRICHOMONIASIS TESTING AND CERTIFICATION REQUIREMENTS (1) The following official ~~Trichomoniasis~~ testing and certification requirements apply to all nonvirgin, sexually intact male cattle imported into Montana or sold, loaned, ~~or leased,~~ or otherwise acquired in Montana, except as provided in ARM 32.3.212:

(a) Nonvirgin male cattle must be negative to ~~three official trichomoniasis tests;~~ one official PCR test and originate from a herd not known to be infected with T. foetus, or to three official Trichomoniasis culture tests. For the culture tests:

(i) and (ii) remain the same.

(iii) All tested male cattle must be individually Trichomoniasis identified at the time of test;

(b) The following statement must be on the certificate of veterinary inspection: "The bull(s) identified on this certificate were negative to ~~three official trichomoniasis tests. The three tests were conducted at intervals of no less than seven days between each test~~ T. foetus in accordance with ARM 32.3.502. There was no breeding activity ~~during the intervals between the three tests or between the final test and time of import, sale, loan, or lease in Montana.~~"

(c) Tests expire within 90 days or immediately upon commingling with female cattle.

(d) Test eligible bulls sold, loaned, leased, or otherwise acquired without a negative test are considered positive and must be disposed of per ARM 32.3.505. If the bull has been identified as being sold, loaned, leased, or otherwise acquired without a negative Trichomoniasis test he must be quarantined away from females and tested as in ARM 32.3.502(1). The owner is liable for any fine, expenses, and/or misdemeanor ticket as stated in new penalty rule.

AUTH: 81-2-102, 81-2-103, 81-2-707, MCA

IMP: 81-2-102, 81-2-703, MCA

32.3.503 REPORTING TRICHOMONIASIS (1) All ~~licensed~~ approved laboratories and all ~~licensed~~ Trichomoniasis certified Montana veterinarians conducting trichomoniasis testing of cattle in Montana shall report test positive animals to the department within one working day of such test or diagnosis.

(2) Test negative animals shall be reported on a weekly basis to the state veterinarian's office by all in-state labs or the certified veterinarian, which includes the names of the Trichomoniasis certified veterinarian and owner, date tested, animal identification, type of test, and the name of the approved laboratory.

(3) All Montana veterinarians conducting Trichomoniasis testing must be certified by the state veterinarian's office in accordance with ARM 32.3.502.

AUTH: 81-2-102, 81-2-103, MCA  
IMP: 81-2-102, 81-2-107, MCA

32.3.504 CONFIRMATORY TESTING OF TEST POSITIVE ANIMALS

(1) The Department of Livestock may require or recommend a retest or supplemental testing of test positive animals to confirm infection. Any culture positive animal must be confirmed by PCR unless the animal is destined directly to slaughter.

AUTH: 81-2-102, 81-2-103, MCA  
IMP: 181-2-102, MCA

32.3.505 DISPOSITION OF TEST POSITIVE ANIMALS ~~(1) Test positive animals shall be subject to an immediate hold order and shall remain on the premises where the animal was found to be infected, the owner's premise, or another premises approved by the state veterinarian and are subject to the department's general disease control administrative rules.~~

~~(2) remains the same but is renumbered (1).~~

~~(3) (2) Test positive animals shall remain on a hold order quarantined until they are:~~

~~(a) consigned directly to a licensed slaughterhouse slaughtering establishment;~~

~~(b) consigned directly to a licensed livestock market and then directly to a licensed slaughterhouse slaughtering establishment; or~~

~~(c) "V" branded and consigned directly to a licensed Trichomoniasis approved feedlot and then directly to a licensed slaughterhouse slaughtering establishment.~~

(3) The test positive herd shall be subject to an immediate quarantine and all animals shall remain on the current premises, the owner's premises, or another premises approved by the state veterinarian except:

(a) any individually identified animal consigned directly to a licensed livestock market, slaughterhouse, or Trichomoniasis approved feedlot;

(b) bull calves less than 12 months of age;

(c) bulls that have been individually tested negative to three consecutive official T. foetus tests at least one week apart;

(d) virgin heifers with no exposure to a bull;

(e) nonvirgin females over 12 months of age if:

(i) exposed to only known negative T. foetus bulls;

(ii) documented to be greater than 120 days pregnant by an accredited deputy state veterinarian; or

(iii) documented to have been isolated from all bulls for greater than 120 days.

(4) Release of herd quarantine will be when:

- (a) all remaining bulls 12 months of age and older, shall individually test negative to three consecutive official T. foetus tests at least one week apart; and
- (b) all conditions in (3)(e)(i) through (iii) have been met.
- (5) Breeding by artificial insemination is allowed while under quarantine.
- (6) Trichomoniasis test positive herds must have a whole herd bull test including virgin bulls 12 months of age and older, within 90 days prior to the following year's breeding season.

AUTH: 81-2-102, 81-2-103, MCA  
IMP: 81-2-102, 81-2-108, MCA

32.3.506 EPIDEMIOLOGICAL INVESTIGATION AND EXPOSED HERD NOTIFICATION (1) remains the same.

(2) Upon completion of the epidemiological investigation, the department or its agent shall issue an exposed herd notification notifying all owners or managers of likely exposed herds that the herd may have been exposed to a test positive animal or test positive herd. The department will provide owners of exposed herds with educational materials pertaining to ~~†~~Trichomoniasis, including detection, prevention, control, eradication, and management strategies.

(3) Exposed herds may be subject to a ~~held order~~ quarantine and official ~~†~~Trichomoniasis testing and certification requirements as set forth in ARM 32.3.502.

AUTH: 81-2-102, 81-2-103, MCA  
IMP: 81-2-102, 81-2-108, MCA

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

NEW RULE I PUBLIC GRAZING AND GRAZING ASSOCIATIONS (1) All bulls commingling in common grazing associations and/or public lands or multiple user permits shall have the official Trichomoniasis foetus test conducted after the last breeding season and within ten months prior to next season's turn out. This test is valid for the next year's breeding season unless bulls are commingled with female cattle. Virgin bulls added to a herd are exempt from testing requirements during their first breeding season.

(a) If any bull in the common grazing association is found to be positive, the entire bull population not including bull calves less than 12 months of age, regardless of owners, will be required to have three consecutive negative weekly tests prior to turn out time.

(b) Any stray nonvirgin bull from an untested group that enters the grazing area of tested animals may be held under quarantine until the bull has one or more official T. foetus test(s) conducted.

(c) The expense of testing shall be the responsibility of the bull's owner.

AUTH: 81-2-102, 81-2-103, MCA  
IMP: 81-2-102, 81-2-108, MCA

NEW RULE II PENALTIES: (1) Persons in possession of a bull that has been sold, loaned, leased, or otherwise acquired shall have proof of current negative test or will be subject to all of the following:

(a) up to a \$500 fine to the Department of Livestock for failure to comply with ARM 32.3.502 (REF 81-2-102(c), MCA);

(b) any departmental expenses regarding the investigation if a violation of law has taken place, as defined in 81-2-109, MCA.

(2) Any person, persons, firm, or corporation that fails to comply shall also be guilty of:

(a) a misdemeanor as described in 81-2-113, MCA; or

(b) civil liability as described in 81-2-114, MCA.

(3) Disputes will be heard by the Board of Livestock according to MAPA.

AUTH: 81-2-102, 81-2-103, MCA

IMP: 81-2-102, 81-2-108, MCA

NEW RULE III DEPUTY STATE VETERINARIAN DEFINITIONS

(1) "Department" means the Department of Livestock.

(2) "Deputy State Veterinarian" means a veterinarian licensed in the state of Montana and deputized to perform state functions pursuant to Rule IV of this subchapter who does not receive a salary or compensation from the department or USDA.

(3) "USDA" means the veterinary services branch of the Animal and Plant Inspection Services, United States Department of Agriculture.

AUTH: 81-2-102, 81-2-103, MCA

IMP: 81-2-102, 81-2-108, MCA

NEW RULE IV APPOINTMENT AS DEPUTY STATE VETERINARIAN

(1) The department is authorized to deputize a veterinarian when it determines that such veterinarian:

(a) is licensed to practice veterinary medicine in Montana without restriction;

(b) has made formal application for deputization upon forms provided by the department;

(c) has been recommended by the state veterinarian and has attended the department deputy state veterinarian training; and

(d) has been accredited by USDA pursuant to 9 CFR, Chapter 1, Part 161; and

(e) follows the current Montana Deputy State Veterinarian Policy and Procedures Handbook.

AUTH: 81-2-102, 81-2-103, MCA

IMP: 81-2-102, 81-2-108, MCA

NEW RULE V DUTIES OF DEPUTY STATE VETERINARIAN (1) A deputy state veterinarian shall:

(a) quarantine in writing all animals exposed to a quarantinable disease upon suspicion of diagnosis in the absence of, or on the order of the state veterinarian. Immediate notification of quarantine must be made to the Montana State Veterinarian's office by phone, fax, or mail;

(b) report immediately all cases of quarantinable diseases (ARM 32.3.104 and 32.3.105) to the state veterinarian in Helena, by telephone or fax;

(c) release quarantine upon the direction of the state veterinarian and ARM 32.3.106 through 32.3.108;

(d) be responsible for proper use of all official certificates, forms, records, reports, tags, or other official identification used in the work as a deputy state veterinarian and take proper precautions to prevent misuse thereof;

(e) immediately report the loss, theft, deliberate or accidental misuse of any official document or materials as listed above in [New Rule III](1)(d), and must keep these materials in only his/her custody prior to official use;

(f) file a monthly form regarding other important reportable diseases;

(g) mail weekly, all required inspection forms, test charts, certificates of veterinary inspection, and vaccination certificates made during the week.

AUTH: 81-2-102, 81-2-103, MCA

IMP: 81-2-102, 81-2-108, MCA

NEW RULE VI REVOCATION OR SUSPENSION OF APPOINTMENT OF DEPUTY STATE VETERINARIAN (1) A deputy state veterinarian may have his/her appointment revoked by any of the following:

(a) voluntarily surrendered; or

(b) becoming ineligible because of revocation or suspension of Montana veterinary license or USDA accreditation; or

(c) revoked or suspended by the department for cause, by violating ARM or established policy and/or procedures.

(2) MAPA will be followed as in ARM 32.2.101 and 32.2.102.

(3) Reappointment may occur as in [New Rule V].

AUTH: 81-2-102, 81-2-103, MCA

IMP: 81-2-102, 81-2-108, MCA

REASON: The proposed amendments to ARM 32.3.104, 32.3.106, 32.3.212, 32.3.501 through 32.3.506, and adoption of NEW RULES I AND II are necessary to clarify definitions and provide consistency in disease reporting and regulatory actions required specific to Trichomoniasis in cattle. The proposed changes allow for new science which allows the Polymerase Chain Reaction (PCR) test to be used, identifies who may collect the sample, describes how positive herds and animals will be treated as well as provides penalties for noncompliance. The initial rule was a producer driven ARM in 2006 to control this economically devastating venereal disease of cattle which causes infertility. Since this rule's inception, 118 bulls have been identified as positive, exposing an estimated 3000 cows on 66 premises to Trichomoniasis.

The economic impact of these changes would include the purchase of the official Trichomoniasis ear tag from the department at cost to the veterinarian, currently at \$1.05/tag including shipping costs. Including single PCR testing as a choice instead of requiring the three negative weekly cultures will reduce producer costs of working animals through the chute three times and paying for three veterinary trip and service fees. Montana diagnostic laboratory test fees are currently \$26.00 for PCR and \$6.00 for each culture, and shipping fees are additional. Out-of-state laboratories may also be used, as long as they are approved by definition.

The new rule and subchapter for classification of Montana deputy veterinarians define an existing program that is consistent with Montana Department of Livestock and USDA requirements for veterinarians to be accredited in order to do official work like TB and Brucellosis testing and the issuing of health certificates. Deputy veterinary accreditation is an additional requirement to Montana veterinary medicine licensure, but is not a requirement of general practice. This accreditation training is already required prior to practicing certain types of veterinary medicine in Montana, by policy, but no administrative rule exists. After reviewing current ARM, this omission was revealed and this rule seeks to create accountability by the department as it is cited in 15 other rules in chapter 32.

This rule is revenue neutral.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to [cmackay@mt.gov](mailto:cmackay@mt.gov) to be received no later than 5:00 p.m., November 30, 2009.

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 a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m. November 30, 2009.

7. If the department 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 public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25, based upon the population of the state.

8. An electronic copy of this proposal notice is available through the department's web site at [www.liv.mt.gov](http://www.liv.mt.gov).



9. The Montana Department of Livestock maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by this department. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the area of interest that the person wishes to receive notices regarding. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; faxed to (406) 444-1929 "attention Christian Mackay"; or e-mailed to [cmackay@mt.gov](mailto:cmackay@mt.gov). Request forms may also be completed at any rules hearing held by the department.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

DEPARTMENT OF LIVESTOCK

BY: /s/ Christian Mackay  
Christian Mackay  
Executive Officer  
Board of Livestock  
Department of Livestock

BY: /s/ George H. Harris  
George H. Harris  
Rule Reviewer

Certified to the Secretary of State October 19, 2009

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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 37.78.102 and 37.78.420 ) PROPOSED AMENDMENT  
pertaining to Temporary Assistance )  
for Needy Families (TANF) )

TO: All Concerned Persons

1. On November 18, 2009, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on November 9, 2009, to advise us of the nature of the accommodation that you need. Please contact Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.78.102 TANF: FEDERAL REGULATIONS ADOPTED BY REFERENCE

(1) remains the same.

(2) The "Montana TANF Cash Assistance Manual" dated ~~July 1, 2009~~ January 1, 2010 is adopted and incorporated by this reference. A copy of the Montana TANF Cash Assistance Manual is available for public viewing at each local Office of Public Assistance, and at the Department of Public Health and Human Services, Human and Community Services Division, 111 N. Jackson St., 5th Floor, P.O. Box 202925, Helena, MT 59620-2925. Manual updates are also available on the department's web site at www.dphhs.mt.gov.

AUTH: 53-4-212, MCA  
IMP: 53-4-211, 53-4-601, MCA

37.78.420 TANF: ASSISTANCE STANDARDS; TABLES; METHODS OF COMPUTING AMOUNT OF MONTHLY BENEFIT PAYMENT (1) through (3)(b)

remain the same.

(4) The GMI standards, NMI standards, and benefits standards are as follows:

(a) Gross monthly income standards are compared with the assistance unit's gross monthly income as defined in ARM 37.78.406.

GROSS MONTHLY INCOME STANDARDS (GMI)

Number of Persons in Household	Gross Monthly Income (GMI)	
1	<del>\$ 522</del>	<u>\$ 638</u>
2	703	<u>858</u>
3	884	<u>1,079</u>
4	<del>1,066</del>	<u>1,299</u>
5	1,249	<u>1,519</u>
6	1,430	<u>1,739</u>
7	1,611	<u>1,961</u>
8	<del>1,793</del>	<u>2,181</u>
9	1,974	<u>2,401</u>
10	<del>2,155</del>	<u>2,621</u>
11	2,337	<u>2,842</u>
12	2,518	<u>3,062</u>
13	<del>2,699</del>	<u>3,282</u>
14	2,880	<u>3,502</u>
15	3,062	<u>3,722</u>
16	3,245	<u>3,944</u>
17	3,426	<u>4,164</u>
18	3,608	<u>4,385</u>
19	3,789	<u>4,605</u>
20	3,970	<u>4,825</u>

(b) Net monthly income standards are used to compute gross monthly income standards (GMI).

NET MONTHLY INCOME STANDARDS (NMI)

1	<del>\$ 282</del>	<u>\$ 345</u>
2	380	<u>464</u>
3	478	<u>583</u>
4	576	<u>702</u>
5	675	<u>821</u>
6	773	<u>940</u>
7	871	<u>1,060</u>
8	969	<u>1,179</u>
9	1,067	<u>1,298</u>
10	1,165	<u>1,417</u>
11	1,263	<u>1,536</u>
12	1,361	<u>1,655</u>
13	1,459	<u>1,744</u>
14	1,557	<u>1,893</u>
15	1,655	<u>2,012</u>
16	1,754	<u>2,132</u>
17	1,852	<u>2,251</u>
18	1,950	<u>2,370</u>
19	2,048	<u>2,489</u>
20	2,146	<u>2,608</u>

(c) Benefit standards are compared with the assistance unit's countable income as defined in ARM 37.78.406.

BENEFITS STANDARDS

1	<del>\$ 221</del>	<u>\$ 271</u>
2	298	<u>364</u>
3	375	<u>458</u>

4	452	<u>551</u>
5	530	<u>644</u>
6	607	<u>738</u>
7	684	<u>832</u>
8	761	<u>926</u>
9	838	<u>1,019</u>
10	915	<u>1,112</u>
11	991	<u>1,206</u>
12	1,068	<u>1,299</u>
13	1,145	<u>1,393</u>
14	1,222	<u>1,486</u>
15	1,299	<u>1,579</u>
16	1,377	<u>1,674</u>
17	1,454	<u>1,767</u>
18	1,531	<u>1,860</u>
19	1,608	<u>1,954</u>
20	1,685	<u>2,047</u>

(d) The payment standards for the TANF Cash Assistance Program are compared to the assistance unit's net countable income as defined in ARM 37.78.406.

PAYMENT STANDARDS

(33% of the FY 2007 Federal Poverty Level)

1	<del>\$ 281</del>	<u>\$ 298</u>
2	<del>376</del>	<u>401</u>
3	<del>472</del>	<u>504</u>
4	<del>568</del>	<u>606</u>
5	<del>664</del>	<u>709</u>
6	<del>759</del>	<u>812</u>

7	855	<u>915</u>
8	954	<u>1,018</u>
9	1,046	<u>1,121</u>
10	1,142	<u>1,223</u>
11	1,238	<u>1,326</u>
12	1,333	<u>1,429</u>
13	1,429	<u>1,532</u>
14	1,525	<u>1,635</u>
15	1,621	<u>1,738</u>
16	1,716	<u>1,841</u>
17	1,812	<u>1,943</u>
18	1,908	<u>2,046</u>
19	<del>2,003</del>	<u>2,149</u>
20	2,099	<u>2,252</u>

(e) and (5) remain the same.

AUTH: 53-4-212, MCA

IMP: 53-4-211, 53-4-241, 53-4-601, MCA

4. The Department of Public Health and Human Services (department) is proposing amendments to ARM 37.78.102 and 37.78.420 pertaining to Temporary Assistance for Needy Families (TANF).

ARM 37.78.102

ARM 37.78.102 currently adopts and incorporates by reference the TANF policy manual effective July 1, 2009. The department proposes to make some revisions to this manual that will take effect on January 1, 2010. The proposed amendments to ARM 37.78.102 are necessary to incorporate into the Administrative Rules of Montana the revised versions of the policy manual and to permit all interested parties to comment on the department's policies and to offer suggested changes. It is estimated that changes to the TANF manual could affect approximately 8,155 TANF recipients. Manuals and draft manual material are available for review in each local Office of Public Assistance (OPA) and on the department's web site at [www.dphhs.mt.gov](http://www.dphhs.mt.gov).

Following is a brief overview of the TANF manual sections with substantive changes:

### TANF 103-2 - Referral to WoRC

TANF 103-2 is being updated to allow WoRC offices an alternative time for scheduling appointments with applicants. WoRC offices currently are required to schedule such appointments within three working days from the date the OPA refers the applicant. There are some cases in which there will be a significant time period between the OPA referring a TANF applicant to the WoRC offices and the time when the applicant will begin the work activities. In such cases, it may be more effective for the WoRC office to schedule the appointment with reference to when the applicant is to begin work activities rather with reference to the date the TANF applicant is referred to the WoRC office. The revised version, therefore, allows the WoRC office the option to schedule appointments within three working days of the date the TANF applicant is to begin the work activities.

### TANF 103-5 - Start Date of Benefits

TANF 103-5 is being updated to allow WoRC offices an alternative time for scheduling appointments with applicants. WoRC offices currently are required to schedule such appointments within three working days from the date the OPA refers the applicant to the WoRC office. There are cases in which there will be a significant time period between the OPA referring a TANF applicant to the WoRC offices and the time the applicant will begin the required work activities. In such cases, it may be more effective for the WoRC office to schedule the required appointment with reference to when the applicant is to begin work rather than with reference to when the TANF applicant is referred to the WoRC office. The revised version, therefore, allows the WoRC office to schedule appointments within three working days of the date the TANF applicant is to begin the work activities.

### TANF 701-3 - Participation Components

TANF 701-3 is being updated to clarify that forms HCS 205, 206, 207, and 209 must be fully completed by a medical professional and faxed or delivered directly from the office of the medical professional if they are to be relied upon to establish a medical or mental health condition justifying WoRC accommodation based on classifications of "Not Participating/Incapacitated", "Extended Benefits/Incapacitated" and "Needed in Home". The update also clarifies individuals will be required to participate fully in the WoRC program if these requirements are not met. Previously, TANF 701-3 did not expressly state these requirements and it was unclear what result would follow if the forms were not delivered directly from the medical professional or if they were delivered in less than completed form. The updates clarify these matters.

### TANF 704-1 - Supportive Services

TANF 704-1 is being updated to reflect that OPA offices will review requests for supportive services, including requests by Tribal NEW, to ensure the requests meet

the appropriate policy guidelines. The section was also updated to set forth the required verification and documentation for requests for supportive services.

#### TANF 1512-1 - Case Transfer

TANF 1512-1 is being updated to incorporate the Case Transfer Process set forth in TANF Bulletin 37, dated July 30, 2007, which was based upon the strict requirements for participation required pursuant to the Deficit Reduction Act. Under the previous policy, participants often did not comply with work activity requirements during the transfer process, and this resulted in reducing the department's participation rate, subjecting the department to penalties. The revised process set forth in the update is designed to clarify and streamline the case transfer process so as to increase the likelihood of participants' full compliance with work requirements and decrease any detrimental effect on the department's participation rate.

The updated Case Transfer Process differentiates between case transfers requested between the first and the 15th days of the month and transfer requests made after the 15th day of the month. This distinction is made in order to accommodate WoRC processes which are required to take place before the 15th day of the month, such as the signing of employability plans, and processes which are not required to take place within that time frame. The process for transferring cases for the WoRC program has been removed from the TANF manual and relocated in the WoRC Guidelines. This change was made to reflect the fact that the TANF manual is designed for use by OPA workers, and the transfer of WoRC cases is the duty of WoRC personnel and is therefore properly treated within the WoRC guidelines.

#### ARM 37.78.420

This ARM has been updated to reflect the increase in the TANF payment standards from 33 of the 2007 Federal Poverty Guidelines to 33% of the 2009 Federal Poverty Guidelines. The increase was approved in the 2009 Legislative Session under House Bill 2. This change will have a positive impact on TANF cash assistance participants. The department estimates this change could affect a monthly average of 3,302 TANF households with an average monthly fiscal impact increase of \$92,554.00.

The ARM has also been updated to reflect the increase in the TANF eligibility standards from 30% of the 2002 Federal Poverty Guidelines to 30% of the 2009 Federal Poverty Guidelines. This increase was approved in the 2009 Legislative Session under House Bill 645 and is a result of funding through the American Recovery and Reinvestment Act. This increase is effective through September 31, 2010, at which time it is slated to decrease to 30% of the 2006 Federal Poverty Guidelines. The department estimates this change could result in a monthly average of 70 additional households being eligible for TANF cash assistance with an average monthly fiscal impact increase of \$249,060.



5. The department intends the proposed rule changes to be applied effective January 1, 2010.

6. 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: Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., November 27, 2009.

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

8. 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 list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the Notice 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 Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ Francis X. Clinch  
Rule Reviewer

/s/ Anna Whiting Sorrell  
Anna Whiting Sorrell, Director  
Public Health and Human Services

Certified to the Secretary of State October 19, 2009.

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

In the matter of the adoption of New ) NOTICE OF PUBLIC HEARING ON  
Rules I through VI pertaining to state ) PROPOSED ADOPTION  
matching fund grants to counties for )  
crisis intervention, jail diversion, )  
involuntary precommitment, short- )  
term inpatient treatment costs, and )  
contracts for crisis beds and )  
emergency and court-ordered )  
detention beds for persons with )  
mental illness )

TO: All Concerned Persons

1. On November 23, 2009, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, at Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on November 16, 2009, to advise us of the nature of the accommodation that you need. Please contact Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov).

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

RULE I GRANTS TO COUNTIES, GOALS AND OUTCOMES (1) A county or group of counties may apply to the department for a grant under this subchapter.

(2) In developing grant applications, counties should consider the following goals:

- (a) to reduce reliance on Montana State Hospital (MSH) for emergency and court ordered detention and evaluation;
- (b) to support the treatment of mental illness closer to home by increasing local treatment capacity and creating better treatment outcomes;
- (c) to increase the number of intervention and jail diversion options that may provide judges, county attorneys, and law enforcement with alternatives to incarceration; and
- (d) to establish and support collaboration among community stakeholders to address community needs.

(3) The department expects grant applications to address the following outcomes:

(a) disruption of the consumer's life will be minimized and the effectiveness of treatment will be maximized, resulting in better treatment outcomes;

(b) financial and other resources will be retained in the community for jail diversion and crisis intervention; and

(c) inpatient capacity at MSH will be appropriately utilized.

AUTH: 53-21-1203, MCA

IMP: 53-21-1203, MCA

RULE II GRANTS TO COUNTIES, PARTICIPANTS (1) Only a county as defined in ARM 37.2.902 or a group of counties that have collaborated for the purpose established in 53-21-1203, MCA, may submit a grant application for matching fund grants awarded under this subchapter.

(2) A county or group of counties preferring to have a chief operating officer or other person submit a grant application may issue a document authorizing the chief operating officer or other person to act on their behalf. The authorization document must be included with the grant application.

AUTH: 53-21-1203, MCA

IMP: 53-21-1203, MCA

RULE III GRANTS TO COUNTIES, DETERMINING GRANT AMOUNTS

(1) The department will base matching fund grants awarded under this subchapter on the criteria specified in 53-21-1203, MCA.

(2) The total amount of matching fund grants will not exceed available funding appropriated by the Montana Legislature.

(3) The department will evaluate each county or multicounty grant application submitted pursuant to [RULE V] and award matching fund grants based on the likelihood, as determined by the department, that the plan would promote appropriate utilization of the Montana State Hospital (MSH) for emergency and court-ordered detention and evaluation and would ultimately result in cost savings to the state if implemented.

(4) The department will match county and other local entity funds or in-kind contributions using a sliding scale for state grants as provided in 53-21-1203, MCA.

(a) The sliding scale is determined by calculating the previous year's admissions as reported by MSH per 1,000 county residents.

(b) The department may grant up to 70% of the local investment to counties below the statewide average admission rate.

(c) The department may match the local investment of cash and in-kind contributions to any county whose MSH admissions are at or above the statewide average admission rate on a sliding scale of 50% to 65% in equal 5% increments. The department's match will not be less than 50% of the local investment.

(5) The county population will be the figure published in Table 1: Annual Estimates of the Population for Counties of Montana: April 1, 2000 to July 1, 2007 (CO-EST2007-01-30). Source: Population Division, U.S. Census Bureau that is

adopted and incorporated by reference. Copies of the table may be obtained from the Department of Public Health and Human Services, Addictive and Mental Disorders Division, P.O. Box 202905, Helena, MT 59620.

(6) The department will recalculate the sliding scale match rate annually using the formula described in 53-21-1203, MCA, based on the prior year's admissions to MSH per 1,000 residents.

AUTH: 53-21-1203, MCA

IMP: 53-21-1203, MCA

RULE IV GRANTS TO COUNTIES, PRO RATA DISTRIBUTION (1) If the amount requested for matching fund grants exceeds the funding available in the legislative appropriation, the department may allocate funding on a pro rata basis according to the estimate of county population adopted in [RULE III].

(2) The department will allocate funding by dividing available funding by the sum total population of all counties submitting a letter of intent and multiplying the resulting quotient by the individual county population, subject to the matching fund requirements in [RULE III].

AUTH: 53-21-1203, MCA

IMP: 53-21-1203, MCA

RULE V GRANTS TO COUNTIES, STRATEGIC PLAN REQUIREMENTS

(1) Letters of intent (LOI) to participate in the state fund matching grants will be accepted until two weeks after publication of the final adopted version of this rule and grant applications will be accepted until March 1, 2010 for fiscal year 2010 with the grant term concluding at the end of the fiscal year.

(2) For subsequent fiscal years, grant application deadlines will be determined by the department and the department will notify counties of the application deadline no later than March 31.

(3) Only counties that submit a timely LOI are eligible for matching grant funds.

(4) Grants will be awarded no later than 60 days after receipt of a completed grant applications and contract for services.

(5) Successful grant applicants will be those submitting a grant application with at least the following elements:

(a) a county or multi-county jail diversion and crisis intervention strategic plan including a plan for community-based or regional emergency or court-ordered detention and examination services as well as short term inpatient treatment;

(b) a detailed proposal for how the county or counties and other local entities will collaborate and commit local funds for mental health services for crisis intervention, jail diversion, involuntary precommitment, and short-term inpatient treatment costs including a plan for the collection and reporting of data and information;

(c) a detailed budget that identifies cash and in-kind local contribution amounts designated for match, anticipated expenses through June 30 of the funding fiscal year and start up or one time only costs. Multi-county grant applications must

identify the county that will act as the fiduciary agent for distribution of the grant funds;

(d) a statement from the grant applicant agreeing to report key data elements according to the department's specifications; and

(e) counties that include tribal lands must demonstrate coordination efforts with tribal representatives both on and off reservations.

(6) Each county or group of counties will submit an annual report to the department within 30 days of the end of each funding year describing implementation of the strategic plan provided for in this rule, including key data elements as defined by the department, for the funded grant period.

AUTH: 53-21-1203, MCA

IMP: 53-21-1203, MCA

RULE VI JAIL DIVERSION AND CRISIS INTERVENTION, CONTRACTS FOR PSYCHIATRIC TREATMENT BEDS (1) The department may contract with a mental health facility for psychiatric treatment beds as provided for in 53-21-1204, MCA, to the extent of available funding.

(2) Contracts will be developed in each service area as defined in 53-21-1001, MCA.

(3) Eligible providers include:

(a) licensed mental health centers who operate a secured crisis stabilization facility (SCSF) as defined in ARM 37.106.2027; and

(b) hospitals, including critical access hospitals.

(4) Reimbursement to an eligible mental health facility under this rule is for vacant contracted psychiatric treatment beds. A contractor must prioritize placement in contracted beds for persons admitted for the purposes specified in 53-21-1204, MCA.

AUTH: 53-21-1204, MCA

IMP: 53-21-1204, MCA

4. The Department of Public Health and Human Services (the department) is proposing the adoption of new Rules I, II, III, IV, and V pertaining to state matching fund grants to counties for crisis intervention, jail diversion, involuntary precommitment, and short-term inpatient treatment costs. These rules are necessary to implement House Bill 130 (HB 130), codified at 53-21-1203, MCA. The purpose of the program is to provide state matching fund grants to counties for local crisis intervention, jail diversion, involuntary precommitment, and short-term inpatient treatment costs for individuals with mental illnesses. The statute mandated that the department adopt rules by August 1, 2009. Therefore, the department intends to adopt the rules retroactively to August 1, 2009.

The department is also proposing the adoption of new Rule VI pertaining to state contracts with eligible providers for crisis beds and emergency and court-ordered detention beds for the mentally ill. This rule is necessary to implement HB 131, codified at 53-21-1204, MCA. The purpose of such contracts is to assure the

availability of treatment facilities for the emergency detention of persons with mental illness under 53-21-129, MCA, court-ordered detentions under 53-21-124, MCA, and inpatient crisis intervention services prior to the filing of an involuntary commitment petition.

Crisis intervention, jail diversion, involuntary precommitment, and short-term inpatient treatment costs

Proposed new Rules I, II, III, IV, and V are intended to provide county officials and members of the public with the specific information necessary to review and comment on the proposed implementation of state matching fund grants under 53-21-1203, MCA for state fiscal years (SFY) 2010 and 2011. At the time of publication of this proposal, the department had received letters of intent from 37 counties to participate in the matching fund grant program for SFY 2010.

Although the statute specifies the terms and considerations for distribution, the department encountered several matters requiring interpretation of the statute. Therefore, it was necessary to propose these rules.

A summary of each proposed rule is set forth below with the department's rationale:

Rule I

This proposed new rule contains the goals and outcomes counties or groups of counties should consider when developing applications for state matching fund grants for crisis intervention, jail diversion, involuntary precommitment, and short-term inpatient treatment for individuals with mental illnesses. The department drew many of the proposed goals and outcomes from the preamble of HB 130. Since the preamble was not codified, the department has attempted to summarize the intent of the Legislature without repeating statutory language. The department suggests that the purpose and objectives of the grants should be stated in these rules to provide easier access for department staff and county officials as well as to members of the public. Numbering of the goals and outcomes was done to conform to current rule formatting standards and should not be interpreted as an indication of rank or priority.

The department considered and rejected the alternative of not stating goals and objectives to be pursued in preparing and evaluating grant proposals. The department believes this proposed rule will be helpful to county officials and department staff by summarizing the standards that will be used to evaluate whether a grant proposal conforms to the intent of the Legislature.

Rule II

This proposed new rule contains a statement of the policy that a county or group of counties are the only entities that may participate in the state matching fund grants issued under the proposed rules. A cross-reference to an existing department rule

defining a county as the Board of County Commissioners is included for clarity.

The department considered and rejected the alternative of accepting proposals from a county's chief operating officer. The department believes the resource commitments necessary to implement strategic plans under the grants are significant enough that the county commission should participate in the grant proposal. The proposed rule allows for designation of an individual to act on behalf of the Board of County Commissioners if desired.

### Rule III

This proposed new rule contains some additional criteria that could be considered in awarding grants in future state fiscal years. It states the policy that grants will be limited to the amounts appropriated for that purpose. This would make it clear that the department's liability under these rules is limited.

For purposes of these rules, the department proposes adoption and incorporation by reference of the most recent U.S. Census Bureau population estimates, July 1, 2007. Montana State Hospital admissions data would be drawn from reports already published by the state hospital.

The department considered using population estimates published by the Montana Department of Labor and Industry, but chose to use estimates published by the U.S. Census Bureau because they are the figures used by the Montana Association of Counties for planning purposes.

The department believes the statute allows funds from "other local entities" such as hospitals and other for-profit and nonprofit organizations to be considered part of the match. The department is proposing that in-kind contributions, such as the use of county and other local entity services and facilities be considered in calculating the county's share. This would allow counties with limited funds to participate in the grants when they otherwise could not.

The department considered and rejected the alternative of not allowing in-kind contributions or donations by for-profit and nonprofit organizations. The department believes the statutory provision that counties collaborate with local organizations indicates that such contributions should be allowed.

The department proposes to use admissions data from reports already published by Montana State Hospital to compute match rates. The department considered and rejected other measures of state hospital utilization in an attempt to use only those factors under the control of counties. However, the resulting match rates did not differ significantly from those computed using admissions data. The department believes admission data best reflects the purpose of the grants and the intent of the Legislature.

A sample matrix demonstrating the proposed match rate calculations is posted on

the department's web page, [www.dphhs.mt.gov/amdd/services](http://www.dphhs.mt.gov/amdd/services). Interested persons can obtain a copy of the matrix by writing the department's Addictive and Mental Disease Division at P.O. Box 202905, Helena, MT 59620. The matrix represents a working copy of the match rates and does not necessarily reflect the final match rates for SFY 2010.

#### Rule IV

The department is proposing new Rule IV to address overwhelming county interest in the grants. The cost of county proposals far exceeds the amount appropriated for such purposes. A total of approximately \$1,091,495 is available for such grants in SFY 2010. The 37 participating counties indicated an intent to implement plans that would cost a projected total of \$3,249,894 in SFY 2010.

The department is proposing a distribution of available funds on the basis of population, so that all eligible counties could, subject to matching requirements, receive a share.

The department considered and rejected distribution options including the award of grants to counties submitting the earliest or, in the department's judgment, the most meritorious proposals. However, the department proposes to reserve the right to award grants based on its evaluation of merit in SFY 2011. The department also rejected the option of awarding each county a fraction of the grant request based on the total amount requested. This would have encouraged counties to propose the most costly plans possible.

The department proposes to distribute grants based on population. Total funding divided by the total population of all counties submitting proposals equals approximately \$1.50 per person. Grants to each county would be available for up to \$1.50 times the county population.

The department believes this is the fairest and most reasonable method of distribution because it would promote the delivery of mental health services to the greatest number of people possible with available resources. The department believes per capita distribution like the one proposed would be the most effective way to maintain appropriate admissions at Montana State Hospital and would conform to the intent of the Legislature.

A matrix demonstrating the proposed distribution methodology is posted on the department's web page, [www.dphhs.mt.gov/amdd/services](http://www.dphhs.mt.gov/amdd/services). Interested persons can obtain a copy of the matrix by writing the department's Addictive and Mental Disease Division at P.O. Box 202905, Helena, MT 59620. The matrix represents a working copy of the distribution and does not necessarily reflect the final matching fund balances for SFY 2010.

#### Rule V



This proposed new rule contains the proposed considerations counties should address when developing a grant proposal under these rules. These considerations are the standards the department proposes to use when evaluating a grant application. The information pertaining to the considerations will be necessary to allow the department to determine if a proposal meets the statutory requirements. Since the department deems the considerations necessary to evaluate a grant request, the department did not consider other options. The department believes the proposed considerations are reasonable and conform to legislative intent.

#### Contracting for mental health treatment beds

The department is proposing new Rule VI containing details necessary for the department to contract with a mental health facility or other eligible provider for treatment beds as provided in 53-21-1204, MCA, including eligibility requirements for providers. The rule also specifies that persons admitted to a secure mental health facility will be placed in a contracted bed as a priority over other secure beds in the facility. The department believes this is the unstated assumption of the Legislature in enacting the statute and appropriating funds.

The department believes the proposed details are necessary to implement 53-21-1204, MCA. It did not consider options that were not specified in the statute.

#### Entities Affected

There are 56 counties in the state of Montana that could be affected by the proposed new rules. Under the terms of the statute, no other entities may participate in the state matching funds grant program for crisis intervention, jail diversion, involuntary precommitment, and short-term inpatient treatment costs for individuals with mental illnesses.

#### Fiscal Effects

The fiscal effect of the proposed new rules will be limited to the funds appropriated by the 2009 Montana Legislature for the purpose of state matching fund grants to counties for crisis intervention, jail diversion, involuntary precommitment, and short-term inpatient treatment costs for individuals with mental illnesses. The amount of state funds appropriated in House Bill 2 (HB2) for those purposes for SFY 2010 is \$1,240,866 and for SFY 2011 is \$1,239,454, including \$1,091,495 to implement HB 130 in SFY 2010. The amount allocated to implementation of HB 131 is \$149,371 for SFY 2010.

5. The department intends to apply the final rules retroactively to August 1, 2009. No detrimental effects will occur if the rules are applied retroactively.

6. 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: Rhonda Lesofski, Department of Public Health and Human Services,

Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., November 27, 2009.

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

8. 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 list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the Notice 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 Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by letter on August 5, 2009, sent postage prepaid via USPS, and by telephone and e-mail September 16, 2009.

/s/ John Koch  
Rule Reviewer

/s/ Anna Whiting Sorrell  
Anna Whiting Sorrell, Director  
Public Health and Human Services

Certified to the Secretary of State October 19, 2009.

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PROPOSED  
ARM 38.5.2202 and 38.5.2302, ) AMENDMENT  
pertaining to pipeline safety )  
) NO PUBLIC HEARING  
) CONTEMPLATED

TO: All Concerned Persons

1. On December 2, 2009, the Department of Public Service Regulation (PSC) proposes to amend the above-stated rules.

2. The PSC will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or who need an alternative accessible format of this notice. If you require an accommodation, contact the PSC no later than 4:00 p.m. on November 24, 2009, to advise us of the nature of the accommodation you need. Please contact Verna Stewart, PSC Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601; telephone (406) 444-6170; TTD (406) 444-6199; fax (406) 444-7618; or e-mail [vstewart@mt.gov](mailto:vstewart@mt.gov).

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

38.5.2202 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS (1) The commission adopts and incorporates by reference the U.S. Department of Transportation (DOT) Pipeline Safety Regulations, Code of Federal Regulations (CFR), Title 49, chapter 1, subchapter D, parts 191, 192, and 193, including all revisions and amendments enacted by DOT on or before ~~October 31, 2008~~ October 31, 2009. A copy of the referenced regulations may be obtained from United States Department of Transportation, Office of Pipeline Safety, Western Region, 12300 West Dakota Avenue, Suite 110, Lakewood, Colorado 80228, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

AUTH: 69-3-207, MCA  
IMP: 69-3-207, MCA

38.5.2302 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS -- DRUG AND ALCOHOL TESTING AND PREVENTION PROGRAMS (1) Except as otherwise provided in this subchapter, the commission adopts and incorporates by reference the DOT Pipeline Safety Regulations, Drug and Alcohol Testing, 49 CFR 199, including all revisions and amendments enacted by DOT on or before ~~October 31, 2008~~ October 31, 2009. A copy of the referenced CFRs is available from the United States Department of Transportation, Office of

Pipeline Safety, Western Region, 12300 West Dakota Avenue, Suite 110, Lakewood, Colorado 80228, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

AUTH: 69-3-207, MCA  
IMP: 69-3-207, MCA

4. Amendment of ARM 38.5.2202 and 38.5.2302 (annual update) is necessary to allow the PSC to administer the most recent version of federal rules applicable in the PSC's administration of all federal aspects of Montana's pipeline safety programs.

5. Concerned persons may submit their written data, views, or arguments (original and 10 copies) to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601, and must be received no later than November 30, 2009, 5:00 p.m., or may be submitted to the PSC through the PSC's web-based comment form at <http://psc.mt.gov> (go to "Contact Us," "Comment on Proceedings Online," then complete and submit the form) no later than November 30, 2009. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-09.10.1-RUL.")

6. The Montana Consumer Counsel, 616 Helena Avenue, P.O. Box 201703, Helena, Montana 59620-1703, telephone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

7. If persons who are directly affected by the proposed amendment wish to express their data, views, or arguments either 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 to Justin Kraske, Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, or e-mail [jkraske@mt.gov](mailto:jkraske@mt.gov) to be received no later than 5:00 p.m., November 30, 2009.

8. If the PSC receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons 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 directly affected has been determined to be 2 entities based on the 27 entities affected.

9. The PSC maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the PSC. Persons who wish to have their name added to the list shall make a written request which includes the name, e-mail address, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: electric utilities, providers, and suppliers; natural gas utilities, providers, and suppliers; telecommunications utilities and

carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and/or administrative procedures. Such written request may be mailed or delivered to Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Verna Stewart at (406) 444-7618, e-mailed to [vstewart@mt.gov](mailto:vstewart@mt.gov), or may be made by completing a request form at any rules hearing held by the PSC.

10. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register. However, the PSC advises that it will decide any conflict between the official version and the electronic version in favor of the official printed version. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

11. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ Greg Jergeson  
Greg Jergeson, Chairman  
Public Service Commission

/s/ Robin A. McHugh  
Reviewed by Robin A. McHugh

Certified to the Secretary of State, October 14, 2009.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I ) NOTICE OF PUBLIC  
and amendment of ARM 42.9.102, 42.9.103, ) HEARING ON PROPOSED  
42.9.104, 42.9.105, 42.9.106, 42.9.202, ) ADOPTION AND  
42.9.203, 42.9.301, 42.9.401, 42.9.402, and ) AMENDMENT  
42.9.540 relating to income tax )

TO: All Concerned Persons

1. On November 18, 2009, at 1:00 p.m., a public hearing will be held in the Third Floor Reception Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption and amendment of the above-stated rules.

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 no later than 5:00 p.m., November 9, 2009, 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 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

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 COMPOSITE RETURN – NET OPERATING LOSS

(1) Net operating losses pass through to the individual shareholders and partners and are not available for carryover or carryback on the entity return. When these shareholders and partners elect to be included in the composite return, they lose their ability to use their distributive share of the net operating losses.

AUTH: 15-1-201, 15-30-2620, 15-31-501, MCA

IMP: 15-30-3312, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I to clarify the proper treatment of a net operating loss carryover and carryback in regards to shareholders and partners electing to be included in a composite return. The department interprets the statute to limit net operating loss carryover and carryback to the individual shareholders and partners when a composite return election is made. This treatment is consistent with the application of other tax credits as they relate to composite return elections. Taxpayers have not understood the department's interpretation of the statute, and the adoption of this rule will clarify

that requirement.

In addition to the adoption of this rule, the department will provide instructional information in the pass-through tax booklets to further clarify and assist the taxpayers regarding this subject.

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

42.9.102 PASS-THROUGH ENTITY INFORMATION RETURNS (1) Every pass-through entity with Montana source income is subject to the requirement in ~~15-30-1102, 15-30-3302~~, MCA, to file pass-through entity information returns. Most pass-through entities are subject to an annual filing requirement. In general, the status of a pass-through entity is the same as its status for federal income tax purposes. Disregarded entities with Montana source income, whose separate existence is disregarded for federal income tax purposes, are subject to the information return filing requirements in this rule, even though no filing requirement may be imposed in the IRC. Some disregarded entities are required to file information returns only on the happening of an event. A pass-through entity falls into one of three categories:

- (a) partnership;
- (b) S corporation; or
- (c) disregarded entity.

(2) Pass-through entity information returns ~~are to~~ can be filed on paper with the and mailed to:

Montana Department of Revenue,  
P.O. Box ~~5805~~ 8021,  
Helena, Montana 59604-~~5805~~ 8021.

(3) Partnership and S corporation returns can also be filed electronically through the joint federal/state program using approved software vendors.

~~(3)~~(4) On written application, and for good cause shown, the department may grant extensions for the filing requirements provided in this subchapter.

AUTH: 15-1-201, 15-30-305, 15-30-1102, 15-30-2620, 15-31-501, MCA  
IMP: 15-30-142, 15-30-143, 15-30-301, 15-30-1102, 15-30-1111, 15-30-1112,  
15-30-2602, 15-30-2603, 15-30-2616, 15-30-3302, 15-30-3311, 15-30-3312, 15-31-  
101, 15-31-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.9.102 to correct the mailing address and to include information about electronic filing of the returns. The ability to file these returns electronically will assist the taxpayers and the department in the ability to expedite the process.

The statutory amendment in the authority and implementing cites is necessary to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in House Bill 24 (Ch. 147, L. 2009).

42.9.103 LATE-FILE PENALTY FOR PASS-THROUGH ENTITIES (1) through (3)(c) remain the same.

(4) ARM 42.3.101 through ~~42.3.114~~ 42.3.115 and 42.3.120 apply to requests for waiving penalties.

AUTH: 15-1-201, ~~15-30-305, 15-30-1102, 15-30-2620~~, 15-31-501, MCA  
IMP: ~~15-30-142, 15-30-143, 15-30-1102, 15-30-1111, 15-30-1112, 15-30-2602, 15-30-2603, 15-30-3302, 15-30-3311, 15-30-3312, 15-31-101, 15-31-111, MCA~~

REASONABLE NECESSITY: The department is proposing to amend ARM 42.9.103 to include references to all of the penalty waiver rules. The internal reference to the penalty waiver rules previously concluded with ARM 42.3.114 when ARM 42.9.103 was originally adopted in 2002. In 2007, ARM 42.3.115 was adopted and that rule should also be included as an internal reference within this rule.

The statutory amendment in the authority and implementing cites is necessary to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in House Bill 24 (Ch. 147, L. 2009).

42.9.104 CONSENT, COMPOSITE RETURN, OR WITHHOLDING FOR PARTNERS, SHAREHOLDERS, MANAGERS, AND SINGLE-MEMBER LLC MEMBERS WHO ARE NONRESIDENT INDIVIDUALS (1) A partnership and, S corporation, ~~and single-member LLC~~ with one or more nonresident individual owners, during any part of a tax year for which an information return is required by this chapter, must for each nonresident individual:

(a) file a composite return as provided in ARM 42.9.202 and include the nonresident individual in the filing;

(b) obtain from the nonresident individual and file with its information return the pass-through entity owner tax agreement to timely file a Montana individual income tax return, to timely pay tax due, and to be subject to the state's tax collection jurisdiction on Form PT-AGR (Montana Pass-through Entity Owner Agreement); or

(c) remit an amount on the individual's account, determined as provided in ~~(3)~~ (4), with the Pass-through Entity Information Return, ~~Forms~~ forms CLT-4S, or PR-1, ~~or DER-1~~; and

(d) provide ~~Form~~ form PT-WH or Montana Schedule K-1 to the nonresident individual setting forth the amount of withholding remitted to the ~~Department of Revenue~~ department which can be used as an ~~estimated~~ a withholding payment against the tax liability of the nonresident individual upon filing a form 2, Montana income tax return ~~Form 2~~.

(2) A disregarded entity with one or more nonresident individual owners, during any part of a tax year for which an information return is required by this chapter, must for each nonresident individual:

(a) obtain from the nonresident individual and file with its information return the pass-through entity owner tax agreement to timely file a Montana individual income tax return, to timely pay tax due, and to be subject to the state's tax collection jurisdiction on form PT-AGR, Montana Pass-through Entity Owner Agreement; or

(b) remit an amount on the individual's account, determined as provided in



(4), with form DER-1, Disregarded Entity Information Return; and

(c) provide form PT-WH or Montana Schedule K-1 to the nonresident individual setting forth the amount of withholding remitted to the department which can be used as a withholding payment against the tax liability of the nonresident individual upon filing a form 2, Montana income tax return.

~~(2)(3)~~ The pass-through entity is not required to attach new agreements each year, but must attach a currently effective agreement for each new nonresident individual owner.

~~(3)(4)~~ The amount that must be remitted by the due date described in ~~(4)~~ (5) is the highest marginal rate in effect under ~~15-30-103~~, 15-30-2103, MCA, multiplied by the share of Montana source income of the nonresident individual reflected on the pass-through entity's information return.

~~(4)(5)~~ The due date for the remittance described in (1)(c) and (2)(b) is different for tax years beginning before January 1, 2003, than it is for later tax years.

~~(a) For an entity's tax year beginning before January 1, 2003, the due date is the later of 180 days after the due date (including extensions) for filing its information return or the date the department sends it notice of the requirement to withhold and liability for penalties for not remitting the withholding amount.~~

~~(b) For tax years beginning after December 31, 2002, the due date is the due date of the entity's information return.~~

(6) A publicly traded partnership as defined in section 7704(b) of the IRC, that is treated as a partnership for federal purposes, is exempt from the requirements in (1) for tax years beginning after December 31, 2008, if certain information is provided to the department. This information includes the name, address, taxpayer identification number, and Montana source income of each partner that had an interest in the partnership during the tax year. This information must be provided in an electronic format approved by the department.

AUTH: 15-30-305, 15-30-1112, 15-30-2620, MCA

IMP: 15-30-1113, 15-30-3312, 15-30-3313, MCA

**REASONABLE NECESSITY:** The department is proposing to amend ARM 42.9.104 to conform to 15-30-3311 and 15-30-3312, MCA, as part of a general cleanup of the department rules. Section 15-30-3311, MCA, has a broader definition of the owner of a disregarded entity which includes a manager or member who is a nonresident individual. Section 15-30-3312, MCA, does not allow a disregarded entity to file a composite tax return. Therefore, the filing options for disregarded entities need to be described separately.

The department is proposing to add new section (6) to adopt and clarify the provisions enacted by the 2009 Legislature in Senate Bill 260 (Ch. 401, L. 2009). Publicly traded partnerships are exempt from the reporting and remitting requirements in section (1) of the rule for tax years beginning after December 31, 2008, but are subject to the reporting requirements as defined by Senate Bill 260 (Ch. 401, L. 2009) and the new section (6) in ARM 42.9.104.

For reporting and remitting purposes for tax years beginning before December 31, 2008, publicly traded partnerships are governed by the statutes and rules in place for the respective tax year.

The statutory amendment in the authority and implementing cites is necessary to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in House Bill 24 (Ch. 147, L. 2009).

42.9.105 CONSENT, COMPOSITE RETURN, OR WITHHOLDING FOR PARTNERS, SHAREHOLDERS, MANAGERS, AND SINGLE MEMBER LLC MEMBERS THAT ARE FOREIGN C CORPORATIONS

~~(1) A partnership, and S corporation, and disregarded entity with one or more foreign C corporation owners, during any part of a tax year for which an information return is required by this chapter, must for each foreign C corporation:~~

~~(a) file a composite return as provided in ARM 42.9.202 and include the foreign C corporation in the filing;~~

~~(b) obtain from the foreign C corporation and file with its information return the pass-through entity owner tax agreement to timely file a Montana corporate license tax or corporate income tax return, to timely pay tax due, and to be subject to the state's tax collection jurisdiction on the Montana pass-through entity owner tax agreement, Form form PT-AGR, (Montana Pass-through Entity Owner Tax Agreement); or~~

~~(c) remit an amount on the foreign C corporation's account, determined as provided in ~~(3)~~ (4), with the Pass-through Entity's Information Return, Forms CLT-4S, PR-1, or DER-4; and~~

~~(d) provide Form form PT-WH or Montana Schedule K-1 to the foreign C corporation setting forth the amount of withholding remitted to the ~~department of revenue~~ department which can be used as an estimated a withholding payment against the tax liability of the foreign C corporation upon filing a Montana corporation license tax return or income tax return.~~

(2) A disregarded entity with one or more foreign C corporation owners, during any part of a tax year for which an information return is required by this chapter, must for each foreign C corporation:

(a) obtain from the foreign C corporation and file with its information return the pass-through entity owner tax agreement to timely file a Montana corporate license tax or corporate income tax return, to timely pay tax due, and to be subject to the state's tax collection jurisdiction on the Montana pass-through entity owner tax agreement, form PT-AGR, Montana Pass-through Entity Owner Tax Agreement; or

(b) remit an amount on the foreign C corporation's account, determined as provided in (4), with the form DER-1, Disregarded Entity Information Return; and

(c) provide form PT-WH or Montana Schedule K-1 to the foreign C corporation setting forth the amount of withholding remitted to the department which can be used as a withholding payment against the tax liability of the foreign C corporation upon filing a Montana corporation license tax return or income tax return.

~~(2)(3)~~ The pass-through entity is not required to attach new agreements each year, but must attach a currently effective agreement for each new foreign C corporation owner.

~~(3)(4)~~ The amount that must be remitted by the due date described in ~~(4)~~ (5) is the tax rate in effect under 15-31-121, MCA, multiplied by the foreign C corporation's share of Montana source income reflected on the pass-through entity's information return.

~~(4)~~(5) The due date for the remittance described in (1)(c) and (2)(b) is the due date of the entity's information return.

(6) A publicly traded partnership as defined in section 7704(b) of the IRC, that is treated as a partnership for federal purposes, is exempt from the requirements in (1) for tax years beginning after December 31, 2008, if certain information is provided to the department. This information includes the name, address, taxpayer identification number, and Montana source income of each partner that had an interest in the partnership during the tax year. This information must be provided in an electronic format approved by the department.

AUTH: 15-30-305, 15-30-1112, 15-30-2620, MCA  
IMP: 15-30-1113, 15-30-3312, 15-30-3313, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.9.105 to conform to 15-30-3311 and 15-30-3312, MCA, as part of a general cleanup of the rules. Section 15-30-3311, MCA, has a broader definition of the owner of a disregarded entity, which includes a manager or member of a foreign corporation. Section 15-30-3312, MCA, does not allow a disregarded entity to file a composite tax return. Therefore, the filing options for disregarded entities need to be described separately.

The department is proposing to add new section (6) to adopt and clarify the provisions enacted by the 2009 Legislature in Senate Bill 260 (Ch. 401, L. 2009). Publicly traded partnerships are exempt from the reporting and remitting requirements in section (1) of the rule for tax years beginning after December 31, 2008, but are subject to the reporting requirements as defined by Senate Bill 260 (Ch 401, L. 2009) and the new section (6) in ARM 42.9.105.

For reporting and remitting purposes for tax years beginning before December 31, 2008, publicly traded partnerships are governed by the statutes and rules in place for the respective tax year.

The statutory amendment in the authority and implementing cites is necessary to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009).

42.9.106 STATEMENT, COMPOSITE RETURN, OR WITHHOLDING FOR PARTNERS, SHAREHOLDERS, MANAGERS, AND SINGLE MEMBER LLC MEMBERS THAT ARE SECOND-TIER PASS-THROUGH ENTITIES (1) A

~~partnership, and S corporation, and disregarded entity~~ with one or more owners that are also pass-through entities (second-tier pass-through entities), during any part of the tax year for which an information return is required by this chapter, must for each second-tier pass-through entity:

(a) file a composite return as provided in ARM 42.9.202 and include the second-tier pass-through entity in the filing;

(b) obtain from the second-tier pass-through entity and file with its information return the second-tier pass-through entity owner statement on ~~Form form~~ PT-STM, (Montana Second-tier Pass-through Entity Owner Statement) establishing that its Montana source income will be fully accounted for in individual income or corporate license or income tax returns filed with the state; or

(c) remit an amount on the second-tier pass-through entity's account, determined as provided in ~~(3)~~ (4), with the forms CLT-4S or PR-1, Pass-through Entity's Information Return, ~~Forms CLT-4S, PR-1, or DER-1;~~ and

(d) provide ~~Form~~ form PT-WH or Montana Schedule K-1 to the second-tier ~~Pass-through~~ pass-through entity setting forth the amount of withholding remitted to the department of revenue which can be passed through to its owners and used as ~~an estimated~~ a withholding payment against the tax liability of the owner of the second-tier pass-through entity upon filing a Montana individual income, or corporation license tax return.

(2) A disregarded entity with one or more owners that are also pass-through entities (second-tier pass-through entities), during any part of the tax year for which an information return is required by this chapter, must for each second-tier pass-through entity:

(a) obtain from the second-tier pass-through entity and file with its information return the second-tier pass-through entity owner statement on form PT-STM, Montana Second-tier Pass-through Entity Owner Statement. This statement establishes that the owner's Montana source income will be fully accounted for in individual income or corporate license or income tax returns filed with the state; or

(b) remit an amount on the second-tier pass-through entity's account, determined as provided in (4) with the form DER-1, Disregarded Entity Information Return; and

(c) provide form PT-WH or Montana Schedule K-1 to the second-tier pass-through entity setting forth the amount of withholding remitted to the department which can be passed through to its owners and used as a withholding payment against the tax liability of the owner of the second-tier pass-through entity upon filing a Montana individual income or corporation license tax return.

~~(2)(3)~~ The pass-through entity is required to attach new statements, form PT-STM, each year.

~~(3)(4)~~ The amount that must be remitted by the due date described in ~~(4)~~ (5) is the highest marginal rate in effect under ~~15-30-103, 15-30-2103, MCA~~, multiplied by the share of Montana source income of the second-tier pass-through entity reflected on the first-tier pass-through entity's information return.

~~(4)(5)~~ The due date for the remittance described in (1)(c) and (2)(b) is the due date of the first-tier pass-through entity's information return.

(6) A publicly traded partnership as defined in section 7704(b) of the IRC, that is treated as a partnership for federal purposes, is exempt from the requirements in (1) for tax years beginning after December 31, 2008, if certain information is provided to the department. This information includes the name, address, taxpayer identification number, and Montana source income of each partner that had an interest in the partnership during the tax year. This information must be provided in an electronic format approved by the department.

AUTH: 15-30-305, 15-30-1102, 15-30-1112, 15-30-2620, MCA  
IMP: 15-30-1113, 15-30-3302, 15-30-3312, 15-30-3313, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.9.106 to conform to 15-30-3311 and 15-30-3312, MCA, as part of a general

cleanup of the rules and to include the exemption from filing for publicly traded partnerships according to 15-30-3302, MCA. Section 15-30-3311, MCA, has a broader definition of the owner of a disregarded entity, which includes a manager or member, as it applies to second tier pass-through entities. Section 15-30-3312, MCA, does not allow a disregarded entity to file a composite tax return. Therefore, the filing options for disregarded entities need to be described separately.

The department is proposing to add new section (6) to adopt and clarify the provisions enacted by the 2009 Legislature in Senate Bill 260 (Ch. 401, L. 2009). Publicly traded partnerships are exempt from the reporting and remitting requirements in section (1) of the rule for tax years beginning after December 31, 2008 but are subject to the reporting requirements as defined by Senate Bill 260 (Ch. 401, L. 2009) and the new section (6) in ARM 42.9.106.

For reporting and remitting purposes for tax years beginning before December 31, 2008, publicly traded partnerships are governed by the statutes and rules in place for the respective tax year.

The statutory amendment in the authority and implementing cites is necessary to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in House Bill 24 (Ch. 147, L. 2009).

42.9.202 FILING REQUIREMENT (1) ~~The Montana Composite Income Tax Return, Form PT-CR1, composite income tax return~~ is due on or before the due date (including extensions) of the entity's information return provided in ARM 42.9.301 and 42.9.401. Extension of the date for filing the composite return does not extend the date for paying the composite tax, ~~and interest accrues~~ Interest and a late payment penalty accrue from the original due date of the return.

(2) The composite return must include the name, address, social security or federal employer identification number, ownership interest in the entity that is used to calculate the owner's distributive share of income, and composite return liability of each consenting eligible participant included in the filing.

AUTH: 15-30-305, 15-30-1112, 15-30-2620, MCA

IMP: 15-30-105, 15-30-1112, 15-30-2104, 15-30-3312, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.9.202 as part of a general cleanup of the rules. The form mentioned in the rule no longer exists. The rule should provide information about the date that late payment penalty start to accrue. The rule should clarify the description of the ownership interest required to be reported on the return. This clarification of ownership interest reflects the distributive share of items discussed in 15-30-3312, MCA, to calculate the composite tax.

The statutory amendment in the authority and implementing cites is necessary to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in House Bill 24 (Ch. 147, L. 2009).

42.9.203 COMPUTATION OF COMPOSITE TAX (1) remains the same.

(2) The composite return liability of each eligible consenting participant is the product obtained by:

(a) determining the tax that would be imposed, using the rates specified in 15-31-121, MCA, for C corporations, and using the rates specified in 15-30-103, 15-30-2103, MCA, for all other eligible participants, on the sum obtained by subtracting the allowable standard deduction for a single individual, an amount adjusted annually, and one exemption allowance, from the participant's share of the entity's income from all sources as determined for federal income tax purposes; and

(b) multiplying that amount by the ratio of the entity's Montana source income to the entity's income from all sources for federal income tax purposes.

(3) The entity is required to make quarterly estimated tax payments as prescribed by ~~15-30-241~~, 15-30-2512, MCA, computed separately for each participant included in the filing of a composite return.

Example: Assume an S corporation's federal return shows income from all sources of \$60,000, \$20,000 of which is Montana source income, and that an eligible participant's share of the S corporation's federal income is one-fourth, or \$15,000. The eligible participant's composite return liability is \$161:

Participant's share of entity income from all sources	\$15,000
Standard deduction <del>(2003)</del> <u>(2009)</u>	<del>(3,330)</del> <u>(3,500)</u>
Exemption allowance <del>(2003)</del> <u>(2009)</u>	<del>(1,780)</del> <u>(2,110)</u>
	<del>\$ 9,890</del> <u>\$9,390</u>

Assume the tax on the ~~\$9,890~~ \$9,390, using the rates set forth in ~~15-30-103, 15-30-2103, MCA~~, is ~~\$482~~ \$237.

Participant's composite return liability would be ~~\$482~~ \$237 x \$20,000/\$60,000 = \$161 \$79.

AUTH: 15-30-305, 15-30-1112, 15-30-2620, 15-30-3312, MCA  
IMP: 15-30-1112, 15-30-3312, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.9.203 to clarify the composite tax rate for corporate owners and to conform to 15-30-3312, MCA.

The statutory amendment in the authority and implementing cites is necessary to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in House Bill 24 (Ch. 147, L. 2009).

42.9.301 PASS-THROUGH ENTITY INFORMATION RETURNS FOR PARTNERSHIPS (1) Every partnership that has Montana source income must file ~~an Annual a form PR-1, Montana Partnership Information and Composite Tax Return, Form PR-1~~, on or before the 15th day of the fourth month following the close of its annual accounting period.

(2) ~~See ARM 42.15.201 and 42.15.202 to determine the time for filing a short-period return.~~

~~(3) For tax years beginning before January 1, 2003, the partnership must file a Pass-through Entity Extension Form PT-EXT to extend the filing date. For tax years beginning after December 31, 2002, approval~~ Approval of an extension to file the partnership's federal Return of Partnership Income or federal Return of Income for Electing Large Partnerships automatically extends the time for filing the Montana return to the date approved for filing the federal return. A copy of the federal extension form must be attached to the Montana partnership information return in order to receive the Montana extension.

~~(4)~~(3) A partnership required to file a Montana partnership information return is subject to a late-filing penalty if:

(a) the Montana partnership information return is not filed by the due date (including extensions);

(b) a copy of the partnership's federal partnership return ~~is~~ is not filed with the Montana partnership information return; or

(c) a return is filed that does not include all of the following information:

(i) name, address, and social security or federal identification number of each partner;

(ii) the partnership's Montana source income;

(iii) each partner's distributive share of Montana source income, gain, loss, deduction, or credit or items of income, gain, loss, deduction, or credit; and

(iv) each partner's distributive share of income, gain, loss, deduction, or credit, or item of income, gain, loss, deduction, or credit from all sources.

AUTH: 15-1-201, ~~15-30-305, 15-30-1102, 15-30-2620,~~ 15-31-501, MCA  
IMP: ~~15-30-142, 15-30-143, 15-30-1102, 15-30-1111, 15-30-1112, 15-30-~~  
~~2602, 15-30-2603, 15-30-3302, 15-30-3311, 15-31-101, 15-31-111, MCA~~

REASONABLE NECESSITY: The department proposes to amend ARM 42.9.301 as a general cleanup of all rules by correcting the form names referred to in the rule, eliminating references to outdated filing requirements, removing the reference to repealed administrative rules, and clarifying the procedure for requesting a filing extension.

The statutory amendment in the authority and implementing cites is necessary to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in House Bill 24 (Ch. 147, L. 2009).

42.9.401 PASS-THROUGH ENTITY INFORMATION RETURNS FOR S CORPORATIONS (1) Every S corporation that has Montana source income must file ~~an Annual a form CLT-4S, Montana S Corporation and Composite Information Return, Form CLT4-S,~~ on or before the 15th day of the third month following the close of its annual accounting period.

(2) ~~See ARM 42.15.201 and 42.15.202 to determine the time for filing a short-period return.~~

~~(3) For tax years beginning before January 1, 2003, the S corporation must file a Pass-through Entity Extension Form PT-EXT to extend the filing date. For tax years beginning after December 31, 2002, approval~~ Approval of an extension to file the S corporation's federal income tax return for an S corporation automatically

extends the time for filing the Montana return to the date approved for filing the federal return. A copy of the federal extension form must be attached to the Montana S corporation information return in order to receive the Montana extension.

~~(4)~~(3) An S corporation required to file a Montana S corporation information return is subject to a late filing penalty if:

(a) the Montana S corporation information return is not filed by the due date (including extensions);

(b) a copy of the S corporation's federal return is not filed with the Montana S corporation information return; or

(c) a return is filed that does not include the following information:

(i) name, address, and social security or federal identification number of each shareholder;

(ii) the S corporation's Montana source income;

(iii) each shareholder's pro rata share of separately and nonseparately stated Montana source income, gain, loss, deduction, or credit, or item of income, gain, loss, deduction, or credit; and

(iv) each shareholder's pro rata share of separately and nonseparately stated income, gain, loss, deduction, or credit, or item of income, gain, loss, deduction, or credit from all sources.

AUTH: 15-1-201, ~~15-30-305~~, ~~15-30-1102~~, ~~15-30-2620~~, 15-31-501, MCA  
IMP: ~~15-30-142~~, ~~15-30-143~~, ~~15-30-1102~~, ~~15-30-1111~~, ~~15-30-1112~~, ~~15-30-~~  
~~2602~~, ~~15-30-2603~~, ~~15-30-3302~~, ~~15-30-3311~~, ~~15-30-3312~~, 15-31-101, 15-31-111,  
MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.9.401 as a general cleanup of all rules by correcting the form names referred to in the rule, eliminating references to outdated filing requirements, removing the reference to repealed administrative rules, and clarifying the procedure for requesting a filing extension.

The statutory amendment in the authority and implementing cites is necessary to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in House Bill 24 (Ch. 147, L. 2009).

~~42.9.402 S CORPORATION ADDITION TO MONTANA ADJUSTED GROSS~~  
~~INCOME S CORPORATION SHAREHOLDER'S ADDITION TO MONTANA~~  
~~ADJUSTED GROSS INCOME~~ (1) through (1)(c) remains the same.

AUTH: ~~15-30-305~~, ~~15-30-2620~~, MCA  
IMP: ~~15-30-144~~, ~~15-30-2110~~, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.9.402 to correct the title of the rule that refers to a shareholder's income.

The statutory amendment in the authority and implementing cites is necessary to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 legislature in HB 24 (Ch. 147, L. 2009).



42.9.540 PASS-THROUGH ENTITY RETURNS FOR REMIC (1) Every unincorporated Real Estate Mortgage Investment Conduit (REMIC) described in IRC 860D, that has Montana source income, must file a copy of its form 1066, federal Real Estate Mortgage Investment Conduit Income Tax Return, ~~Form 1066~~, on or before the due date (including extensions) for filing its federal return. ~~See ARM 42.15.201 and 42.15.202 to determine the time for filing a short-period return.~~

AUTH: 15-1-201, 15-30-305, 15-30-1102, 15-30-2620, 15-31-501, MCA  
IMP: 15-30-142, 15-30-143, 15-30-1102, 5-30-1111, 15-30-1112, 15-30-2602,  
15-30-2603, 15-30-3302, 15-30-3311, 15-30-3312, 15-31-101, 15-31-111, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.9.540 to correct the form references and remove the reference to administrative rules that have been repealed.

The statutory amendment in the authority and implementing cites is necessary to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in House Bill 24 (Ch. 147, L. 2009).

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 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail [canderson@mt.gov](mailto:canderson@mt.gov) and must be received no later than November 30, 2009.

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 [www.mt.gov/revenue](http://www.mt.gov/revenue), under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." 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 web site accessible at all times, concerned persons should be aware that the web site 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 e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. 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 contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor for Senate Bill 260, Senator Kim Gillan, was contacted on July 14, 2009, by regular mail. The primary bill sponsor for House Bill 24, Representative Penny Morgan, was contacted by electronic mail on October 14, 2009.

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Dan R. Bucks  
DAN R. BUCKS  
Director of Revenue

Certified to Secretary of State October 19, 2009

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I ) NOTICE OF PUBLIC  
and II, amendment of ARM 42.13.101, ) HEARING ON PROPOSED  
42.13.111, 42.13.201, 42.13.301, 42.13.402, ) ADOPTION AND  
42.13.404 relating to regulations for liquor ) AMENDMENT  
licensees )

TO: All Concerned Persons

1. On November 18, 2009, at 10:00 a.m., a public hearing will be held in the Third Floor Reception Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption and amendment of the above-stated rules.

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 no later than 5:00 p.m., November 9, 2009, 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 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

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 BEER LABEL APPROVALS (1) Except as provided in (a), a brewer or beer importer who wishes to sell beer in the state must provide labels for each brand to the department for approval prior to selling or distributing beer within the state. All label changes must be preapproved for both in-state and out-of-state brewers or importers.

(a) A brewer or beer importer of malted beverages who is not subject to the labeling provisions in the regulations of the Tobacco Tax and Trade Bureau (TTB), United States Department of the Treasury as set forth in 27 CFR, as revised on April 1, 2009, is not required to provide the department with labels.

(2) Beer containing more than 8.75% alcohol by volume must be approved by the department prior to being sold or distributed within the state. Beer containing more than 8.75% alcohol by volume must be made by the alcoholic fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted cereal grain, in which the sugars used for fermentation of the alcoholic beverage are at least 75% derived from malted cereal grain measured as a percentage of the total dry weight of the fermentable ingredients.

(3) To obtain approval from the department for all beer or formula changes

that meet the criteria in (2), the following documents are required:

(a) The brewer or beer importer must file form BeerSS, a sworn statement attesting the formula meets the requirement in (2).

(b) If the brewer or beer importer is required by federal law or regulations to file its formula with TTB, the brewer or beer importer is also required to send a copy of the formula filed with the TTB to the department.

(c) At the department's request and sole discretion, brewers or beer importers must file a formula for verification of its compliance with Montana statutes.

(d) All formulas filed with the department are protected by the privacy act and will not be released by the department unless otherwise required by law or by court order.

(4) A cover letter requesting approval of the labels and formulations shall be sent to the Liquor Control Division, P.O. 1712, Helena, MT 59624.

(5) The department will process the request and provide approval or denial in writing within 30 days.

AUTH: 16-1-303, MCA

IMP: 16-1-302, 16-4-105, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I both to reflect the department's current practice of requiring review and approval of labels for beer to be sold within the state and to reflect statutory changes made by the 2009 Legislature within House Bill 400, (Ch. 197, L. 2009). House Bill 400 changed the definition of "beer" to include an alternate class of beer in order to permit the sale of certain specialty crafted beers in the state. The definition of "beer" was revised to a malt beverage containing not more than 8.75% alcohol by volume; or an alcoholic beverage containing not more than 14% alcohol by volume:

(a) that is made by the alcoholic fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted cereal grain; and

(b) in which the sugars used for fermentation of the alcoholic beverage are at least 75% derived from malted cereal grain measured as a percentage of the total dry weight of the fermentable ingredients.

To ensure public health and safety, the new rule outlines how beer with the higher alcohol content will be approved for sale within the state of Montana.

NEW RULE II WINERY – SAMPLES (1) Product samples may only be provided in the sample room as shown on the floor plan, which has been submitted and approved by the department.

(2) A winery located in Montana is not a retail licensee.

(3) A sample room may include a deck or patio, as long as the deck or patio is immediately adjacent to the winery sample room and can only be accessed from the winery. The deck or patio must be enclosed in such a manner as to restrict its access and view from the general public on the street or sidewalk.

AUTH: 16-1-303, MCA

IMP: 16-4-201, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule II to plainly outline to in-state wineries and the public where wine samples are allowed at a licensed winery.

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

42.13.101 COMPLIANCE WITH LAWS AND RULES (1) through (7) remain the same.

(8) Aggravating circumstances may result in the imposition of maximum monetary penalties, maximum suspension time or revocation, and will not bind the department to the progressive penalty framework indicated in (3) or (13).

(9) through (11) remain the same.

(12) For sale to a minor violations, the progressive penalty schedule in (3) shall apply except in the case of a licensee who meets the criteria described in this section, in which case the penalty schedule in (13) shall apply. To qualify for the penalty schedule in (13), a licensee must meet the following criteria:

(a) a licensee must, on at least an annual basis, provide responsible server training, as defined in ARM 42.13.111, to all employees and owners of the license who personally sell or serve alcoholic beverages;

(b) all new employees must be given responsible server training within 30 days of the date of hire; and

(c) any licensee or specific employee of the licensee who sold, served, or gave an alcoholic beverage to a person under the age of 21 years must have successfully completed responsible server training within the 12 months preceding the date of the violation, and the licensee must provide documentary evidence of completion of the training to the department; or

(d) if an employee commits a sale to a minor violation within 30 days of hire, the licensee must provide the department records evidencing the date of the employee's hire and demonstrating the licensee meets the requirements in (12)(a) and (b).

(13) For sale to minor violations only, for licensees who meet the criteria described in (12), the following penalty chart will be used for multiple violations within any three-year period in place of the chart at (3):

<u>1st offense</u>	<u>2nd offense</u>	<u>3rd offense</u>	<u>4th offense</u>	<u>5th offense</u>	<u>6th offense</u>
<u>Written</u>	<u>\$100</u>	<u>\$250</u>	<u>\$750</u>	<u>\$1,500</u>	<u>Revocation</u>
<u>Reprimand</u>				<u>and/or 2-day</u>	
				<u>suspension</u>	

(14) The department may verify employee responsible server training documentation supplied by the licensee with the records of the server training organization.

(a) A qualified server training program must be a substantive program to include subjects dealing with Montana alcoholic beverages laws regarding the sale of alcoholic beverages for on-premises and for off-premises consumption.

preventing the sale of alcoholic beverages and methods of recognizing and dealing with customers less than 21 years of age.

(b) To obtain preapproval, a full copy of the curriculum including any training material such as videos, handouts, and testing material must be provided to the department. The department will review and provide approval in writing within 45 days.

(15) The penalty schedule in (13) does not apply to any violations except for a sale to a minor violation. If a licensee commits other violations in conjunction with a sale to a minor violation or during the same three-year period, the penalty schedule in (3) shall apply to the other violations, based on the order in which the violations occurred.

(a) For example, if a licensee meeting the criteria of (12) commits an open after hours violation in January, then a sale to a minor violation in March, then a denial of right to inspect violation in May, the penalty schedules would apply as follows:

(i) the January violation would be a first violation, with a \$150 penalty, based on the schedule in (3);

(ii) the March violation would be a second violation, with a \$100 penalty, based on the schedule in (13); and

(iii) the May violation would be a third violation, with a \$1,000 penalty and/or a 12-day suspension, based on the schedule in (3).

(16) A licensee must meet the criteria in (12) at the time of a sale to a minor violation in order for the schedule in (13) to apply. If the licensee does not meet the criteria at the time of a particular sale to minor violation, the schedule in (3) applies to that violation.

(a) For example, if a licensee meets the criteria in (12) at the time of a sale to a minor violation in October, but subsequently commits a second sale to a minor violation in December while not meeting the criteria of (12), the penalty schedules would apply as follows:

(i) the October violation would be a first violation, with a written reprimand, based on the schedule in (13); and

(ii) the December violation would be a second violation, with a \$1,000 penalty, based on the schedule in (3).

(17) At the time of a sale to a minor violation, licensees are responsible for notifying the department in writing when the licensee or specific employee meets the criteria of (12)(b) or (d) and are encouraged to provide such notice as soon as possible after the licensee or licensee's employee is issued a citation for a sale to a minor. If licensee demonstrates to the department the licensee or specific employee meets the requirements of (12)(b) or (d), the department will issue a violation notice based on the penalty schedule in (13).

(18) For any violations occurring on or after July 1, 2011, the progressive penalty schedule in (3) shall apply. The provisions of (12) through (17) do not apply in the case of any violations occurring on or after July 1, 2011.

AUTH: 16-1-303, MCA

IMP: 16-3-301, 16-4-105, 16-4-406, 16-6-305, 16-6-314, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.13.101 to reflect a compromise rule based on the proposed HB 211 introduced but not passed by the 2009 Legislature. Although House Bill 211 was not passed during the session, the department worked with interested licensees to provide a more flexible way to implement volunteer server training with reduced penalties for the licensees if they provide responsible alcohol seller and server training to all employees within 30 days of hire and again to all employees on an annual basis. The proposed rule establishes a period for testing this new approach to reducing alcohol sales to minors with the test period extending through June 30, 2011.

Based on a survey conducted by the state of Utah, Montana's penalties to licensees for first violation sales to minors are already among the most lenient in the nation.

The department will analyze the benefits and/or impacts of sections (12) through (17) on sales to minors within the state. The rule as amended provides an opportunity for the department to determine if the training works to reduce underage sales. The department will be working with interested parties to determine the most effective way to evaluate the impact of this revision to the rules on sales to minors and other issues related to compliance with the alcohol beverage laws. At the end of the test period, based on the results, the department will determine whether to extend and/or amend the rules.

42.13.111 DEFINITIONS The following definitions apply to this subchapter:

(1) through (4) remain the same.

(5) "Patio/Deck" means a specific area designated on a floor plan which shall be completely enclosed by at least a 3-foot fence or wall, immediately adjacent to and only accessible from the licensed premises.

(5) through (7) remain the same but are renumbered (6) through (8).

(9) "Responsible server training" means any server training program conducted by the department or the department designee, or a qualified server training program that has been preapproved in writing by the department.

(10) "Sale to a minor violation" means a violation consisting of the unlawful sale, service, or delivery of an alcoholic beverage to a person under the age of 21.

(8) remains the same but is renumbered (11).

AUTH: 16-1-303, 16-1-424, MCA

IMP: 16-1-424, 16-3-302, 16-3-311, 16-4-312, 16-4-404, 16-6-104, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.13.111 to add definitions to this chapter to reflect rule additions and amendments. The department is proposing to add the definition of patio/deck to define what is considered a patio and deck and add definitions for "responsible server training" and "sale to a minor violation" due to the new amendments made to ARM 42.13.101.

42.13.201 LABELING REQUIREMENTS (1) remains the same.

(2) Alcohol content by weight volume must be noted on the labels of all packaged malt beverages sold or manufactured in Montana, ~~except this rule shall not apply to beer that contains not more than 7% alcohol by weight~~ with an alcohol

content of more than 8.75% alcohol by volume.

AUTH: 16-1-303, MCA

IMP: 16-1-102, 16-1-106, 16-1-303, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.13.201 to reflect statutory change made by the 2009 Legislature in House Bill 400 (Ch. 197, L. 2009). House Bill 400 (Ch. 197, L. 2009), changed the definition of "beer" to allow an alternate class of beer of specialty crafted beers in the state. To clearly provide adult consumers with information on the alcohol volume of "beer", the amended rule now requires all packaged malt beverages with alcohol content of more than 8.75% to be noted on the labels of packaged malt beverage sold or manufactured in Montana. This amendment is for public health and safety.

42.13.301 STORAGE OF ALCOHOLIC BEVERAGES (1) remains the same.

(2) Only those alcoholic beverages for which the premises are specifically licensed may be received, accepted, or stored. All alcoholic beverages must be purchased through an agency liquor store, ~~or through a licensed~~ beer wholesaler, table wine distributor, domestic winery, or domestic brewery.

AUTH: 16-1-303, MCA

IMP: 16-1-302, 16-3-201, 16-3-301, 16-6-301, 16-6-303, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.13.301 to remove the word "domestic" and add terminology that is consistent with the statutory language.

42.13.402 WINE DISTRIBUTOR'S MONTHLY REPORTS (1) Each table wine distributor shall file with the department a table wine distributor's monthly tax report (~~Form AA-50~~) return Form WIT, as required by ~~16-3-404~~ 16-3-411, MCA, ~~showing the number of liters sold during the previous month.~~ The form must be filed whether or not the distributor has sold any wine during a month. ~~The form may be obtained from the Department of Revenue, P.O. Box 5805, Helena, Montana 59604-5805.~~

(2) ~~The form must be accompanied by payment of the tax due pursuant to 16-1-411, MCA.~~ Each table wine distributor must file the return and pay tax on or before the 15th day of each month for wine sold in the previous month.

(3) Failure to file the ~~form~~ return or pay the table wine tax is sufficient cause for the assessment of penalties and interest in accordance with 15-1-216 and 16-1-411, MCA, and other penalties provided in 16-4-406, MCA.

AUTH: 16-1-303, MCA

IMP: 15-1-216, 16-1-411, 16-3-404, 16-4-406, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.13.402 to correct form titles, remove an incorrect address and bring the language



in line with the applicable statutory language. The amendments also coincide with current department practice and the use of return forms.

42.13.404 WINE REPORTING REQUIREMENTS (1) Each winery located outside of Montana shall complete and file with the department monthly reports; on forms provided by the department, with the following information:

(a) A winery that sells wine directly to a retailer located in Montana must pay the tax due, pursuant to 16-3-411, MCA, on or before the 15th of each month for wine sold in the previous month and complete Montana tax return Form WIT; and

(b) A winery that sells wine directly to a retailer shall report on or before the 15th of each month the amount of wine sold directly to retailers in the previous month on Form WIT-3; ~~or~~

~~(c)~~(2) Each retailer that purchases wine from an out-of-state winery shall report the amount of wine purchased on Form WIT-2.

(2) and (3) remain the same but are renumbered (3) and (4).

AUTH: 16-1-303, MCA

IMP: 16-3-411, 16-4-107, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.13.404 to make it clearer that the winery must "complete" as well as file monthly reports with the department. The reports must be provided to the department on forms provided to the winery by the department.

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 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail [canderson@mt.gov](mailto:canderson@mt.gov) and must be received no later than November 30, 2009.

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 [www.mt.gov/revenue](http://www.mt.gov/revenue), under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." 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 web site accessible at all times, concerned persons should be aware that the web site 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 e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. 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 contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on July 28, 2009, by regular mail.

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Dan R. Bucks  
DAN R. BUCKS  
Director of Revenue

Certified to Secretary of State October 19, 2009

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )  
42.25.501, 42.25.511, 42.25.512, 42.25.515, )  
42.25.1701, 42.25.1706, 42.25.1707, )  
42.25.1708 and repeal of ARM 42.25.1702, )  
42.25.1703, 42.25.1704 relating to coal )  
severance )

NOTICE OF PUBLIC  
HEARING ON PROPOSED  
AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On November 18, 2009, at 3:00 p.m., a public hearing will be held in the Third Floor Reception Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment and repeal of the above-stated rules.

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 no later than 5:00 p.m., November 9, 2009, 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 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

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

42.25.501 DEFINITIONS The following definitions apply to this subchapter:

(1) "Agreement not at arm's length" ~~is defined as~~ means an agreement between two parties when there are business relationships other than the agreement between the buyer and seller which in the opinion of the department have influenced the sales price.

(2) "Contract revenue" ~~is defined~~ means as the total receipts or accruals from all sales of coal during the reporting period.

(3) ~~"Contract sales price" is defined as FOB mine price less production taxes included by the producer in the sales price to pay taxes on production or a price imputed by the department of revenue according to ARM 42.25.512.~~ "Final destination" means the location where the coal is utilized by the purchaser in any industrial, commercial, or energy conversion process.

(4) "FOB mine price" ~~is defined as~~ means contract revenue exclusive of all shipping expenses or any other expense incurred by the producer after the coal has been crushed to size and loaded prepared for shipment.

(5) "Market value" ~~is defined as~~ means an amount determined by multiplying "FOB mine price" of a similar ton of coal, as fixed on the market place, by the

number of tons of coal sold.

(6) ~~"Production taxes" is defined as the resource indemnity trust tax, severance tax, and the gross proceeds tax.~~ "Third party intermediary" means any individual, corporation, partnership, subsidiary, or other entity which purchases coal on behalf of, or for the benefit of, another party. Any coal purchased by a third party intermediary is considered to be a purchase by a broker and not a purchaser and is not considered the contract sales price for tax purposes.

AUTH: 15-23-108, MCA

IMP: Title 15, Ch. 23, part 7, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.25.501 to link commonly used terms defined in the gross proceeds rules and the severance tax rules. Specifically, the changes in definitions 1, 2, 5, and 6 are necessary to bring the rule into conformance with the style of other definitions rules adopted by the department.

The definition of contract sales price and production taxes are eliminated because the statute has definitions for both. The definition of final destination is inserted to further clarify what the department means by this term. The definition of third party intermediary is added to define the term and clarify that a sale to an intermediary does not establish the contract sales price for tax purposes of the coal.

42.25.511 DETERMINATION OF CONTRACT SALES PRICE (1) The department shall ~~consider the date~~ determine the contract sales price of the coal immediately after the point the coal is loaded for final transportation prepared for shipment to the purchaser, as the time for determining the contract sales price of the coal as defined in 15-35-102, MCA. To arrive at FOB mine price any shipping or any other expenses incurred after the coal is prepared for shipment may be excluded from the contract revenue. The contract sales price will be determined by deducting from FOB mine price or a value imputed by the department:

- (a) the allowance for federal, state, and Indian royalties;
  - ~~(b) the processing allowance resulting from imputing value according to ARM 42.25.515; and~~
  - ~~(c)~~(b) the amounts charged to the purchaser to pay taxes on production.
- (2) and (3) remain the same.

AUTH: 15-23-108, MCA

IMP: 15-23-701, 15-23-702, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.25.511 to further define the point where the contract sales price as defined in 15-35-102, MCA, is determined.

The 2009 Legislature enacted Senate Bill 509 (Ch. 433, L. 2009), which clearly defined the term "prepared for shipment". The term "prepared for shipment" is a term used in the definition of a contract sales price and although the statutory change defines the point at which the contract sales price is determined, the department decided to adopt the same language as found in 15-35-102, MCA into

ARM 42.25.511 to eliminate any risk of confusion if different terms were used.

42.25.512 IMPUTED VALUATION (1) ~~When coal is sold or used under the following circumstances, the~~ The department may impute the value when the coal is sold or used under the following circumstances:

(a) the operator of a coal mine is using the produced coal in an energy conversion or other manufacturing process; or

(b) a person sells coal under a contract which is not an arm's length agreement and the transaction price is less than market value;

~~(c) the person neglects or refuses to file a statement.~~

(2) remains the same.

~~(3) The department will not impute a value according to (1) (b) unless the price differential is more than 10 cents/ton or 1% of FOB mine price, whichever is greater.~~

~~(4) The department will maintain the confidentiality of all comparable contract data and will use contract data provided by the producer in question whenever possible.~~

AUTH: 15-23-108, MCA

IMP: 15-23-701, 15-23-702, 15-35-107, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.25.512(1) to bring the rule into conformance with the style of other rules adopted by the department.

The department is further amending the rule to remove the language in (1)(c) to conform to the changes made by the 2009 Legislature when it enacted Senate Bill 509 (Ch. 433, L. 2009), which struck this language from the law.

The amendment to (3) is necessary because the department may consider a price differential of less than \$.10 per ton or one percent of FOB mine price as a material difference.

In addition, the department feels in order to provide equitable treatment to the taxpayers a material difference should be reconciled and adjusted.

42.25.515 IMPUTED VALUATION FOR REFINED COAL (1) For purposes of the coal gross proceeds tax, the department may, ~~or shall at the request of the taxpayer,~~ impute the value of coal ~~which has been refined by drying, cleaning, or other processing designed to improve the quality of the coal. Refined or refining does not include transportation of the coal from the point of extraction to the point of shipment or to the boiler, nor any normal preparation process leading to shipment of coal. The imputed value will represent the value of the coal when the coal is prepared for shipment.~~

~~(2) The imputed value of refined coal will approximate market value FOB mine of similar type coal after primary and secondary crushing where drying, cleaning, or other further processing has not occurred. The FOB mine price of similar type coal means the price of such coal as established by the market place at the time the sale for the refined coal occurs. The price will reflect the selling price of coal with like characteristics within the region, as determined by spot sales or other~~

methods which reliably reflect the market value of unrefined coal at the time the sale of refined coal occurs.

~~(a) Example: Refined coal is sold for \$12/ton. The FOB price of similar type coal where drying, cleaning, or further processing has not occurred is \$10/ton. The imputed value is \$10/ton.~~

AUTH: 15-35-111, 15-35-122, MCA

IMP: 15-35-107, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.25.515 to limit the instances when an imputed value can be used for the coal value. The statute is clear that the value of the coal should be the contract sales price whenever it is possible to be determined. The amendments also link the rule language to the statutory changes enacted by Senate Bill 509 (Ch. 433, L. 2009).

The department is striking the language in the rule that is not consistent to the language adopted by the Legislature in Senate Bill 509 (Ch. 433, L. 2009). The statutory changes enacted by SB 509 establish a contract sales price after the point of prepared for shipment and the present language in the rule was inconsistent with this statutory change. Additionally, the implementing cite is being corrected.

42.25.1701 DEFINITIONS The following definitions apply to this subchapter:

(1) "Agreement not at arm's length" means an agreement between two parties when there are business relationships other than the agreement between the buyer and seller which in the opinion of the department have influenced the sales price.

(2) "Contract revenue" means the total receipts or accruals from all sales of coal during the reporting period.

(3) "Final destination" means the location where the coal is utilized by the purchaser in any industrial, commercial, or energy conversion process.

(4) "FOB mine price" means contract revenue exclusive of all shipping expenses or any other expense incurred by the producer after the coal has been prepared for shipment.

(5) "Market value" is defined as an amount determined by multiplying "FOB mine price" of a similar ton of coal, as fixed on the market place, by the number of tons of coal sold.

~~(4)(6) "Third party intermediary" means any individual, corporation, partnership, subsidiary, or other entity which purchases coal on behalf of, or for the benefit of, another party. Any coal purchased by a third party intermediary is considered to be a purchase by a broker and not a qualified purchaser and is not considered the contract sales price for tax purposes. In determining eligibility for the tax credit, if a qualified purchaser purchases coal from a third party intermediary, that purchase will be included in either the base or current consumption level depending when that purchase occurred. Any partner or joint owner of a coal using facility who purchases coal on behalf of, or for the benefit of, another partner or joint owner of that facility is included in the definition of a third party intermediary. However, this only applies to the partner or joint owner who purchased coal on behalf of, or for the benefit of, another partner or joint owner.~~

AUTH: 15-35-122, MCA

IMP: 15-35-103, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.25.1701 in order to eliminate redundant language, define commonly used terms, and delete old language regarding a tax credit that is no longer available.

Specifically, the amendments to the rule benefit the taxpayers by linking the terms used in the severance tax rules clearly and consistently with the terms used in the gross proceeds tax rules.

42.25.1706 IMPUTED VALUATION FOR REFINED COAL (1) For purposes of the coal severance tax, the department may, ~~or shall at the request of the taxpayer,~~ impute the value of coal ~~which has been refined by drying, cleaning, or other processing designed to improve the quality of the coal. Refined or refining does not include transportation of the coal from the point of extraction to the point of shipment or to the boiler, nor any normal preparation process leading to shipment of coal.~~

(2) ~~The imputed value of refined coal will approximate market value FOB mine of similar type coal after primary and secondary crushing where drying, cleaning, or other further processing has not occurred. The FOB mine price of similar type coal is the price of such coal as established by the market price reflecting the selling price of coal with like characteristics within the region, as determined by spot sales or other methods reflecting the market value of unrefined coal at the time the sale of refined coal occurs.~~ will represent the value of the coal when the coal is prepared for shipment.

(a) ~~Example: Refined coal is sold for \$12/ton. The FOB price of similar type coal where drying, cleaning, or further processing has not occurred is \$10/ton. The imputed value is \$10/ton.~~

AUTH: 15-35-122, MCA

IMP: 15-35-107, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.25.1706 to limit the instances when an imputed value can be used for the coal value. The statute is clear that the value of the coal should be the contract sales price whenever it is possible. The amendments further link the language more closely with the language contained in the statutes after the enactment of Senate Bill 509 (Ch. 433, L. 2009).

The department is striking the language in the rule that is not consistent to the language adopted by the Legislature in Senate Bill 509 (Ch. 433, L. 2009). The statutory changes enacted by Senate Bill 509 (Ch. 433, L. 2009), establish a contract sales price after the point of prepared for shipment. In addition, the present language in the rule was inconsistent with the statutory changes made by this bill.

42.25.1707 DETERMINATION OF CONTRACT SALE PRICE (1) The department shall determine the contract sales price of the coal immediately after the

~~point consider the date the coal is prepared for shipment loaded for final transportation to the purchaser, as defined in 15-35-102, MCA as the time for determining the contract sales price of the coal.~~ To arrive at FOB mine price any shipping or any other expenses incurred after the coal is prepared for shipment may be excluded from the contract revenue. The contract sales price will be determined by deducting from FOB mine price or a value imputed by the department:

- (a) the allowance for federal, state, and Indian royalties; and
  - (b) ~~the processing allowance resulting from imputing value according to ARM 42.25.515; and~~
  - (~~e~~) the amounts charged to the purchaser to pay taxes on production.
- (2) and (3) remain the same.

AUTH: 15-35-122, MCA

IMP: 15-35-103, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.25.1707 to further define the point where the contract sales price as defined in 15-35-102, MCA is determined.

The 2009 Legislature enacted Senate Bill 509 (Ch. 433, L. 2009), which clearly defined the term "prepared for shipment". The term "prepared for shipment" is a term used in the definition of a contract sales price and although the statutory change very clearly defines the point in which the contract sales price is determined, the department decided to adopt the same language as found in 15-35-102, MCA, into ARM 42.25.1707 to eliminate any risk of confusion if different terms were used.

42.25.1708 IMPUTED VALUATION (1) The department may impute the value when coal is sold or used under the following circumstances:

- (a) the operator of a coal mine is using the produced coal in an energy conversion or other manufacturing process; or
- (b) a person sells coal under a contract that is not an arm's length agreement, and the transaction price is less than market value; ~~or~~
- (~~c~~) ~~the person neglects or refuses to file a statement.~~

(2) ~~Market value means the FOB mine price of a similar ton of coal, as established by the marketplace.~~ The department will consider market value to mean the FOB mine price of a similar ton of coal, as established by the marketplace. In determining said FOB mine prices, the department will consider the contract term, tonnage, quality, Btu rating, and any other appropriate comparability criteria.

(3) The department will ~~not impute a value according to (1) (b) unless the price differential is more than 10 cents/ton or 1% of FOB mine price, whichever is higher~~ maintain the confidentiality of all comparable contract data and will use contract data provided by the producer in question whenever possible.

(4) ~~Contract data provided by the producer in question will be used whenever possible.~~

AUTH: 15-35-122, MCA

IMP: 15-35-107, MCA



REASONABLE NECESSITY: The department is proposing to amend ARM 42.25.1708 to remove the language in (1)(c) to conform to the changes made by the 2009 Legislature when it enacted Senate Bill 509 (Ch. 433, L. 2009), when it struck this language in the law.

The department is further amending (2) to assist the taxpayers by bringing the rule into conformance with the style of other rules adopted by the department.

The amendment to (3) is necessary because the department may consider a price differential of less than \$.10 per ton or one percent of FOB mine price as a material difference. In addition, the department feels in order to provide equitable treatment to the taxpayers a material difference should be reconciled and adjusted.

The department is further amending the rule in (3) to assure the taxpayer that if they submit contract data to the department, it will be held in confidence.

4. The department proposes to repeal the following rules:

42.25.1702 BASE CONSUMPTION LEVEL DETERMINATION – JOINTLY OWNED FACILITIES which can be found on page 42-2579 of the Administrative Rules of Montana.

AUTH: 15-35-122, MCA

IMP: 15-35-102, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.25.1702 because the language relates to a nonexisting credit.

42.25.1703 BASE CONSUMPTION LEVEL – SALE OF INTEREST which can be found on page 42-2579 of the Administrative Rules of Montana.

AUTH: 15-35-122, MCA

IMP: 15-35-102, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.25.1703 because the language relates to a nonexisting credit.

42.25.1704 ELIGIBILITY FOR TAX CREDIT which can be found on page 42-2580 of the Administrative Rules of Montana.

AUTH: 15-35-122, MCA

IMP: 15-35-202, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.25.1704 because the language relates to a nonexisting credit.

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 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696;

or e-mail canderson@mt.gov and must be received no later than November 30, 2009.

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 [www.mt.gov/revenue](http://www.mt.gov/revenue), under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." 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 web site accessible at all times, concerned persons should be aware that the web site 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 e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. 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 contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor, Senator Kelly Gebhardt, was contacted on June 23, 2009, by regular mail.

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Dan R. Bucks  
DAN R. BUCKS  
Director of Revenue

Certified to Secretary of State October 19, 2009

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )  
42.17.101, 42.17.103, 42.17.105, 42.17.111, )  
42.17.113, 42.17.114, 42.17.120, 42.17.122, )  
42.17.131, 42.17.133, 42.17.134, 42.17.135, )  
42.17.304, 42.17.305, 42.17.306, 42.17.308, )  
42.17.309, 42.17.310, 42.17.311, 42.17.312, )  
42.17.313, 42.17.314, 42.17.315, 42.17.316, )  
42.17.317, 42.17.601, 42.17.602, 42.17.603, )  
42.17.604, 42.17.605 and repeal of ARM )  
42.17.136, 42.17.137, and 42.17.138 relating )  
to withholding taxes )

NOTICE OF PUBLIC  
HEARING ON PROPOSED  
AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On November 24, 2009, at 1:00 p.m., a public hearing will be held in the Third Floor Reception Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment and repeal of the above-stated rules.

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 no later than 5:00 p.m., November 9, 2009, 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 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

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

42.17.101 DEFINITIONS The following terms pertain to this chapter:

(1) through (10) remain the same.

(11) "Reporting forms" includes, but is not limited to:

(a) form M-1 - payment coupon is the Montana Withholding Tax Payment Form;

(b) form MW-3 - State Income Tax Withholding Reconciliation and Transmittal Document (W-2) is the Montana Annual Wage Withholding Tax Reconciliation; and

(c) federal form W-2 is the federal Wage and Tax Statement wage and tax statement.

(12) "Sole proprietor," ~~as used in 15-30-256, MCA,~~ includes the individual owner of a single-member limited liability company that is disregarded for income tax

purposes and may include a husband and wife partnership for the purpose of withholding.

(13) remains the same.

AUTH: 15-30-272, 15-30-305, 15-30-2547, 15-30-2620, MCA

IMP: 15-30-201, 15-30-256, 15-30-263, 15-30-2501, 15-30-2538, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.101 to update form titles in the rule to match the titles of the forms. The department is striking a reference to a statute in the definition of "sole proprietor" because that statute was repealed.

The amendment to the authority and implementing statutes is necessary because the 2009 Legislature enacted House Bill 24 (Ch. 147, L. 2009), which recodified the existing statutes in Title 15, chapter 30 of the Montana Code Annotated.

42.17.103 OTHER PAYMENTS (1) through (6)(b) remain the same.

AUTH: 15-30-305, 15-30-2620, MCA

IMP: 15-30-201, 15-30-2501, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.103 to update the authority and implementing statutes because the 2009 Legislature enacted House Bill 24 (Ch. 147, L. 2009), which recodified the existing statutes in Title 15, chapter 30 of the Montana Code Annotated.

42.17.105 COMPUTATION OF WITHHOLDING (1) Employers shall calculate the state income tax amount to withhold according to the "Montana State Wage Withholding Tax Tables," provided by the department.

(2) The referenced tax tables in (1) may be obtained by:

(a) telephoning:

Department of Revenue  
Customer Service Center  
(406) 444-6900 (Helena)  
(866) 859-2254 (toll free);

(b) writing to:

Montana Department of Revenue  
P.O. Box 5835  
Helena, Montana 59604-5835; or

(c) accessing:

the department's web site: www.mt.gov; revenue.mt.gov.

AUTH: 15-30-305, 15-30-2620, MCA

IMP: 15-30-103, 15-30-202, 15-30-2103, 15-30-2502, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.105 to update form titles and provide additional avenues for taxpayers to

contact the department and correct the address for the web site for the department.

The amendment to the authority and implementing statutes is necessary because the 2009 Legislature enacted House Bill 24 (Ch. 147, L. 2009), which recodified the existing statutes in Title 15, chapter 30 of the Montana Code Annotated.

42.17.111 WHO MUST WITHHOLD MONTANA STATE INCOME TAX AND WHO IS SUBJECT TO WITHHOLDING (1) through (5) remain the same.

(6) Wages paid to an enrolled member of a Native American tribe are subject to withholding except as ~~provided in this rule~~:

(a) ~~Wages are exempt from withholding~~ When:

(i) the employee is an enrolled tribal member of the governing tribe of the reservation on which the enrolled tribal member works and resides;

(ii) (i) the wages earned by the employee are derived from reservation sources; and

(iii) (ii) the employee submits a statement to the employer attesting that the employee resides on his or her reservation, together with a certificate of enrollment.

(b) When wages are derived from both reservation sources and nonreservation sources, only wages derived from reservation sources are exempt from withholding, provided the employee meets all the criteria in (6)(a).

(c) When an employee does not reside on his or her reservation for an entire pay period, only wages earned while the employee was residing on the reservation are exempt from taxation, provided the employee meets all the criteria in (6)(a).

(7) Wages paid to a resident of North Dakota for personal services rendered within Montana are not subject to withholding provided the employee has filed a form NR-2, certification of North Dakota residency, ~~(form NR-2)~~ in accordance with ARM 42.17.134.

AUTH: ~~15-30-305~~, 15-30-2620, MCA

IMP: ~~15-30-202~~, 15-30-2502, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.111 to change the format of the rule in order to make the rule consistent with other rules in ARM Title 42.

The amendment to the authority and implementing statutes is necessary because the 2009 Legislature enacted House Bill 24 (Ch. 147, L. 2009), which recodified the existing statutes in Title 15, chapter 30 of the Montana Code Annotated.

42.17.113 PAYMENTS (1) Failure to pay withheld amounts within the time provided, and the use thereof by the employer in forwarding its own business, is considered to be an illegal conversion of trust money. The employer will not regard withheld wages as being equivalent to its own personal income tax indebtedness. Penalties provided in 15-1-216 and ~~15-30-324~~ 15-30-2641, MCA, apply to any violation of the requirement to collect, truthfully account for, and pay amounts required to be deducted from employee wages.

(2) remains the same.

(3) Once an employer becomes subject to withholding tax as provided in ~~15-30-204~~ 15-30-2501, MCA, the employer must continue to withhold, and report, income tax from the employees' wages for all subsequent calendar years.

AUTH: 15-30-305, 15-30-2620, MCA

IMP: 15-1-208, 15-30-204, 15-30-210, 15-30-2504, 15-30-2510, 15-30-2641, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.113 to update the statutes referenced in the rule and the authority and implementing cites because the 2009 Legislature enacted House Bill 24 (Ch. 147, L. 2009), which recodified the existing statutes in Title 15, chapter 30 of the Montana Code Annotated.

42.17.114 ANNUAL RECONCILIATION AND WAGE STATEMENTS (1) On or before February 28 of each year, every employer must file with the department a ~~Reconciliation and Transmittal Document Form MW3~~ form MW-3, Montana Annual Wage Withholding Tax Reconciliation. Form MW-3 must be accompanied by the original copies of each employee's earnings statements on federal form W-2.

(a) Employee's earning statements, ~~federal form~~ and the federal form W-2, must be prepared for each employee, regardless of whether or not withholding taxes were actually withheld from the employee's wages. The state wages and state income tax withheld must be shown in the ~~area provided~~ boxes labeled for state information.

(b) An original copy of the federal form W-2 must be filed with the ~~Employer's Annual Reconciliation Statement form MW-3~~, and two copies must be furnished to the employee not later than January 31 of each year.

(c) Montana does not provide substitute-earning statement forms or allow earning statements which do not conform to federal form W-2 requirements.

(2) remains the same.

(3) Computer-generated federal form W-2 equivalents in printout form may be allowed by the department in lieu of W-2s or electronic media.

(4) and (5) remain the same.

AUTH: 15-30-305, 15-30-2620, MCA

IMP: 15-30-206, 15-30-207, 15-30-2506, 15-30-2507, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.114 to update form titles so that they match the current form titles the taxpayers are using.

The amendment to the authority and implementing statutes is necessary because the 2009 Legislature enacted House Bill 24 (Ch. 147, L. 2009), which recodified the existing statutes in Title 15, chapter 30 of the Montana Code Annotated.

42.17.120 EMPLOYER'S FAILURE TO WITHHOLD TAX FROM WAGES

(1) If an employer fails to deduct and withhold the tax from wages as required

under ~~15-30-202~~ 15-30-2502, MCA, and thereafter the income tax against which the withholdings may be credited is paid, the amount required to be deducted and withheld shall not be collected from the employer. However, Such such payment does not, ~~however, operate to~~ relieve the employer from liability for penalties, interest, or additions to the tax applicable because of such failure to deduct and withhold. The employer will not be relieved under this rule from their liability for payment of the amounts required to be withheld unless they can show that the income tax against which the required withholdings may be credited has been paid.

AUTH: 15-30-305, 15-30-2620, MCA  
IMP: 15-30-203, 15-30-2502, 15-30-2503, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.120 to clarify that the rule applies to taxes that are withheld from an employee's wages and to correct the grammatical form of one sentence.

The department is further amending the rule to correct the internal statutory references and the authority and implementing cites because the 2009 Legislature enacted House Bill 24 (Ch. 147, L. 2009), which recodified the existing statutes in Title 15, chapter 30 of the Montana Code Annotated.

42.17.122 RETURNS OF INFORMATION AGENTS (1) ~~Agent Information Returns~~ Federal form 1099s, U.S. Information Returns are required to be filed for certain dividends, interest in excess of \$10, royalties, payments to retirement plans, rents, salaries, wages, prizes, awards, annuities, pensions, and real estate transactions as specified in ~~15-30-304~~ 15-30-2616, MCA. ~~These Agent Information Returns~~ Federal form 1099s may be filed on paper documents, or electronically, ~~or on magnetic media~~. They are due on or before ~~the 15th day of April~~ February 28 following the close of the calendar year with respect to which the payments made are being reported. The returns are to be filed with: ~~the~~

Montana Department of Revenue,  
P.O. Box ~~5805~~ 5835,  
Helena, Montana 59604-~~5805~~ 5835.

(2) Paper documents are to be prepared on the appropriate federal information return and a copy filed with the department. Returns filed on paper forms are to be accompanied by a copy of federal form 1096, Annual Summary summarizing the information being reported to the department.

(3) ~~Agent Information Returns~~ Federal form 1099s filed electronically ~~or on magnetic media~~ are to conform to the specifications outlined in Federal Publication 1220 for the applicable year. ~~A copy of federal form 4804/4802 must be used to transmit the magnetic files.~~

AUTH: 15-30-305, 15-30-2620, MCA  
IMP: 15-30-301, 15-30-2616, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.122 to reflect media formats that the department can accept electronic data. In addition the rule is amended to require Agent Information Returns (1099s) to be

filed on a time table that reflects federal requirements with the exception of W-2s whose filing deadline is defined in statute.

The amendments to the internal statutory reference and the authority and implementing statutes is necessary because the 2009 Legislature enacted House Bill 24 (Ch. 147, L. 2009), which recodified the existing statutes in Title 15, chapter 30 of the Montana Code Annotated.

42.17.131 EMPLOYEE'S WITHHOLDING ALLOWANCES (1) For purposes of determining the employee's withholding allowances, the amount claimed for Montana may be different than the amount claimed on the IRS federal form W-4, Withholding Allowance Certificate, reported (~~on the line stating "Total total~~ number of allowances you are claiming"), furnished by the employee to the employer for federal withholding tax purposes. The department may determine whether the amount claimed on the IRS federal form W-4 should be adjusted. The department does not provide forms for this purpose. The department has determined that the federal child tax credit that allows extra allowances for federal withholding is not allowed for state Montana purposes when determining the number of allowances for state Montana withholding.

(2) remains the same.

(3) If an employee fails or refuses to provide the number of allowances on federal form W-4 reported on the (~~line stating "Total total~~ number of allowances you are claiming"), the employer shall withhold, for Montana purposes, on the basis of zero withholding allowances.

(4) Any change to the "~~Total total~~ number of allowances you are claiming", on federal form W-4 for federal purposes, including federal re-determinations of allowances, automatically changes the number of allowances for Montana purposes unless the allowances have been set at a fixed number by the department under (5). If a re-determination allows extra allowances for the federal child tax credit for federal purposes, these extra allowances will not be allowed for state purposes.

(5) An employer is required to provide a copy of any Withholding Allowance Certificate (~~federal form W-4~~) on which an employee has claimed more than ten withholding allowances to:

~~the~~ Department of Revenue,  
P.O. Box ~~5805~~ 5835,  
Helena, Montana 59604-~~5805~~ 5835,

~~on which an employee has claimed more than ten withholding allowances.~~

(a) Each such certificate is to be provided at the same time and in the same manner as such certificate is required to be provided to the IRS under 26 CFR 37.3402-1.

~~(a)~~ (b) If, upon review of any such certificates, the department determines that the certificate is defective, it may require in writing that the employer disregard the allowances claimed and advise the employer of a maximum number of withholding allowances permitted the employee for state purposes.

~~(b)~~ (c) The filing of a new certificate by an employee whose withholding allowances have been set at a fixed maximum number by the department shall be



disregarded by the employer unless a number equal to or less than the set maximum is claimed or written notice by the department is given authorizing a different maximum.

(6) When adjusting claimed withholding allowances for an employee under (5), the department shall consider:

(a) exemptions provided under ~~15-30-112, 15-30-113, and 15-30-114~~, 15-30-2114, 15-30-2115, and 15-30-2116, MCA;

(b) marital status and number of employers;

(c) estimated wages and salaries;

(d) estimated allowable deductions under ~~15-30-121, 15-30-122, 15-30-123, and 15-30-131~~, 15-30-2131, 15-30-2132, 15-30-2133, and 15-30-2111, MCA, to the extent that such deductions exceed the average itemized deductions taken into account in the withholding tables;

(e) business losses;

(f) annuity plan contributions; and

(g) residency.

(7) remains the same.

AUTH: ~~15-30-305~~, 15-30-2620, MCA

IMP: ~~15-30-202~~, 15-30-2502, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.131 to make titles to forms consistent and update the address.

The amendment to the internal statutory references and the authority and implementing statutes is necessary because the 2009 Legislature enacted House Bill 24 (Ch. 147, L. 2009), which recodified the existing statutes in Title 15, chapter 30 of the Montana Code Annotated.

42.17.133 TREATMENT OF SUPPLEMENTAL WAGES - STATE INCOME TAX WITHHOLDING (1) through (3) remain the same.

AUTH: ~~15-30-305~~, 15-30-2620, MCA

IMP: ~~15-30-201~~, 15-30-2501, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.133 to update the authority and implementing statutes because the 2009 Legislature enacted House Bill 24 (Ch. 147, L. 2009), which recodified the existing statutes in Title 15, chapter 30, Montana Code Annotated.

42.17.134 RECIPROCAL AGREEMENT - NORTH DAKOTA (1) An employer is not required to deduct Montana state income tax withholding on wages earned by residents of North Dakota under the provisions of the Income Tax and Withholding Tax Reciprocal Agreement between Montana and North Dakota. Relief from withholding is subject to the following provisions:

(a) A North Dakota resident performing services in Montana for compensation must annually provide form NR-2, a certificate of North Dakota residency, ~~(form NR-2)~~ to his or her employer before the employer may discontinue

withholding on compensation earned in Montana. The certificate is valid only from the date filed to December 31 of the year in which filed. The certificate is rendered invalid if the employee changes his or her residence to any state other than North Dakota;

(b) Withholding from a North Dakota resident's compensation earned in Montana must be treated as if earned in North Dakota. If North Dakota requires withholding from the compensation, the North Dakota withholdings must be deducted from the compensation;

(c) A copy of the employee's form NR-2 must be submitted by the employer to the department after it is provided to the employer; and

(d) If the department determines that an employee's certificate is false or unsubstantiated, it may require an employer to disregard any claim to North Dakota residency and resume withholding on compensation earned in Montana.

AUTH: ~~15-30-305~~, 15-30-2621, MCA

IMP: ~~15-30-202~~, ~~15-30-209~~, 15-30-2502, 15-30-2509, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.134 to update forms references.

The amendment to the authority and implementing statutes is necessary because the 2009 Legislature enacted House Bill 24 (Ch. 147, L. 2009), which recodified the existing statutes in Title 15, chapter 30 of the Montana Code Annotated.

42.17.135 FALSE STATEMENTS BY EMPLOYEES - RECOMPUTATION OF WITHHOLDING (1) and (2) remain the same.

AUTH: ~~15-30-305~~, 15-30-2620, MCA

IMP: ~~15-30-202~~, ~~15-30-209~~, 15-30-2502, 15-30-2509, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.135 to update the authority and implementing statutes because the 2009 Legislature enacted House Bill 24 (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.17.304 DETERMINATION OF TAX LIABILITY FOR PRECEDING TAX YEAR; DETERMINATION OF TAX PAID FOR CURRENT TAX YEAR (1) and (2) remain the same.

(3) To determine the preceding tax year liability of an individual who participates in a composite return, the following requirements apply:

(a) For a taxpayer who was a participant in a composite return for the preceding year, the tax liability for the preceding year is the participant's preceding year composite tax liability.

(b) For a taxpayer who filed a Montana ~~Individual Income Tax Return~~ individual income tax return for the preceding tax year and for the current year, and participated in a composite return filing, their tax liability for the preceding tax year is their individual liability as determined in (1).

(4) remains the same.

AUTH: ~~15-30-305~~, 15-30-2620, MCA  
IMP: ~~15-30-241~~, 15-30-2512, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.304 to change the title of a form.

The amendment to the statutory references in the authority and implementing cites were updated to reflect the changes made by the 2009 Legislature in House Bill 24 (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

#### 42.17.305 ESTIMATED TAX AND PAYMENT OF INSTALLMENTS

(1) Except as provided in ~~15-30-241~~, 15-30-2512, MCA, a taxpayer is required to pay at least 100% of their tax liability for the preceding tax year or 90% of their tax for the current tax year through ~~employer~~ withholding and estimated payments. If they do not, they will be liable for interest on the underpayment provided in ~~15-30-241~~, 15-30-2512, MCA. In addition, unless the department grants a taxpayer an extension to pay an installment of estimated tax as provided in ARM 42.17.306, a taxpayer required to make installment payments of estimated tax who fails to timely pay an installment is liable for interest on the unpaid installment from the due date of the installment to the earlier of the date of payment or the due date of their income tax return, not including extensions, as provided in 15-1-216, MCA, and ARM 42.2.306.

(2) Taxpayers must complete the form ESW, Montana Individual Estimated Income Tax Worksheet, ~~form ESW~~, to determine if they are required to make current year installment payments of estimated tax and, if ~~they are~~ necessary, to determine the amount. If a taxpayer's income fluctuates or is seasonal, employing the annualization method may lower the amount of one or more installments. A taxpayer using the optional annualization method must complete the form ESA, Annualization Worksheet, ~~form ESA~~. Taxpayers are not required to file the estimated tax worksheet with their income tax return but it is a tax record the taxpayer must retain and provide the department on request. Taxpayers using the annualization method must file form ESA with their income tax return. If the taxpayer files their individual income tax return electronically, the ~~Annualization Worksheet~~ form ESA is a tax record the taxpayer must retain and provide the department on request.

(3) The department will provide taxpayers with estimated tax payment coupons on request. Unless paid electronically, as set forth in ARM 42.5.201 and 42.5.202, installment payments of estimated tax must be accompanied by a payment ~~coupon~~ voucher and be:

- (a) personally delivered to:  
Montana Department of Revenue  
Sam W. Mitchell Building  
125 North Roberts, 3rd Floor  
Helena, Montana; or
- (b) mailed to:  
Montana Department of Revenue  
P.O. Box 6309

Helena, Montana 59604-6309.

(4) If a taxpayer has not received estimated tax payment ~~coupons~~ vouchers from the department before the first installment due date, the payment should be accompanied by a ~~writing~~ written statement setting forth that the payment is an estimated tax payment, the tax year, the due date of the installment, and the taxpayer's name, mailing address, and social security number and be:

- (a) personally delivered to:  
Montana Department of Revenue  
Sam W. Mitchell Building  
125 North Roberts, 3rd Floor; or
- (b) mailed to:  
Montana Department of Revenue  
P.O. Box 6308  
Helena, Montana 59604-6308.

(5) ~~Coupons~~ Payment vouchers will be mailed to the taxpayer if a request for them is included with the first installment. Payments must be received by the department on or before the installment due date.

(6) remains the same.

(7) If fewer than four installments are required, the applicable percentage of the required annual amount for each installment is increased. The applicable percentage per installment is as follows:

- (a) 100% for one installment;
- (b) 50% for two installments; and
- (c) 33 1/3% for three installments.

Example 1: If the short tax year is the 10-month period from January 1 through October 31, the estimated tax must be paid in four installments, on April 15, June 15, September 15, and November 15. Each installment is 25% of the total payment required.

Example 2: If the short tax year ~~ended on September 30~~ is the 9-month period from January 1 through September 30, the estimated tax must be paid in three installments, on April 15, June 15, and October 15. With three installments, each installment is 33 1/3% of the total payment required.

AUTH: ~~15-30-305,~~ 15-30-2620, MCA

IMP: ~~15-30-241,~~ 15-30-2512, MCA

REASONABLE NECESSITY: The word "employer" was deleted in reference to withholding because mineral royalty withholding is also applicable beginning with the 2008 tax year. Coupons are now referred to as vouchers on forms and other publications.

The amendment to the internal statutory references and the authority and implementing cites were updated to reflect the changes made by the 2009 Legislature in House Bill 24 (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

#### 42.17.306 WRITTEN REQUEST FOR EXTENSION - PAYMENT OF

ESTIMATED TAX (1) through (3) remain the same.

(4) If an extension is granted, no further notice or demand will be given and the taxpayer must pay the estimated payment on or before the expiration of the period of the extension. If an extension is granted and the extended installment timely paid, the penalty and interest provided in 15-1-216, MCA, is not imposed. Section ~~15-30-241~~ 15-30-2512, MCA, which provides for interest on an underpayment of tax, is in addition to the uniform penalties and interest provided in 15-1-216, MCA, and is imposed whether or not a taxpayer obtains an extension as provided in this rule.

(5) through (8) remain the same.

AUTH: ~~15-30-305~~, 15-30-2620, MCA

IMP: ~~15-30-241~~, 15-30-2512, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.306 to update the internal statutory references and the authority and implementing statutes because the 2009 Legislature enacted House Bill 24 (Ch. 147, L. 2009), which recodified the existing statutes in Title 15, chapter 30 of the Montana Code Annotated.

42.17.308 DETERMINING ANNUALIZED INCOME (1) and (2) remain the same.

AUTH: ~~15-30-305~~, 15-30-2620, MCA

IMP: ~~15-30-241~~, 15-30-2512, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.308 to update the authority and implementing statutes because the 2009 Legislature enacted House Bill 24 (Ch. 147, L. 2009), which recodified the existing statutes in Title 15, chapter 30, Montana Code Annotated.

42.17.309 ANNUALIZED PERIODS (1) and (2) remain the same.

AUTH: ~~15-30-305~~, 15-30-2620, MCA

IMP: ~~15-30-241~~, 15-30-2512, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.309 to update the authority and implementing statutes because the 2009 Legislature enacted House Bill 24 (Ch. 147, L. 2009), which recodified the existing statutes in Title 15, chapter 30, Montana Code Annotated.

42.17.310 DETERMINATION OF TAX LIABILITY - STATUS CHANGE FROM JOINT TO SEPARATE (1) Taxpayers who file separate returns on separate forms for the current period and who filed a joint return for the preceding tax year must compute their prior year's estimated tax liability as follows:

- (a) 100% of the tax liability of the joint return for the preceding tax year; or
- (b) a prorated portion of the preceding year's joint tax liability. This prorated amount is determined by calculating the tax liability of the taxpayers as if they filed

separately and totaling their individual taxes. Each spouse's prior year estimated tax liability is found by dividing their separate liability by the total of the two separate liabilities and multiplying this figure by the preceding year's joint tax liability.

Example: Husband and wife file a joint return for the calendar year ~~2003~~ one showing taxable income of \$50,000 and a tax of \$3,556. Of the taxable income, \$30,000 was attributable to the husband and \$20,000 to the wife. Husband and wife filed separate returns on separate forms for calendar year ~~2004~~ two. The tax shown on the return for the preceding taxable year, for purposes of determining if interest is owed on an underpayment, is determined as follows:

Taxable income of husband for <del>2003</del> <u>year one</u> :	\$30,000
Tax on \$30,000 (on basis of separate return):	\$ 1,712
Taxable income of wife for <del>2003</del> <u>year one</u> :	\$20,000
Tax on \$20,000 (on basis of separate return):	\$ 934
Aggregate tax of husband and wife (on basis of separate returns):	\$ 2,646
Portion of <del>2003</del> <u>year one</u> tax shown on joint return attributable to husband ( $\$1,712/\$2,646 \times \$3,556$ ):	\$ 2,301
Portion of <del>2003</del> <u>year one</u> tax shown on joint return attributable to wife ( $\$934/\$2,646 \times \$3,556$ ):	\$ 1,255

AUTH: ~~15-30-305~~, 15-30-2620, MCA  
IMP: ~~15-30-241~~, 15-30-2512, MCA

REASONABLE NECESSITY: The reference to 2003 and 2004 has been changed to year one and year two to avoid updating the administrative rule in future years.

The amendment to the statutory references in the authority and implementing cites are necessary to reflect the changes made by the 2009 Legislature in House Bill 24 (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.17.311 DETERMINATION OF TAX LIABILITY - STATUS CHANGE FROM SEPARATE TO EITHER A JOINT RETURN OR MARRIED FILING SEPARATE

(1) remains the same.

AUTH: ~~15-30-305~~, 15-30-2620, MCA  
IMP: ~~15-30-241~~, 15-30-2512, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.311 to update the authority and implementing statutes because the 2009 Legislature enacted House Bill 24 (Ch. 147, L. 2009), which recodified the existing statutes in Title 15, chapter 30, Montana Code Annotated.

42.17.312 ESTIMATED TAX PAYMENTS - DIVORCE (1) through (3) remain the same.

AUTH: 15-30-305, 15-30-2512, MCA  
IMP: 15-30-241, 15-30-2512, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.312 to update the authority and implementing statutes because the 2009 Legislature enacted House Bill 24 (Ch. 147, L. 2009), which recodified the existing statutes in Title 15, chapter 30, Montana Code Annotated.

42.17.313 PAYMENT OF ESTIMATED TAX - DECEDENT (1) through (4) remain the same.

AUTH: 15-30-305, 15-30-2620, MCA  
IMP: 15-30-241, 15-30-2512, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.313 to update the authority and implementing statutes because the 2009 Legislature enacted House Bill 24 (Ch. 147, L. 2009), which recodified the existing statutes in Title 15, chapter 30, Montana Code Annotated.

42.17.314 NONRESIDENTS AND PART-YEAR RESIDENTS (1) A nonresident or part-year resident who was not required to file a Montana ~~Individual Income Tax Return~~ individual income tax return for the previous tax year is not required to pay estimated taxes. ARM 42.15.301 sets forth the rules for determining who must file an ~~Individual Income Tax Return~~ individual income tax return. (2) through (6) remain the same.

AUTH: 15-30-305, 15-30-2620, MCA  
IMP: 15-30-241, 15-30-2512, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.314 to remove the capitalization of the form name.

The amendment to the statutory references in the authority and implementing cites were updated to reflect the changes made by the 2009 Legislature in House Bill 24 (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.17.315 WAIVER OF INTEREST ON ESTIMATED TAX UNDERPAYMENT (1) remains the same.  
(2) The calculation of the estimated underpayment penalty must be made on form ~~EST-P~~ EST-I.

AUTH: 15-30-305, 15-30-2620, MCA  
IMP: 15-30-241, 15-30-2512, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.315 to update the name of the form.

The amendment to the statutory references in the authority and implementing cites were updated to reflect the changes made by the 2009 Legislature in House Bill 24 (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.17.316 TRUSTS, ESTATES, AND FIDUCIARY RETURNS (1) remains the same.

AUTH: 15-30-305, 15-30-2620, MCA  
IMP: 15-30-241, 15-30-2512, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.316 to update the statutory references in the authority and implementing cites to reflect the changes made by the 2009 Legislature in House Bill 24 (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.17.317 ESTIMATED PAYMENTS FOR MARRIED TAXPAYERS FILING SEPARATE RETURNS (1) through (2)(b) remain the same.

AUTH: 15-30-305, 15-30-2620, MCA  
IMP: 15-30-241, 15-30-2512, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.317 to update the authority and implementing statutes because the 2009 Legislature enacted House Bill 24 (Ch. 147, L. 2009), which recodified the existing statutes in Title 15, chapter 30, Montana Code Annotated.

42.17.601 ADVANCE PAYMENTS AND FURTHER DISTRIBUTIONS (1) remains the same.

(2) Each remittor who disburses funds that are owed to any person owning a royalty interest, overriding royalty interest, production payment, or any other nonworking interest in minerals produced in this state, is subject to the withholding requirement of ~~15-30-264~~ 15-30-2536, MCA.

(3) If a mineral is taken in-kind by a royalty owner, the take-in-kind owner must forward 6% of the net value of the mineral that was taken in-kind to the department unless they are exempt from withholding due to ~~15-30-264~~ 15-30-2539 or 15-31-102, MCA.

(4) If you are a remittor and you are providing accounting services, and these accounting services include fulfilling the requirements of ~~15-30-266~~ 15-30-2541, MCA, for more than one producer, you must remit separate withholding payments and submit a separate form RW-3, Montana Mineral Royalty Withholding Tax Reconciliation Return (~~form RW-3~~), for each producer.

AUTH: 15-30-272, 15-30-2547, MCA  
IMP: 15-30-266, 15-30-2541, MCA



REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.601 to update form names.

The amendment to the internal statutory references and the authority and implementing cites is necessary to reflect the changes made by the 2009 Legislature in House Bill 24 (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.17.602 CLAIMING THE CREDIT FOR TAX WITHHELD (1) Claiming credit for the tax withheld shall be accomplished as follows:

(a) Credit may be claimed for the tax withheld on a Montana ~~Individual Income Tax Return~~ individual income tax return or a Montana ~~Corporation License Tax Return~~ corporation license tax return.

(b) Taxpayers who are shareholders in a corporation taxed under Subchapter S of the ~~Internal Revenue Code~~ IRC doing business in this state must maintain a copy of federal form K-1. They may claim credit for the amount shown as their percentage share of the tax withheld from Montana net royalty payments by the corporation, limited liability company, or partnership.

(c) An estate or trust is entitled to credit for the tax withheld in proportion to its share of federal distributable net income. The remaining credit must be passed through to the beneficiaries in proportion to their respective shares of federal distributable net income of the estate or trust. To claim the credit, the beneficiaries must maintain a copy of federal form K-1 and claim credit for the amount shown by the fiduciary as their percentage share of the tax withheld from Montana mineral production payments.

(d) Any person filing on a fiscal year ending other than December 31 must claim a credit for the withholding tax shown on the personal income tax return required to be filed during the year following the December closing period of the form RW-3, Montana Mineral Royalty Withholding Tax Reconciliation Return (~~form RW-3~~).

(e) Production taxes cannot be claimed as withholding for mineral royalty withholding or as income tax withholding.

AUTH: 15-30-272, 15-30-2547, MCA

IMP: 15-30-264, 15-30-2539, MCA

REASONABLE NECESSITY: During the first year of administering the mineral royalty withholding tax several taxpayers attempted to claim production taxes as withholding. This provision simply clarifies that production taxes are not a withholding tax.

The amendment to the statutory references in the authority and implementing cites is necessary to reflect the changes made by the 2009 Legislature in House Bill 24 (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.17.603 APPLICABLE THRESHOLDS - CHANGE OF OWNERSHIP - PUBLICLY TRADED PARTNERSHIPS - NONPROFIT ORGANIZATIONS - EXEMPT ROYALTY OWNERS (1) An oil and gas remittor is not required to

withhold from their royalty interest owners if the production does not exceed 100,000 barrels of oil and 500 million cubic feet of gas, based on the previous three calendar years' average production reported to the Montana Board of Oil and Gas Conservation. For example, the department will calculate whether an entity is required to withhold from their royalty interest owners for ~~2008~~ 2010 by averaging the production numbers for calendar years ~~2004, 2005, and 2006~~ 2006, 2007, and 2008 and comparing this average to the production exemption limits.

(2) If an entity does not have three years of recent ~~oil and/or gas~~ mineral production records, the remitter may provide the department with information supporting the exemption from the withholding requirements of ~~15-30-264,~~ 15-30-2536, MCA. The department shall review this information to determine if an exemption is warranted and notify the remitter of the determination.

(3) On or before September 15 of each year, the department shall notify all oil and gas producers of their requirements as it relates to the provisions of ~~15-30-264~~ 15-30-2536 and ~~15-30-264,~~ 15-30-2539, MCA. The department will notify all other mineral producers by September 15 only if they are required to withhold.

(4) If a person that is required to withhold on behalf of their royalty interest owners sells their mineral interests during the year and ceases to be the remitter, the person that acquired the mineral interests becomes the remitter and must continue to withhold 6% of the net royalty payments from the royalty interest owners subject to the withholding requirements of ~~15-30-264,~~ 15-30-2536, MCA.

(5) If a remitter produces both oil and gas and only one resource meets the requirements for withholding as provided in ~~15-30-264,~~ 15-30-2539, MCA, the withholding provisions apply to both oil and gas regardless of the production volumes of the other resource that does not meet the requirements of ~~15-30-264,~~ 15-30-2539, MCA.

(6) If a person, not previously extracting resources in the state, begins extracting from new sources of natural resources in Montana (i.e., newly drilled oil or gas wells or a new mine), that person is required to withhold 6% of the net royalty payments from the royalty interest owners subject to the withholding requirements of ~~15-30-264,~~ 15-30-2536, MCA.

(7) The person described in (6) that extracts ~~oil and/or gas~~ minerals only may not be required to withhold on net royalty payments from their royalty interest owners if the person can provide information that satisfies the department that the new producing property will not meet the threshold requirements established ~~for oil and gas~~ in ~~15-30-264,~~ 15-30-2539, MCA.

(8) All persons that extract minerals other than oil and gas must withhold 6% of the net royalty payments of all royalty interest owners subject to the withholding requirements of ~~15-30-264,~~ 15-30-2536, MCA.

(9) The person described in (8) may not be required to withhold net royalty payments from their royalty interest owners if the person can provide information that satisfies the department that the net royalty payments are immaterial.

(a) The department has defined an entity that has immaterial net royalty payments as an entity that has production amounts for minerals, other than oil and gas, with a value less than \$5,000,000. The only filing requirement for this type of entity is the filing of the RW-3 by February 28 of the following year along with a listing of all royalty recipients. The \$5,000,000 value will be based on a three-year

average of production value reported to the department's Business Tax and Valuation Bureau. For example, the department will calculate whether an entity is required to withhold from their royalty interest owners for 2010 by averaging the valuation reported for 2006, 2007, and 2008.

(10) Section ~~15-30-264~~, 15-30-2539, MCA, allows for a publicly traded partnership to be exempt from the withholding requirements of ~~15-30-264~~, 15-30-2536, MCA, provided the publicly traded partnership, who is a royalty owner, submits a report to both the remitter and the ~~Department of Revenue~~ department. The report, which can be in the form of a letter, must contain the publicly traded partnership's letterhead and state that the partnership is publicly traded and the partnership requests exemption from ~~15-30-264~~, 15-30-2536, MCA. The request must be received by the remitter and the department prior to November 1 of the year prior to the calendar year in which the partnership requests exemption. Upon receipt of the report, the department will notify the partnership and the remitter of either acceptance or denial of the request within thirty days. The election does not need to be repeated annually unless requested by the department.

(11) Section ~~15-30-264~~, 15-30-2539, MCA, allows for an organization that is exempt from taxation under 15-31-102, MCA, to be exempt from the withholding requirements of ~~15-30-264~~, 15-30-2536, MCA, provided the exempt organization, who is a royalty owner, submits a report to both the remitter and the department. The report, which can be in the form of a letter, must contain the exempt organization's letterhead and requests exemption from ~~15-30-264~~, 15-30-2536, MCA. The request must be received by the remitter and the department prior to November 1 of the year prior to the calendar year in which the exempt organization requests exemption. Upon receipt of the report, the department shall notify the exempt organization and the remitter of either acceptance or denial of the request within thirty days. The election does not need to be repeated annually unless requested by the department.

(12) According to ~~15-30-264~~, 15-30-2539, MCA, the department grants remitters the authority to forego withholding the tax from royalty owners who meet the following qualifications:

- (a) the amount of the royalty interest payment is less than \$2,000 per year; or
- (b) less than \$166 per month.

(13) remains the same.

AUTH: ~~15-30-272~~, 15-30-2547, MCA

IMP: ~~15-30-264~~, 15-30-2539, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.603 to update various dates and establish valuation levels whereas mineral producers, other than oil and gas producers, are not required to withhold from their mineral interest owners. The rule is proposed to establish an equivalent de minimus amount for all mineral producers.

The amendment to the internal statutory references and the authority and implementing cites is necessary to reflect the changes made by the 2009 Legislature in House Bill 24 (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.17.604 REGISTRATION FOR WITHHOLDING (1) and (2) remain the same.

(3) Each registration application must contain the applicable tax identification number assigned by the ~~Internal Revenue Service~~ IRS.

(4) and (5) remain the same.

AUTH: 15-30-272 15-30-2547, MCA

IMP: 15-30-263, 15-30-266 15-30-2538, 15-30-2541, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.604 to change the reference to the Internal Revenue Service to IRS so that this rule is consistent with other rules of ARM Title 42.

The amendment to the statutory references in the authority and implementing cites is necessary to reflect the changes made by the 2009 Legislature in House Bill 24 (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.17.605 FILING REQUIREMENTS (1) The following forms are to be completed and filed in accordance with instructions provided by the department:

(a) Form RW-1, Mineral Royalty Withholding Payment ~~Coupon~~ Voucher, must be filed quarterly unless the department establishes that the entity is exempt from the withholding requirements of ~~15-30-264, 15-30-2536, MCA~~. A remittor may request to file a form RW-1 on an accelerated basis. The remittor must receive approval from the department before remitting the withholding tax on a more frequent basis than quarterly;

(b) A remittor who has no withholding to remit for a remittance period shall on or before the due date, ~~submit~~ send a payment ~~coupon~~ voucher showing that a zero amount is being remitted;

(c) Form RW-3, Montana Annual Mineral Royalty Withholding Tax Reconciliation (~~form RW-3~~), must be filed on or before February 28 of each year. Form RW-3 must be accompanied by copies of each royalty owner's ~~Withholding Statements on Federal~~ withholding statements on federal form 1099-MISC;

(d) Form 1099-MISC, Miscellaneous Income, shall be furnished by the remittor to each person who is entitled to a credit for taxes withheld each calendar year before January 31 of each year; and

(e) Each remittor that is exempt from withholding is still required to file the form RW-3 with the department along with a copy of form 1099-MISC for every recipient of royalties. ~~For ease of reporting the department will accept the comparable federal form, or submission of the form in electronic format as defined by the IRS.~~ These reports are due on or before February 28 of each year.

(2) remains the same.

(3) If a remittor does not withhold on a royalty interest owner who in the previous year met the exemption requirement in ~~15-30-264, 15-30-2539, MCA~~, but exceeded that requirement in the current year, the department will not penalize the remittor for the lack of withholding in that current year.

AUTH: 15-30-272, 15-30-2547, MCA

IMP: 15-30-266, 15-30-268, 15-30-269, 15-30-2541, 15-30-2543, 15-30-2544,

MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.605 to make general grammatical changes so that the rules read more clearly for the taxpayers.

In addition, the department is proposing to amend the rule in order to clarify that royalty payors that are not required to withhold still have a filing obligation to submit the RW-3 itself, and not a comparable form.

The amendment to the internal statutory references and the authority and implementing cites is necessary to reflect the changes made by the 2009 Legislature in House Bill 24 (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

4. The department proposes to repeal the following rules:

42.17.136 AFFIDAVIT - FORM AND CONTENT which can be found on page 42-1724 of the Administrative Rules of Montana.

AUTH: 15-30-305, MCA

IMP: 15-30-208, MCA

REASONABLE NECESSITY: The department is proposing to repeal 42.17.136 because the Accounts Receivable and Collections Bureau does not currently use the provisions outlined in this rule and does not intend to use them in the future.

42.17.137 AFFIDAVIT - TIME PERIOD FOR EXECUTION which can be found on page 42-1724 of the Administrative Rules of Montana.

AUTH: 15-30-305, MCA

IMP: 15-30-208, 39-71-2503, MCA

REASONABLE NECESSITY: The department is proposing to repeal 42.17.137 because the department's Accounts Receivable and Collections Bureau does not currently use the provisions outlined and they do not anticipate using the provisions in the rule in the future.

42.17.138 RECORD OF AFFIDAVIT - NOTICE which can be found on page 42-1724 of the Administrative Rules of Montana.

AUTH: 15-30-305, MCA

IMP: 15-30-208, 39-71-2503, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.17.138 because the department's Accounts Receivable and Collections Bureau

does not currently use the provisions outlined and they do not anticipate using the provisions in the rule in the future.

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 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail [canderson@mt.gov](mailto:canderson@mt.gov) and must be received no later than December 4, 2009.

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 [www.mt.gov/revenue](http://www.mt.gov/revenue), under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." 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 web site accessible at all times, concerned persons should be aware that the web site 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 e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. 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 contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor for House Bill 24, Representative Penny Morgan, was contacted on October 14, by electronic mail.

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Dan R. Bucks  
DAN R. BUCKS  
Director of Revenue

Certified to Secretary of State October 19, 2009

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF PUBLIC
42.21.113, 42.21.123, 42.21.125, 42.21.131,	)	HEARING ON PROPOSED
42.21.137, 42.21.138, 42.21.139, 42.21.140,	)	AMENDMENT
42.21.151, 42.21.153, 42.21.155, 42.21.158,	)	
42.21.159, 42.21.160, 42.21.162,	)	
42.22.1311 relating to property taxes and the	)	
trend tables for valuing property	)	

TO: All Concerned Persons

1. On November 24, 2009, at 3:00 p.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of the above-stated rules.

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 no later than 5:00 p.m., November 9, 2009, 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 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

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

42.21.113 LEASED AND RENTAL EQUIPMENT (1) Leased or rental equipment that is leased or rented on an hourly, daily, ~~or~~ weekly, semimonthly, or monthly basis, but is not exempt under ~~15-6-201(1)(cc)~~ 15-6-219(5) or 15-6-202(4), MCA, will be valued in the following manner:

(a) For equipment that has an acquired cost of \$0 to \$500, the department shall use a four-year trended depreciation schedule. The trended schedule will be the same as ARM 42.21.155, category 1.

<del>YEAR NEW/ACQUIRED</del>	<del>TRENDED % GOOD</del>
<del>2008</del>	<del>70%</del>
<del>2007</del>	<del>38%</del>
<del>2006</del>	<del>16%</del>
<del>2005 and older</del>	<del>8%</del>

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD</u>
<u>2009</u>	<u>70%</u>

<u>2008</u>	<u>42%</u>
<u>2007</u>	<u>16%</u>
<u>2006 and older</u>	<u>8%</u>

(b) For equipment that has an acquired cost of \$501 to \$1,500, the department shall use a five-year trended depreciation schedule. The trended schedule will be the same as ARM 42.21.155, category 2.

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD</u>
2008	85%
2007	71%
2006	53%
2005	35%
2004 and older	21%

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD</u>
<u>2009</u>	<u>85%</u>
<u>2008</u>	<u>75%</u>
<u>2007</u>	<u>58%</u>
<u>2006</u>	<u>38%</u>
<u>2005 and older</u>	<u>22%</u>

(c) For equipment that has an acquired cost of \$1,501 to \$5,000, the department shall use a ten-year trended depreciation schedule. The trended schedule will be the same as ARM 42.21.155, category 8.

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD</u>
2008	92%
2007	86%
2006	80%
2005	73%
2004	65%
2003	56%
2002	45%
2001	35%
2000	28%
1999 and older	24%

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD</u>
<u>2009</u>	<u>92%</u>
<u>2008</u>	<u>89%</u>
<u>2007</u>	<u>83%</u>
<u>2006</u>	<u>75%</u>
<u>2005</u>	<u>67%</u>
<u>2004</u>	<u>59%</u>
<u>2003</u>	<u>47%</u>
<u>2002</u>	<u>37%</u>



<u>2001</u>	<u>29%</u>
<u>2000 and older</u>	<u>25%</u>

(d) For equipment that has an acquired cost of \$5,001 to \$15,000, the department shall use the trended depreciation schedule for heavy equipment. The schedule will be the same as ARM 42.21.131.

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD</u>
2009	80%
2008	65%
2007	63%
2006	56%
2005	50%
2004	44%
2003	40%
2002	37%
2001	35%
2000	32%
1999	28%
1998	29%
1997	29%
1996	29%
1995	26%
1994	26%
1993	24%
1992	23%
1991	22%
1990 and older	22%

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD</u>
<u>2010</u>	<u>80%</u>
<u>2009</u>	<u>65%</u>
<u>2008</u>	<u>58%</u>
<u>2007</u>	<u>56%</u>
<u>2006</u>	<u>50%</u>
<u>2005</u>	<u>44%</u>
<u>2004</u>	<u>41%</u>
<u>2003</u>	<u>38%</u>
<u>2002</u>	<u>36%</u>
<u>2001</u>	<u>36%</u>
<u>2000</u>	<u>29%</u>
<u>1999</u>	<u>25%</u>
<u>1998</u>	<u>24%</u>
<u>1997</u>	<u>24%</u>
<u>1996</u>	<u>25%</u>
<u>1995</u>	<u>22%</u>
<u>1994</u>	<u>21%</u>

<u>1993</u>	<u>22%</u>
<u>1992</u>	<u>21%</u>
<u>1991 and older</u>	<u>21%</u>

(e) For rental video tapes and digital video disks the following schedule will be used:

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD</u>
<u>2008</u>	<u>25%</u>
<u>2007</u>	<u>15%</u>
<u>2006 and older</u>	<u>10%</u>

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD</u>
<u>2009</u>	<u>25%</u>
<u>2008</u>	<u>15%</u>
<u>2007 and older</u>	<u>10%</u>

(2) For all other leased property that is not rented on an hourly, daily, or weekly, semimonthly, or monthly basis, the valuation procedures shall be the same as other like personal property.

(3) When a special mobile permit (SM plate), as defined in 61-4-104, 61-4-101(66), MCA, is purchased for lease or rental equipment, the equipment will be classified and valued the same as other SM equipment in class eight.

(4) All leased and rental property not exempt under 15-6-201(1)(ee) 15-6-219(5) or 15-6-202(4), MCA, will be assessed and taxed as class eight property.

(5) This rule is effective for tax years beginning after December 31, 2008 2009.

AUTH: 15-1-201, 15-23-108, MCA

IMP: 15-6-135, 15-6-138, 15-6-207, 15-6-219, 15-24-921, 15-24-922, 15-24-925, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 41.21.113 to clarify through the trend tables how the department arrives at market value as required by 15-8-111, MCA. Annually, the department updates these schedules to inform taxpayers of the current percentages used by the department when valuing and taxing their property.

To determine the market value of personal property, the department has historically used and adopted the concept of trending and depreciation. The method by which trended depreciation schedules are derived is described in the existing rule, and that method is not being changed.

The First Judicial District Court indicated in 1986 that the department must publish these trend tables annually and these amendments are in compliance with that order.

The department is adding the language semimonthly or monthly to ARM 42.21.113(1) and (2) to be in compliance with Senate Bill 280, (Ch. 295, L. 2009), which was enacted by the 2009 Legislature to be effective for tax years beginning

after December 31, 2009.

42.21.123 FARM MACHINERY AND EQUIPMENT (1) through (4) remain the same.

(5) The trended depreciation schedule referred to in (2) through (4) is listed below and shall be used for tax year ~~2009~~ 2010. The schedule is derived by using the guidebook listed in (1) as the data base. The values derived through use of the trended depreciation schedule will approximate average wholesale value.

FARM MACHINERY & EQUIPMENT TRENDED DEPRECIATION SCHEDULE

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD</u> <u>AVERAGE WHOLESAL</u>
2009	80%
2008	75%
2007	70%
2006	70%
2005	64%
2004	60%
2003	52%
2002	46%
2001	42%
2000	39%
1999	36%
1998	35%
1997	33%
1996	31%
1995	31%
1994	26%
1993 and older	23%

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD</u> <u>AVERAGE WHOLESAL</u>
<u>2010</u>	<u>80%</u>
<u>2009</u>	<u>75%</u>
<u>2008</u>	<u>71%</u>
<u>2007</u>	<u>68%</u>
<u>2006</u>	<u>64%</u>
<u>2005</u>	<u>58%</u>
<u>2004</u>	<u>54%</u>
<u>2003</u>	<u>47%</u>
<u>2002</u>	<u>42%</u>
<u>2001</u>	<u>38%</u>
<u>2000</u>	<u>36%</u>
<u>1999</u>	<u>33%</u>
<u>1998</u>	<u>33%</u>
<u>1997</u>	<u>30%</u>
<u>1996</u>	<u>28%</u>

1995  
1994 and older

28%  
23%

(6) remains the same.

(7) This rule is effective for tax years beginning after December 31, ~~2008~~  
2009.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-138, 15-6-207, 15-6-219, 15-24-921, 15-24-922, 15-24-925, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 41.21.123 to clarify through the trend tables how the department arrives at market value as required by 15-8-111, MCA.

Annually, the department updates these schedules to inform taxpayers of the current percentages used by the department when valuing and taxing their property. To determine the market value of personal property, the department historically uses and adopts the concept of trending and depreciation. The method by which trended depreciation schedules are derived is described in the existing rule, and that method is not being changed.

The First Judicial District Court indicated in 1986 that the department must publish these trend tables annually and these amendments are in compliance with that order.

42.21.125 BUSINESS EQUIPMENT (1) remains the same.

(2) Business equipment that is held by a dealers, pursuant to a dealer rental program, is not a part of the dealer's inventory except for farm implements and construction equipment that are in a purchase incentive rental program and that meet the criteria in (4). The dealer shall report the equipment on the property reporting form provided by the department. The dealer shall be assessed property tax on the equipment for the full tax year.

(3) All business equipment that is part of a dealer sales program ~~or a dealer demonstration program~~ shall be considered a part of the dealer's business inventory.

(4) Farm implements and construction equipment that meet all of the following criteria shall be considered a part of the dealer's business inventory:

(a) the equipment must be owned by a farm implement or construction equipment dealership,

(b) the equipment must be held for sale;

(c) the equipment must be rented only once to a single user for nine months or less as an incentive for the purchase of the property.

(5) Property brought into the state that meets the criteria in (4) is not taxable unless it is sold or otherwise disposed of in the state.

(6) All farm implement and construction equipment dealers with equipment that meet the criteria in (4) shall report the qualifying equipment each calendar quarter for which the dealership has qualifying equipment on the form provided by the department. As part of its audit responsibility, the department may request a copy of specific purchase rental program agreements from the respective dealers.

AUTH: 15-1-201, MCA

IMP: 15-6-202, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.21.125 so farm implement and construction equipment dealers clearly understand the conditions under which their property is exempt from property taxation.

Farm implement and construction equipment dealers historically allowed producers the opportunity to "test drive" new and used equipment by using it in their operation for specific time periods, normally several days or weeks. The producer paid a rental or lease fee for use of the equipment. The law provided no latitude – the fact that the equipment was rented or leased made it taxable. Those situations created what was viewed by those dealers as an unwarranted property tax burden. The dealers maintained that the equipment was actually business equipment that was for sale, thus tax exempt. The 2009 Legislature provided an exception to the law by providing in House Bill 487 (Ch. 343, L. 2009), that business equipment that is part of a dealer sales program shall be considered a part of the dealer's inventory program. The provisions of that program are contained in the proposed rule. The department developed these provisions through discussions with the Implement Dealer's Association.

The rule also addresses the reporting requirements and complies with the provisions enacted by House Bill 487 (Ch. 343, L. 2009), which changed 15-6-138, 15-6-202, and 15-24-301, MCA.

42.21.131 HEAVY EQUIPMENT (1) through (4) remain the same.

(5) The trended depreciation schedule referred to in (2), (3), and (4) is listed below and shall be used for tax year ~~2009~~ 2010. The values derived through the use of these percentages approximate the "quick sale" values as calculated in the guidebooks listed in (1).

<u>HEAVY EQUIPMENT TRENDED DEPRECIATION SCHEDULE</u>	
<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD WHOLESALE</u>
<del>2009</del>	80%
<del>2008</del>	65%
<del>2007</del>	63%
<del>2006</del>	56%
<del>2005</del>	50%
<del>2004</del>	44%
<del>2003</del>	40%
<del>2002</del>	37%
<del>2001</del>	35%
<del>2000</del>	32%
<del>1999</del>	28%
<del>1998</del>	29%
<del>1997</del>	29%

1996	29%
1995	26%
1994	26%
1993	24%
1992	23%
1991	22%
1990 and older	22%

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD WHOLESALE</u>
<u>2010</u>	<u>80%</u>
<u>2009</u>	<u>65%</u>
<u>2008</u>	<u>58%</u>
<u>2007</u>	<u>56%</u>
<u>2006</u>	<u>50%</u>
<u>2005</u>	<u>44%</u>
<u>2004</u>	<u>41%</u>
<u>2003</u>	<u>38%</u>
<u>2002</u>	<u>36%</u>
<u>2001</u>	<u>36%</u>
<u>2000</u>	<u>29%</u>
<u>1999</u>	<u>25%</u>
<u>1998</u>	<u>24%</u>
<u>1997</u>	<u>24%</u>
<u>1996</u>	<u>25%</u>
<u>1995</u>	<u>22%</u>
<u>1994</u>	<u>21%</u>
<u>1993</u>	<u>22%</u>
<u>1992</u>	<u>21%</u>
<u>1991 and older</u>	<u>21%</u>

(6) This rule is effective for tax years beginning after December 31, ~~2008~~ 2009, and applies to all heavy equipment.

AUTH: 15-1-201, 15-23-108, MCA

IMP: 15-6-135, 15-6-138, 15-6-207, 15-6-219, 15-24-921, 15-24-922, 15-24-925, MCA

REASONABLE NECESSITY: See the reasonable necessity for ARM 42.21.123.

42.21.137 SEISMOGRAPH UNITS AND ALLIED EQUIPMENT

(1) through (3) remain the same.

(4) The trended depreciation schedules referred to in (1) through (3) are listed below and shall be used for tax year ~~2009~~ 2010.

SEISMOGRAPH UNIT

<u>YEAR</u> <u>NEW/ACQUIRED</u>	<u>%</u> <u>GOOD</u>	<u>TREND</u> <u>FACTOR</u>	<u>TRENDED</u> <u>% GOOD</u>	<u>WHOLESALE</u> <u>FACTOR</u>	<u>WHOLESALE</u> <u>% GOOD</u>
2009	100%	1.000	100%	80%	80%
2008	85%	1.000	85%	80%	68%
2007	69%	1.033	71%	80%	57%
2006	52%	1.094	57%	80%	46%
2005	34%	1.149	39%	80%	31%
2004	20%	1.247	25%	80%	20%
2003 and older	5%	1.291	6%	80%	5%

<u>YEAR</u> <u>NEW/ACQUIRED</u>	<u>%</u> <u>GOOD</u>	<u>TREND</u> <u>FACTOR</u>	<u>TRENDED</u> <u>% GOOD</u>	<u>WHOLESALE</u> <u>FACTOR</u>	<u>WHOLESALE</u> <u>% GOOD</u>
2010	100%	1.000	100%	80%	80%
2009	85%	1.000	85%	80%	68%
2008	69%	1.041	72%	80%	57%
2007	52%	1.088	57%	80%	45%
2006	34%	1.153	39%	80%	31%
2005	20%	1.211	24%	80%	19%
2004 and older	5%	1.314	7%	80%	5%

SEISMOGRAPH ALLIED EQUIPMENT

<u>YEAR NEW/</u> <u>ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED %</u> <u>GOOD</u>
2009	100%	1.000	100%
2008	85%	1.000	85%
2007	69%	1.033	71%
2006	52%	1.094	57%
2005	34%	1.149	39%
2004	20%	1.247	25%
2003 and older	5%	1.291	6%

<u>YEAR NEW/</u> <u>ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED %</u> <u>GOOD</u>
2010	100%	1.000	100%
2009	85%	1.000	85%
2008	69%	1.041	72%
2007	52%	1.088	57%
2006	34%	1.153	39%
2005	20%	1.211	24%
2004 and older	5%	1.314	7%

(5) This rule is effective for tax years beginning after December 31, 2008  
2009.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-138, 15-6-207, 15-6-219, 15-24-921, 15-24-922, 15-24-

925, MCA

REASONABLE NECESSITY: See the reasonable necessity for ARM 42.21.123.

42.21.138 OIL AND GAS FIELD MACHINERY AND EQUIPMENT (1) and (2) remain the same.

(3) The trended depreciation schedule referred to in (1) and (2) is listed below and shall be used for tax year ~~2009~~ 2010.

OIL AND GAS FIELD PRODUCTION  
EQUIPMENT TRENDED DEPRECIATION SCHEDULE

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2009	100%	1.000	100%
2008	95%	1.000	95%
2007	90%	1.033	93%
2006	85%	1.094	93%
2005	79%	1.149	91%
2004	73%	1.247	91%
2003	68%	1.291	88%
2002	62%	1.317	82%
2001	55%	1.324	73%
2000	49%	1.336	65%
1999	43%	1.358	58%
1998	37%	1.365	50%
1997	31%	1.379	43%
1996	26%	1.396	36%
1995	23%	1.424	33%
1994 and older	20%	1.476	30%

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
<u>2010</u>	<u>100%</u>	<u>1.000</u>	<u>100%</u>
<u>2009</u>	<u>95%</u>	<u>1.000</u>	<u>95%</u>
<u>2008</u>	<u>90%</u>	<u>1.041</u>	<u>94%</u>
<u>2007</u>	<u>85%</u>	<u>1.088</u>	<u>93%</u>
<u>2006</u>	<u>79%</u>	<u>1.153</u>	<u>91%</u>
<u>2005</u>	<u>73%</u>	<u>1.211</u>	<u>88%</u>
<u>2004</u>	<u>68%</u>	<u>1.314</u>	<u>89%</u>
<u>2003</u>	<u>62%</u>	<u>1.362</u>	<u>84%</u>
<u>2002</u>	<u>55%</u>	<u>1.387</u>	<u>76%</u>
<u>2001</u>	<u>49%</u>	<u>1.394</u>	<u>68%</u>
<u>2000</u>	<u>43%</u>	<u>1.408</u>	<u>61%</u>
<u>1999</u>	<u>37%</u>	<u>1.431</u>	<u>53%</u>
<u>1998</u>	<u>31%</u>	<u>1.438</u>	<u>45%</u>
<u>1997</u>	<u>26%</u>	<u>1.452</u>	<u>38%</u>



<u>1996</u>	<u>23%</u>	<u>1.471</u>	<u>34%</u>
<u>1995 and older</u>	<u>20%</u>	<u>1.500</u>	<u>30%</u>

(4) and (5) remain the same.

(6) This rule is effective for tax years beginning after December 31, ~~2008~~  
2009.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-138, 15-6-207, 15-6-213, 15-6-219, 15-24-921, 15-24-922, 15-24-925, MCA

REASONABLE NECESSITY: See the reasonable necessity for ARM 42.21.123.

42.21.139 WORK-OVER AND SERVICE RIGS (1) through (4) remain the same.

(5) The trended depreciation schedule referred to in (2) and (4) is listed below and shall be used for tax year ~~2009~~ 2010.

SERVICE AND WORKOVER RIG TRENDED DEPRECIATION SCHEDULE

<u>YEAR</u> <u>NEW/ACQUIRED</u>	<u>% GOOD</u>	<u>TREND</u> <u>FACTOR</u>	<u>WHOLESALE</u> <u>FACTOR</u>	<u>TRENDED</u> <u>WHOLESALE</u> <u>% GOOD</u>
2009	100%	1.000	80%	80%
2008	92%	1.000	80%	74%
2007	84%	1.033	80%	69%
2006	76%	1.094	80%	67%
2005	67%	1.149	80%	62%
2004	58%	1.247	80%	58%
2003	49%	1.291	80%	51%
2002	39%	1.317	80%	41%
2001	30%	1.324	80%	32%
2000	24%	1.336	80%	26%
1999 and older	20%	1.358	80%	22%

<u>YEAR/NEW</u> <u>ACQUIRED</u>	<u>% GOOD</u>	<u>TREND</u> <u>FACTOR</u>	<u>WHOLESALE</u> <u>FACTOR</u>	<u>TRENDED</u> <u>WHOLESALE</u> <u>% GOOD</u>
<u>2010</u>	<u>100%</u>	<u>1.000</u>	<u>80%</u>	<u>80%</u>
<u>2009</u>	<u>92%</u>	<u>1.000</u>	<u>80%</u>	<u>74%</u>
<u>2008</u>	<u>84%</u>	<u>1.041</u>	<u>80%</u>	<u>70%</u>
<u>2007</u>	<u>76%</u>	<u>1.088</u>	<u>80%</u>	<u>66%</u>
<u>2006</u>	<u>67%</u>	<u>1.153</u>	<u>80%</u>	<u>62%</u>
<u>2005</u>	<u>58%</u>	<u>1.211</u>	<u>80%</u>	<u>56%</u>
<u>2004</u>	<u>49%</u>	<u>1.314</u>	<u>80%</u>	<u>51%</u>
<u>2003</u>	<u>39%</u>	<u>1.362</u>	<u>80%</u>	<u>42%</u>
<u>2002</u>	<u>30%</u>	<u>1.387</u>	<u>80%</u>	<u>33%</u>

<u>2001</u>	<u>24%</u>	<u>1.394</u>	<u>80%</u>	<u>27%</u>
<u>2000 and older</u>	<u>20%</u>	<u>1.408</u>	<u>80%</u>	<u>23%</u>

(6) This rule is effective for tax years beginning after December 31, 2008 2009.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-138, 15-6-219, 15-24-921, 15-24-922, 15-24-925, MCA

REASONABLE NECESSITY: See the reasonable necessity for ARM 42.21.123.

42.21.140 OIL DRILLING RIGS (1) remains the same.

(2) The department shall prepare a ten-year trended depreciation schedule for oil drilling rigs. The trended depreciation schedule shall be derived from depreciation factors published by Marshall and Swift Publication Company. The "% good" for all drill rigs less than one year old shall be 100%. The trended depreciation schedule for tax year ~~2009~~ 2010 is listed below.

DRILL RIG TRENDED DEPRECIATION SCHEDULE

<u>YEAR</u> <u>NEW/ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED</u> <u>% GOOD</u>
2009	100%	1.000	100%
2008	92%	1.000	92%
2007	84%	1.033	87%
2006	76%	1.094	83%
2005	67%	1.149	77%
2004	58%	1.247	72%
2003	49%	1.291	63%
2002	35%	1.317	46%
2001	30%	1.324	40%
2000	24%	1.336	32%
1999 and older	20%	1.358	27%

<u>YEAR/NEW</u> <u>ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED %</u> <u>GOOD</u>
<u>2010</u>	<u>100%</u>	<u>1.000</u>	<u>100%</u>
<u>2009</u>	<u>92%</u>	<u>1.000</u>	<u>92%</u>
<u>2008</u>	<u>84%</u>	<u>1.041</u>	<u>87%</u>
<u>2007</u>	<u>76%</u>	<u>1.088</u>	<u>83%</u>
<u>2006</u>	<u>67%</u>	<u>1.153</u>	<u>77%</u>
<u>2005</u>	<u>58%</u>	<u>1.211</u>	<u>70%</u>
<u>2004</u>	<u>49%</u>	<u>1.314</u>	<u>64%</u>
<u>2003</u>	<u>35%</u>	<u>1.362</u>	<u>48%</u>
<u>2002</u>	<u>30%</u>	<u>1.387</u>	<u>42%</u>
<u>2001</u>	<u>24%</u>	<u>1.394</u>	<u>33%</u>
<u>2000 and older</u>	<u>20%</u>	<u>1.408</u>	<u>28%</u>

(3) remains the same.

(4) This rule is effective for tax years beginning after December 31, 2008  
2009.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-138, 15-6-207, 15-6-219, 15-24-921, 15-24-922, 15-24-925, MCA

REASONABLE NECESSITY: See the reasonable necessity for ARM 42.21.123.

42.21.151 TELEVISION CABLE SYSTEMS (1) through (3) remain the same.

(4) The trended depreciation schedules referred to in (2) and (3) are listed below and shall be in effect for tax year ~~2009~~ 2010.

TABLE 1: FIVE-YEAR "DISHES"

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2008	85%	1.000	85%
2007	69%	1.029	71%
2006	52%	1.085	56%
2005	34%	1.136	39%
2004 and older	20%	1.224	24%

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2009	85%	1.000	85%
2008	69%	1.034	71%
2007	52%	1.075	56%
2006	34%	1.133	39%
2005 and older	20%	1.186	24%

TABLE 2: TEN-YEAR "TOWERS"

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2008	92%	1.000	92%
2007	84%	1.029	86%
2006	76%	1.085	82%
2005	67%	1.136	76%
2004	58%	1.224	71%
2003	49%	1.263	62%
2002	39%	1.285	50%
2001	30%	1.292	39%
2000	24%	1.303	31%
1999 and older	20%	1.327	27%

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
<u>2009</u>	<u>92%</u>	<u>1.000</u>	<u>92%</u>
<u>2008</u>	<u>84%</u>	<u>1.034</u>	<u>87%</u>
<u>2007</u>	<u>76%</u>	<u>1.075</u>	<u>82%</u>
<u>2006</u>	<u>67%</u>	<u>1.133</u>	<u>76%</u>
<u>2005</u>	<u>58%</u>	<u>1.186</u>	<u>69%</u>
<u>2004</u>	<u>49%</u>	<u>1.275</u>	<u>62%</u>
<u>2003</u>	<u>39%</u>	<u>1.319</u>	<u>51%</u>
<u>2002</u>	<u>30%</u>	<u>1.342</u>	<u>40%</u>
<u>2001</u>	<u>24%</u>	<u>1.350</u>	<u>32%</u>
<u>2000 and older</u>	<u>20%</u>	<u>1.361</u>	<u>27%</u>

(5) This rule is effective for tax years beginning after December 31, 2008  
2009.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-138, 15-6-207, 15-6-219, 15-24-921, 15-24-922, 15-24-925, MCA

REASONABLE NECESSITY: See the reasonable necessity for ARM 42.21.123.

42.21.153 SKI LIFT EQUIPMENT (1) and (2) remain the same.

(3) The depreciation schedules shall be determined by the life expectancy of the equipment and will normally compensate for the loss in value due to ordinary wear and tear, offset by reasonable maintenance, and ordinary functional obsolescence due to the technological changes during the life expectancy period.

DEPRECIATION TABLE FOR SKI LIFT EQUIPMENT

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
<u>2008</u>	<u>92%</u>	<u>1.000</u>	<u>92%</u>
<u>2007</u>	<u>84%</u>	<u>1.029</u>	<u>86%</u>
<u>2006</u>	<u>76%</u>	<u>1.085</u>	<u>82%</u>
<u>2005</u>	<u>67%</u>	<u>1.136</u>	<u>76%</u>
<u>2004</u>	<u>58%</u>	<u>1.224</u>	<u>71%</u>
<u>2003</u>	<u>49%</u>	<u>1.263</u>	<u>62%</u>
<u>2002</u>	<u>39%</u>	<u>1.285</u>	<u>50%</u>
<u>2001</u>	<u>30%</u>	<u>1.292</u>	<u>39%</u>
<u>2000</u>	<u>24%</u>	<u>1.303</u>	<u>31%</u>
<u>1999 and older</u>	<u>20%</u>	<u>1.327</u>	<u>27%</u>

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
<u>2009</u>	<u>92%</u>	<u>1.000</u>	<u>92%</u>
<u>2008</u>	<u>84%</u>	<u>1.034</u>	<u>87%</u>

<u>2007</u>	<u>76%</u>	<u>1.075</u>	<u>82%</u>
<u>2006</u>	<u>67%</u>	<u>1.133</u>	<u>76%</u>
<u>2005</u>	<u>58%</u>	<u>1.186</u>	<u>69%</u>
<u>2004</u>	<u>49%</u>	<u>1.275</u>	<u>62%</u>
<u>2003</u>	<u>39%</u>	<u>1.319</u>	<u>51%</u>
<u>2002</u>	<u>30%</u>	<u>1.342</u>	<u>40%</u>
<u>2001</u>	<u>24%</u>	<u>1.350</u>	<u>32%</u>
<u>2000 and older</u>	<u>20%</u>	<u>1.361</u>	<u>27%</u>

- (a) The taxpayer must initially list with the department:
  - (i) all equipment by year of installation; and
  - (ii) installed costs of that equipment.
- (b) Each year thereafter, the taxpayer must list with the department:
  - (i) all additions or deletions from the previous year's list, with installed cost.
- (4) This methodology is effective for tax years beginning after December 31, ~~2008~~ 2009.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-138, 15-6-207, 15-6-219, 15-24-921, 15-24-922, 15-24-925, MCA

REASONABLE NECESSITY: See the reasonable necessity for ARM 42.21.123.

42.21.155 DEPRECIATION SCHEDULES (1) remains the same.

(2) The trended depreciation schedules for tax year ~~2009~~ 2010 are listed below. The categories are explained in ARM 42.21.156. The trend factors are derived according to ARM 42.21.156 and 42.21.157.

CATEGORY 1

<u>YEAR</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
<u>NEW/ACQUIRED</u>	<u>70%</u>	<u>1.000</u>	<u>70%</u>
<u>2008</u>	<u>45%</u>	<u>0.854</u>	<u>38%</u>
<u>2007</u>	<u>20%</u>	<u>0.810</u>	<u>16%</u>
<u>2006 and older</u>	<u>10%</u>	<u>0.773</u>	<u>8%</u>

<u>YEAR</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
<u>NEW/ACQUIRED</u>	<u>70%</u>	<u>1.000</u>	<u>70%</u>
<u>2009</u>	<u>45%</u>	<u>0.932</u>	<u>42%</u>
<u>2008</u>	<u>20%</u>	<u>0.793</u>	<u>16%</u>
<u>2007 and older</u>	<u>10%</u>	<u>0.755</u>	<u>8%</u>

CATEGORY 2

<u>YEAR</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
<u>NEW/ACQUIRED</u>	<u>70%</u>	<u>1.000</u>	<u>70%</u>

2008	85%	1.000	85%
2007	69%	1.022	71%
2006	52%	1.016	53%
2005	34%	1.022	35%
2004 and older	20%	1.034	21%

<u>YEAR</u> <u>NEW/ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED %</u> <u>GOOD</u>
<u>2009</u>	<u>85%</u>	<u>1.000</u>	<u>85%</u>
<u>2008</u>	<u>69%</u>	<u>1.089</u>	<u>75%</u>
<u>2007</u>	<u>52%</u>	<u>1.112</u>	<u>58%</u>
<u>2006</u>	<u>34%</u>	<u>1.106</u>	<u>38%</u>
<u>2005 and older</u>	<u>20%</u>	<u>1.113</u>	<u>22%</u>

CATEGORY 3

<u>YEAR</u> <u>NEW/ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED %</u> <u>GOOD</u>
<u>2008</u>	<u>85%</u>	<u>1.000</u>	<u>85%</u>
<u>2007</u>	<u>69%</u>	<u>0.905</u>	<u>62%</u>
<u>2006</u>	<u>52%</u>	<u>0.908</u>	<u>47%</u>
<u>2005</u>	<u>34%</u>	<u>0.897</u>	<u>30%</u>
<u>2004 and older</u>	<u>20%</u>	<u>0.878</u>	<u>18%</u>

<u>YEAR</u> <u>NEW/ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED %</u> <u>GOOD</u>
<u>2009</u>	<u>85%</u>	<u>1.000</u>	<u>85%</u>
<u>2008</u>	<u>69%</u>	<u>0.966</u>	<u>67%</u>
<u>2007</u>	<u>52%</u>	<u>0.873</u>	<u>45%</u>
<u>2006</u>	<u>34%</u>	<u>0.876</u>	<u>30%</u>
<u>2005 and older</u>	<u>20%</u>	<u>0.865</u>	<u>17%</u>

CATEGORY 4

<u>YEAR</u> <u>NEW/ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED %</u> <u>GOOD</u>
<u>2008</u>	<u>85%</u>	<u>1.000</u>	<u>85%</u>
<u>2007</u>	<u>69%</u>	<u>0.977</u>	<u>67%</u>
<u>2006</u>	<u>52%</u>	<u>0.966</u>	<u>50%</u>
<u>2005</u>	<u>34%</u>	<u>0.953</u>	<u>32%</u>
<u>2004 and older</u>	<u>20%</u>	<u>0.925</u>	<u>19%</u>

<u>YEAR</u> <u>NEW/ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED %</u> <u>GOOD</u>
<u>2009</u>	<u>85%</u>	<u>1.000</u>	<u>85%</u>
<u>2008</u>	<u>69%</u>	<u>0.988</u>	<u>68%</u>
<u>2007</u>	<u>52%</u>	<u>0.966</u>	<u>50%</u>
<u>2006</u>	<u>34%</u>	<u>0.955</u>	<u>32%</u>

2005 and older                      20%                                      0.943                                      19%

CATEGORY 5

<u>YEAR</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED %</u>
<u>NEW/ACQUIRED</u>			<u>GOOD</u>
<u>2008</u>	<u>85%</u>	<u>1.000</u>	<u>85%</u>
<u>2007</u>	<u>69%</u>	<u>1.014</u>	<u>70%</u>
<u>2006</u>	<u>52%</u>	<u>1.034</u>	<u>54%</u>
<u>2005</u>	<u>34%</u>	<u>1.062</u>	<u>36%</u>
<u>2004 and older</u>	<u>20%</u>	<u>1.088</u>	<u>22%</u>

<u>YEAR</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED %</u>
<u>NEW/ACQUIRED</u>			<u>GOOD</u>
<u>2009</u>	<u>85%</u>	<u>1.000</u>	<u>85%</u>
<u>2008</u>	<u>69%</u>	<u>1.043</u>	<u>72%</u>
<u>2007</u>	<u>52%</u>	<u>1.057</u>	<u>55%</u>
<u>2006</u>	<u>34%</u>	<u>1.078</u>	<u>37%</u>
<u>2005 and older</u>	<u>20%</u>	<u>1.108</u>	<u>22%</u>

CATEGORY 6

<u>YEAR</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED %</u>
<u>NEW/ACQUIRED</u>			<u>GOOD</u>
<u>2008</u>	<u>85%</u>	<u>1.000</u>	<u>85%</u>
<u>2007</u>	<u>69%</u>	<u>1.022</u>	<u>71%</u>
<u>2006</u>	<u>52%</u>	<u>1.058</u>	<u>55%</u>
<u>2005</u>	<u>34%</u>	<u>1.129</u>	<u>38%</u>
<u>2004 and older</u>	<u>20%</u>	<u>1.177</u>	<u>24%</u>

<u>YEAR</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED %</u>
<u>NEW/ACQUIRED</u>			<u>GOOD</u>
<u>2009</u>	<u>85%</u>	<u>1.000</u>	<u>85%</u>
<u>2008</u>	<u>69%</u>	<u>1.026</u>	<u>71%</u>
<u>2007</u>	<u>52%</u>	<u>1.048</u>	<u>54%</u>
<u>2006</u>	<u>34%</u>	<u>1.085</u>	<u>37%</u>
<u>2005 and older</u>	<u>20%</u>	<u>1.159</u>	<u>23%</u>

CATEGORY 7

<u>YEAR NEW/</u>	<u>% GOOD</u>	<u>TREND</u>	<u>TRENDED</u>
<u>ACQUIRED</u>		<u>FACTOR</u>	<u>% GOOD</u>
<u>2008</u>	<u>92%</u>	<u>1.000</u>	<u>92%</u>
<u>2007</u>	<u>84%</u>	<u>1.018</u>	<u>86%</u>
<u>2006</u>	<u>76%</u>	<u>1.040</u>	<u>79%</u>
<u>2005</u>	<u>67%</u>	<u>1.072</u>	<u>72%</u>
<u>2004</u>	<u>58%</u>	<u>1.100</u>	<u>64%</u>
<u>2003</u>	<u>49%</u>	<u>1.105</u>	<u>54%</u>
<u>2002</u>	<u>39%</u>	<u>1.103</u>	<u>43%</u>

2001	30%	1.104	33%
2000	24%	1.115	27%
1999 and older	20%	1.124	22%

<u>YEAR</u> <u>NEW/ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED %</u> <u>GOOD</u>
<u>2009</u>	<u>92%</u>	<u>1.000</u>	<u>92%</u>
<u>2008</u>	<u>84%</u>	<u>1.031</u>	<u>87%</u>
<u>2007</u>	<u>76%</u>	<u>1.050</u>	<u>80%</u>
<u>2006</u>	<u>67%</u>	<u>1.072</u>	<u>72%</u>
<u>2005</u>	<u>58%</u>	<u>1.105</u>	<u>64%</u>
<u>2004</u>	<u>49%</u>	<u>1.134</u>	<u>56%</u>
<u>2003</u>	<u>39%</u>	<u>1.139</u>	<u>44%</u>
<u>2002</u>	<u>30%</u>	<u>1.138</u>	<u>34%</u>
<u>2001</u>	<u>24%</u>	<u>1.138</u>	<u>27%</u>
<u>2000 and older</u>	<u>20%</u>	<u>1.150</u>	<u>23%</u>

CATEGORY 8

<u>YEAR</u> <u>NEW/ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED %</u> <u>GOOD</u>
<u>2008</u>	<u>92%</u>	<u>1.000</u>	<u>92%</u>
<u>2007</u>	<u>84%</u>	<u>1.021</u>	<u>86%</u>
<u>2006</u>	<u>76%</u>	<u>1.050</u>	<u>80%</u>
<u>2005</u>	<u>67%</u>	<u>1.084</u>	<u>73%</u>
<u>2004</u>	<u>58%</u>	<u>1.125</u>	<u>65%</u>
<u>2003</u>	<u>49%</u>	<u>1.134</u>	<u>56%</u>
<u>2002</u>	<u>39%</u>	<u>1.145</u>	<u>45%</u>
<u>2001</u>	<u>30%</u>	<u>1.152</u>	<u>35%</u>
<u>2000</u>	<u>24%</u>	<u>1.165</u>	<u>28%</u>
<u>1999 and older</u>	<u>20%</u>	<u>1.179</u>	<u>24%</u>

<u>YEAR</u> <u>NEW/ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED %</u> <u>GOOD</u>
<u>2009</u>	<u>92%</u>	<u>1.000</u>	<u>92%</u>
<u>2008</u>	<u>84%</u>	<u>1.063</u>	<u>89%</u>
<u>2007</u>	<u>76%</u>	<u>1.086</u>	<u>83%</u>
<u>2006</u>	<u>67%</u>	<u>1.116</u>	<u>75%</u>
<u>2005</u>	<u>58%</u>	<u>1.152</u>	<u>67%</u>
<u>2004</u>	<u>49%</u>	<u>1.197</u>	<u>59%</u>
<u>2003</u>	<u>39%</u>	<u>1.206</u>	<u>47%</u>
<u>2002</u>	<u>30%</u>	<u>1.217</u>	<u>37%</u>
<u>2001</u>	<u>24%</u>	<u>1.225</u>	<u>29%</u>
<u>2000 and older</u>	<u>20%</u>	<u>1.239</u>	<u>25%</u>

(3) This rule is effective for tax years beginning after December 31, ~~2008~~  
2009.



AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-138, 15-6-207, 15-6-219, 15-24-921, 15-24-922, 15-24-925, MCA

REASONABLE NECESSITY: See the reasonable necessity for ARM 42.21.123.

42.21.158 PROPERTY REPORTING REQUIREMENTS (1) remains the same.

(2) If the aggregate market value of a person or business entity's class eight property on a statewide basis is \$20,000 or less, the person or business entity is exempt from class eight taxation. ~~In order to determine whether individual taxpayers or business entities are below that threshold, the department will require all persons or business entities with an aggregate market value over \$5,000 to report their class eight property for the 2006 tax year. In subsequent years of the reappraisal cycle, the department will not require annual reporting for those taxpayers that have demonstrated they are below the \$20,000 exemption threshold for the 2006 tax year, unless the person or business entity acquires new class eight property or a departmental review as provided in 15-8-104, MCA, indicates a need to report.~~ To ensure fair and accurate reporting of all taxable class eight property, the department may require all persons or business entities to report their class eight property periodically. It is the department's current plan to require a report of all class eight property for tax year ~~2010~~ 2011 and, if judged necessary, for additional future tax years at intervals to be determined.

(3) through (9) remain the same.

(10) This rule is effective for tax years beginning after December 31, ~~2005~~ 2009.

AUTH: 15-1-201, MCA

IMP: 15-1-303, 15-8-104, 15-8-301, 15-8-303, 15-8-309, 15-24-902, 15-24-903, 15-24-904, 15-24-905, MCA

REASONABLE NECESSITY: The department is proposing to amend the rule by changing the year in which the department will require a report of all class eight property from tax year 2010 to tax year 2011. Since the department has conducted ongoing personal property discovery, review and audits from the time this rule was written in 2006 to the present, delaying it would not have a significant negative impact.

The department is further amending the rule to delete the language in (2) that covers tax year 2006 because that language is no longer necessary. That language was originally adopted to clarify the thresholds to be used for Class 8 property for tax year 2006 and subsequent tax years, as well as reporting requirements.

The remaining language is intended to inform taxpayers that the next full report of all Class 8 property will not occur until the 2011 tax year and then only if it is deemed necessary.

42.21.159 PROPERTY AUDITS AND REVIEWS (1) through (3) remain the

same.

(4) The department will seek access to the following records for purposes of conducting the audits and reviews, pursuant to 15-8-304, MCA:

(a) personal property returns on file in the department's field offices;

(b) income statements, receipts of purchase, asset listings, asset registers, asset ledgers, purchase rental program agreements, and any information in the possession of the property owner or lessee which would reflect capital asset investment costs;

(c) any depreciation schedules, age/life programs, asset life schedules, or capital asset investment recovery records in the possession of the commercial personal property taxpayer or his representative; and

(d) any other information in the possession of the department and/or property owner or lessee which is necessary in order to conduct a thorough audit or review.

AUTH: 15-1-201, MCA

IMP: 15-8-104, MCA

REASONABLE NECESSITY: The department is proposing to amend the rule in order to implement the provisions of House Bill 487, (Ch. 343, L. 2009), passed by the 2009 Legislature, to include "purchase rental program agreements" as some of the documentation that will be required if an audit or review is conducted by the department. This change conforms to the legislative changes made by House Bill 487.

42.21.160 DEFINITIONS For purposes of this chapter the following definitions apply:

(1) through (3) remain the same.

(4) "Dealer ~~demonstration~~ purchase incentive rental program" is a program operated by equipment dealerships where the equipment is owned by the dealer and held for sale. The dealer is allowed to ~~demonstrate~~ rent the equipment to a single user on a short term basis as an incentive for sales of the equipment.

(5) through (9)(c) remain the same.

AUTH: 15-1-201, MCA

IMP: 15-6-138, 15-8-104, MCA

REASONABLE NECESSITY: The department is proposing to amend the rule in order to implement the provisions of House Bill 487, (Ch. 343, L. 2009), passed by the 2009 Legislature, which requires changes to 15-6-138, 15-6-202, and 15-24-301, MCA. The proposed amendments are necessary to bring the rule terminology into compliance with that of the statutes.

42.21.162 PERSONAL PROPERTY TAXATION DATES (1) remains the same.

(2) In order to obtain an exemption for personal property, other than class eight property that is exempt under 15-6-138(4), MCA, freeport merchandise or business inventories that are exempt under 15-6-202, MCA, or intangible personal

property that is exempt under 15-6-218, MCA, an application for exemption must be filed before March 1 of the year for which the exemption is sought. If the applicant acquires the personal property after January 1, they must submit an application for exemption:

- (a) by March 1;
  - (b) within 30 days of acquisition of the property; or
  - (c) within 30 days of receipt of an assessment notice, whichever is later.
- (3) through (7)(b) remain the same.

AUTH: 15-1-201, MCA

IMP: 15-8-201, 15-16-613, 15-24-301, 15-24-303, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.21.162 to clarify the references for exempt personal property.

42.22.1311 INDUSTRIAL MACHINERY AND EQUIPMENT TREND

FACTORS (1) through (2)(c) remain the same.

(3) Tables 1 through 32 represent the yearly trend factors for each of the categories.

<u>YEAR</u>	<u>TABLE 1</u> <u>Airplane Mfg.</u>	<u>TABLE 2</u> <u>Baking</u>	<u>TABLE 3</u> <u>Bottling</u>	<u>TABLE 4</u> <u>Brew/Dis.</u>	<u>TABLE 5</u> <u>Candy Confect.</u>
2008	1.000	1.000	1.000	1.000	1.000
2007	1.029	1.031	1.032	1.033	1.031
2006	1.087	1.104	1.095	1.095	1.107
2005	1.143	1.155	1.151	1.151	1.158
2004	1.238	1.242	1.248	1.244	1.245
2003	1.285	1.289	1.294	1.286	1.290
2002	1.308	1.311	1.317	1.309	1.311
2001	1.313	1.319	1.323	1.318	1.319
2000	1.322	1.334	1.335	1.332	1.335
1999	1.346	1.360	1.360	1.357	1.361
1998	1.348	1.365	1.363	1.364	1.366
1997	1.358	1.379	1.373	1.378	1.381
1996	1.374	1.403	1.394	1.400	1.406
1995	1.393	1.423	1.416	1.426	1.428
1994	1.449	1.482	1.472	1.480	1.487
1993	1.486	1.528	1.511	1.515	1.532
1992	1.510	1.556	1.536	1.539	1.561
1991	1.520	1.577	1.551	1.555	1.582
1990	1.544	1.613	1.581	1.590	1.621
1989	1.578	1.657	1.620	1.635	1.669

<u>YEAR</u>	<u>TABLE 1</u> <u>Airplane Mfg.</u>	<u>TABLE 2</u> <u>Baking</u>	<u>TABLE 3</u> <u>Bottling</u>	<u>TABLE 4</u> <u>Brew/Dis.</u>	<u>TABLE 5</u> <u>Candy Confect.</u>
<u>2009</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>
<u>2008</u>	<u>1.036</u>	<u>1.030</u>	<u>1.032</u>	<u>1.033</u>	<u>1.029</u>

<u>2007</u>	<u>1.079</u>	<u>1.072</u>	<u>1.077</u>	<u>1.079</u>	<u>1.071</u>
<u>2006</u>	<u>1.139</u>	<u>1.148</u>	<u>1.142</u>	<u>1.143</u>	<u>1.150</u>
<u>2005</u>	<u>1.198</u>	<u>1.201</u>	<u>1.201</u>	<u>1.202</u>	<u>1.202</u>
<u>2004</u>	<u>1.297</u>	<u>1.291</u>	<u>1.302</u>	<u>1.299</u>	<u>1.292</u>
<u>2003</u>	<u>1.346</u>	<u>1.340</u>	<u>1.350</u>	<u>1.343</u>	<u>1.339</u>
<u>2002</u>	<u>1.371</u>	<u>1.363</u>	<u>1.374</u>	<u>1.367</u>	<u>1.361</u>
<u>2001</u>	<u>1.376</u>	<u>1.372</u>	<u>1.381</u>	<u>1.376</u>	<u>1.370</u>
<u>2000</u>	<u>1.385</u>	<u>1.387</u>	<u>1.393</u>	<u>1.391</u>	<u>1.386</u>
<u>1999</u>	<u>1.411</u>	<u>1.415</u>	<u>1.419</u>	<u>1.417</u>	<u>1.413</u>
<u>1998</u>	<u>1.412</u>	<u>1.419</u>	<u>1.422</u>	<u>1.425</u>	<u>1.418</u>
<u>1997</u>	<u>1.423</u>	<u>1.434</u>	<u>1.433</u>	<u>1.439</u>	<u>1.433</u>
<u>1996</u>	<u>1.440</u>	<u>1.459</u>	<u>1.455</u>	<u>1.462</u>	<u>1.459</u>
<u>1995</u>	<u>1.460</u>	<u>1.480</u>	<u>1.477</u>	<u>1.490</u>	<u>1.482</u>
<u>1994</u>	<u>1.518</u>	<u>1.541</u>	<u>1.536</u>	<u>1.546</u>	<u>1.543</u>
<u>1993</u>	<u>1.558</u>	<u>1.588</u>	<u>1.576</u>	<u>1.582</u>	<u>1.591</u>
<u>1992</u>	<u>1.582</u>	<u>1.618</u>	<u>1.602</u>	<u>1.607</u>	<u>1.620</u>
<u>1991</u>	<u>1.593</u>	<u>1.640</u>	<u>1.618</u>	<u>1.624</u>	<u>1.642</u>
<u>1990</u>	<u>1.618</u>	<u>1.677</u>	<u>1.650</u>	<u>1.661</u>	<u>1.682</u>

<u>YEAR</u>	<u>TABLE 6</u> <u>Cement Mfg.</u>	<u>TABLE 7</u> <u>Chemical Mfg.</u>	<u>TABLE 8</u> <u>Clay Mfg.</u>	<u>TABLE 9</u> <u>Contractor Eq.</u>	<u>TABLE 10</u> <u>Creamery/Dairy</u>
2008	1.000	1.000	1.000	1.000	1.000
2007	1.032	1.033	1.032	1.024	1.032
2006	1.086	1.094	1.087	1.060	1.105
2005	1.140	1.149	1.139	1.108	1.160
2004	1.239	1.247	1.229	1.183	1.248
2003	1.288	1.291	1.273	1.218	1.291
2002	1.314	1.317	1.298	1.236	1.313
2001	1.323	1.324	1.308	1.246	1.321
2000	1.335	1.336	1.322	1.254	1.336
1999	1.358	1.358	1.344	1.275	1.363
1998	1.364	1.365	1.349	1.286	1.369
1997	1.378	1.379	1.363	1.300	1.383
1996	1.395	1.396	1.384	1.326	1.406
1995	1.421	1.424	1.410	1.348	1.431
1994	1.471	1.476	1.459	1.385	1.491
1993	1.504	1.507	1.493	1.419	1.531
1992	1.527	1.526	1.520	1.458	1.556
1991	1.540	1.537	1.536	1.485	1.575
1990	1.570	1.571	1.567	1.521	1.613
1989	1.612	1.611	1.614	1.570	1.660

<u>YEAR</u>	<u>TABLE 6</u> <u>Cement Mfg.</u>	<u>TABLE 7</u> <u>Chemical Mfg.</u>	<u>TABLE 8</u> <u>Clay Mfg.</u>	<u>TABLE 9</u> <u>Contractor Eq.</u>	<u>TABLE 10</u> <u>Creamery/Dairy</u>
<u>2009</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>
<u>2008</u>	<u>1.052</u>	<u>1.041</u>	<u>1.050</u>	<u>1.033</u>	<u>1.027</u>

<u>2007</u>	<u>1.098</u>	<u>1.088</u>	<u>1.095</u>	<u>1.065</u>	<u>1.071</u>
<u>2006</u>	<u>1.156</u>	<u>1.153</u>	<u>1.154</u>	<u>1.103</u>	<u>1.146</u>
<u>2005</u>	<u>1.213</u>	<u>1.211</u>	<u>1.209</u>	<u>1.153</u>	<u>1.203</u>
<u>2004</u>	<u>1.318</u>	<u>1.314</u>	<u>1.305</u>	<u>1.231</u>	<u>1.294</u>
<u>2003</u>	<u>1.371</u>	<u>1.359</u>	<u>1.352</u>	<u>1.267</u>	<u>1.339</u>
<u>2002</u>	<u>1.399</u>	<u>1.387</u>	<u>1.379</u>	<u>1.287</u>	<u>1.361</u>
<u>2001</u>	<u>1.408</u>	<u>1.394</u>	<u>1.389</u>	<u>1.297</u>	<u>1.371</u>
<u>2000</u>	<u>1.421</u>	<u>1.408</u>	<u>1.404</u>	<u>1.305</u>	<u>1.386</u>
<u>1999</u>	<u>1.445</u>	<u>1.431</u>	<u>1.427</u>	<u>1.327</u>	<u>1.414</u>
<u>1998</u>	<u>1.451</u>	<u>1.438</u>	<u>1.432</u>	<u>1.338</u>	<u>1.420</u>
<u>1997</u>	<u>1.466</u>	<u>1.453</u>	<u>1.447</u>	<u>1.353</u>	<u>1.434</u>
<u>1996</u>	<u>1.485</u>	<u>1.471</u>	<u>1.470</u>	<u>1.380</u>	<u>1.459</u>
<u>1995</u>	<u>1.512</u>	<u>1.500</u>	<u>1.498</u>	<u>1.402</u>	<u>1.484</u>
<u>1994</u>	<u>1.565</u>	<u>1.555</u>	<u>1.549</u>	<u>1.441</u>	<u>1.546</u>
<u>1993</u>	<u>1.600</u>	<u>1.587</u>	<u>1.586</u>	<u>1.477</u>	<u>1.588</u>
<u>1992</u>	<u>1.625</u>	<u>1.607</u>	<u>1.614</u>	<u>1.517</u>	<u>1.614</u>
<u>1991</u>	<u>1.639</u>	<u>1.619</u>	<u>1.631</u>	<u>1.546</u>	<u>1.634</u>
<u>1990</u>	<u>1.671</u>	<u>1.654</u>	<u>1.665</u>	<u>1.583</u>	<u>1.673</u>

<u>YEAR</u>	<u>TABLE 11</u> <u>Elec. Pwr.</u> <u>Eq.</u>	<u>TABLE 12</u> <u>Elec. Eq.</u> <u>Mfg.</u>	<u>TABLE 13</u> <u>Cannery/Fish</u>	<u>TABLE 14</u> <u>Flour, Cer.</u> <u>Feed</u>	<u>TABLE 15</u> <u>Cannery/Fruit</u>
2008	1.000	1.000	1.000	1.000	1.000
2007	1.043	1.037	1.031	1.032	1.029
2006	1.129	1.109	1.104	1.099	1.096
2005	1.211	1.178	1.154	1.155	1.144
2004	1.325	1.283	1.244	1.247	1.226
2003	1.386	1.338	1.291	1.293	1.272
2002	1.409	1.361	1.314	1.314	1.292
2001	1.403	1.359	1.323	1.322	1.301
2000	1.413	1.369	1.337	1.336	1.315
1999	1.441	1.394	1.364	1.363	1.342
1998	1.435	1.389	1.368	1.368	1.347
1997	1.437	1.395	1.382	1.382	1.359
1996	1.445	1.408	1.408	1.403	1.387
1995	1.457	1.424	1.428	1.425	1.405
1994	1.534	1.492	1.487	1.482	1.458
1993	1.566	1.528	1.535	1.522	1.509
1992	1.576	1.545	1.565	1.546	1.544
1991	1.570	1.546	1.587	1.561	1.572
1990	1.580	1.564	1.624	1.593	1.608
1989	1.607	1.595	1.670	1.634	1.654

<u>YEAR</u>	<u>TABLE 11</u> <u>Elec. Pwr.</u> <u>Eq.</u>	<u>TABLE 12</u> <u>Elec. Eq.</u> <u>Mfg.</u>	<u>TABLE 13</u> <u>Cannery/Fish</u>	<u>TABLE 14</u> <u>Flour, Cer.</u> <u>Feed</u>	<u>TABLE 15</u> <u>Cannery/Fruit</u>
<u>2009</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>

<u>2008</u>	<u>1.014</u>	<u>1.026</u>	<u>1.032</u>	<u>1.032</u>	<u>1.025</u>
<u>2007</u>	<u>1.069</u>	<u>1.075</u>	<u>1.074</u>	<u>1.076</u>	<u>1.063</u>
<u>2006</u>	<u>1.157</u>	<u>1.151</u>	<u>1.150</u>	<u>1.147</u>	<u>1.132</u>
<u>2005</u>	<u>1.242</u>	<u>1.222</u>	<u>1.202</u>	<u>1.205</u>	<u>1.182</u>
<u>2004</u>	<u>1.359</u>	<u>1.331</u>	<u>1.296</u>	<u>1.301</u>	<u>1.267</u>
<u>2003</u>	<u>1.421</u>	<u>1.388</u>	<u>1.345</u>	<u>1.348</u>	<u>1.314</u>
<u>2002</u>	<u>1.444</u>	<u>1.411</u>	<u>1.369</u>	<u>1.371</u>	<u>1.335</u>
<u>2001</u>	<u>1.439</u>	<u>1.410</u>	<u>1.378</u>	<u>1.379</u>	<u>1.345</u>
<u>2000</u>	<u>1.449</u>	<u>1.420</u>	<u>1.393</u>	<u>1.394</u>	<u>1.359</u>
<u>1999</u>	<u>1.478</u>	<u>1.446</u>	<u>1.421</u>	<u>1.421</u>	<u>1.387</u>
<u>1998</u>	<u>1.471</u>	<u>1.441</u>	<u>1.425</u>	<u>1.427</u>	<u>1.392</u>
<u>1997</u>	<u>1.474</u>	<u>1.447</u>	<u>1.440</u>	<u>1.441</u>	<u>1.404</u>
<u>1996</u>	<u>1.482</u>	<u>1.461</u>	<u>1.466</u>	<u>1.463</u>	<u>1.433</u>
<u>1995</u>	<u>1.494</u>	<u>1.477</u>	<u>1.488</u>	<u>1.486</u>	<u>1.451</u>
<u>1994</u>	<u>1.573</u>	<u>1.548</u>	<u>1.549</u>	<u>1.546</u>	<u>1.507</u>
<u>1993</u>	<u>1.605</u>	<u>1.585</u>	<u>1.599</u>	<u>1.588</u>	<u>1.559</u>
<u>1992</u>	<u>1.616</u>	<u>1.602</u>	<u>1.630</u>	<u>1.613</u>	<u>1.596</u>
<u>1991</u>	<u>1.610</u>	<u>1.604</u>	<u>1.654</u>	<u>1.628</u>	<u>1.624</u>
<u>1990</u>	<u>1.621</u>	<u>1.622</u>	<u>1.692</u>	<u>1.662</u>	<u>1.662</u>

<u>YEAR</u>	<u>TABLE 16</u> <u>Packing/</u> <u>Fruit</u>	<u>TABLE 17</u> <u>Laundry/</u> <u>Clean</u>	<u>TABLE 18</u> <u>Logging Eq.</u>	<u>TABLE 19</u> <u>Packing/</u> <u>Meat</u>	<u>TABLE 20</u> <u>Metal</u> <u>Work</u>
2008	1.000	1.000	1.000	1.000	1.000
2007	1.026	1.030	1.025	1.030	1.028
2006	1.074	1.086	1.068	1.097	1.085
2005	1.118	1.135	1.116	1.145	1.132
2004	1.194	1.224	1.199	1.227	1.222
2003	1.235	1.268	1.242	1.268	1.261
2002	1.253	1.291	1.261	1.290	1.282
2001	1.265	1.299	1.269	1.300	1.284
2000	1.275	1.309	1.276	1.313	1.293
1999	1.302	1.334	1.299	1.338	1.311
1998	1.308	1.336	1.305	1.345	1.310
1997	1.318	1.347	1.315	1.360	1.323
1996	1.350	1.369	1.336	1.384	1.340
1995	1.366	1.390	1.355	1.408	1.363
1994	1.409	1.440	1.398	1.461	1.416
1993	1.460	1.479	1.438	1.505	1.452
1992	1.504	1.507	1.469	1.533	1.473
1991	1.536	1.522	1.493	1.556	1.486
1990	1.571	1.554	1.523	1.595	1.518
1989	1.618	1.597	1.564	1.644	1.559

<u>YEAR</u>	<u>TABLE 16</u> <u>Packing/</u> <u>Fruit</u>	<u>TABLE 17</u> <u>Laundry/</u> <u>Clean</u>	<u>TABLE 18</u> <u>Logging Eq.</u>	<u>TABLE 19</u> <u>Packing/</u> <u>Meat</u>	<u>TABLE 20</u> <u>Metal</u> <u>Work</u>
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<u>2009</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>
<u>2008</u>	<u>1.024</u>	<u>1.039</u>	<u>1.039</u>	<u>1.036</u>	<u>1.045</u>
<u>2007</u>	<u>1.059</u>	<u>1.082</u>	<u>1.076</u>	<u>1.077</u>	<u>1.085</u>
<u>2006</u>	<u>1.109</u>	<u>1.141</u>	<u>1.121</u>	<u>1.147</u>	<u>1.145</u>
<u>2005</u>	<u>1.155</u>	<u>1.192</u>	<u>1.171</u>	<u>1.197</u>	<u>1.195</u>
<u>2004</u>	<u>1.233</u>	<u>1.286</u>	<u>1.258</u>	<u>1.283</u>	<u>1.290</u>
<u>2003</u>	<u>1.275</u>	<u>1.333</u>	<u>1.303</u>	<u>1.326</u>	<u>1.331</u>
<u>2002</u>	<u>1.294</u>	<u>1.357</u>	<u>1.323</u>	<u>1.349</u>	<u>1.353</u>
<u>2001</u>	<u>1.306</u>	<u>1.365</u>	<u>1.332</u>	<u>1.359</u>	<u>1.356</u>
<u>2000</u>	<u>1.317</u>	<u>1.376</u>	<u>1.339</u>	<u>1.373</u>	<u>1.365</u>
<u>1999</u>	<u>1.345</u>	<u>1.402</u>	<u>1.364</u>	<u>1.399</u>	<u>1.384</u>
<u>1998</u>	<u>1.351</u>	<u>1.404</u>	<u>1.369</u>	<u>1.406</u>	<u>1.383</u>
<u>1997</u>	<u>1.362</u>	<u>1.416</u>	<u>1.380</u>	<u>1.422</u>	<u>1.397</u>
<u>1996</u>	<u>1.394</u>	<u>1.438</u>	<u>1.402</u>	<u>1.448</u>	<u>1.415</u>
<u>1995</u>	<u>1.411</u>	<u>1.461</u>	<u>1.421</u>	<u>1.473</u>	<u>1.439</u>
<u>1994</u>	<u>1.455</u>	<u>1.513</u>	<u>1.467</u>	<u>1.528</u>	<u>1.495</u>
<u>1993</u>	<u>1.508</u>	<u>1.554</u>	<u>1.508</u>	<u>1.573</u>	<u>1.533</u>
<u>1992</u>	<u>1.553</u>	<u>1.583</u>	<u>1.542</u>	<u>1.603</u>	<u>1.555</u>
<u>1991</u>	<u>1.587</u>	<u>1.600</u>	<u>1.566</u>	<u>1.627</u>	<u>1.569</u>
<u>1990</u>	<u>1.623</u>	<u>1.633</u>	<u>1.598</u>	<u>1.668</u>	<u>1.602</u>

<u>YEAR</u>	<u>TABLE 21</u> <u>Mine</u> <u>Mill</u>	<u>TABLE 22</u> <u>Paint</u> <u>Mfg.</u>	<u>TABLE 23</u> <u>Petroleum</u>	<u>TABLE 24</u> <u>Printing</u>	<u>TABLE 25</u> <u>Paper</u> <u>Mfg.</u>
2008	1.000	1.000	1.000	1.000	1.000
2007	1.030	1.032	1.036	1.025	1.029
2006	1.076	1.092	1.102	1.082	1.081
2005	1.128	1.146	1.167	1.125	1.130
2004	1.223	1.243	1.268	1.200	1.225
2003	1.269	1.290	1.313	1.235	1.272
2002	1.294	1.317	1.338	1.255	1.296
2001	1.309	1.325	1.352	1.256	1.307
2000	1.319	1.337	1.369	1.267	1.315
1999	1.341	1.362	1.389	1.284	1.342
1998	1.347	1.366	1.395	1.286	1.345
1997	1.361	1.379	1.414	1.293	1.357
1996	1.383	1.399	1.438	1.313	1.384
1995	1.406	1.424	1.467	1.333	1.403
1994	1.449	1.480	1.521	1.382	1.450
1993	1.489	1.516	1.552	1.416	1.494
1992	1.521	1.541	1.567	1.438	1.528
1991	1.546	1.554	1.579	1.443	1.549
1990	1.582	1.586	1.620	1.464	1.580
1989	1.631	1.627	1.661	1.488	1.620

<u>YEAR</u>	<u>TABLE 21</u> <u>Mine</u>	<u>TABLE 22</u> <u>Paint</u>	<u>TABLE 23</u>	<u>TABLE 24</u>	<u>TABLE 25</u> <u>Paper</u>
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	<u>Mill</u>	<u>Mfg.</u>	<u>Petroleum</u>	<u>Printing</u>	<u>Mfg.</u>
<u>2009</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>
<u>2008</u>	<u>1.049</u>	<u>1.041</u>	<u>1.047</u>	<u>1.027</u>	<u>1.038</u>
<u>2007</u>	<u>1.093</u>	<u>1.087</u>	<u>1.098</u>	<u>1.063</u>	<u>1.080</u>
<u>2006</u>	<u>1.141</u>	<u>1.150</u>	<u>1.168</u>	<u>1.122</u>	<u>1.135</u>
<u>2005</u>	<u>1.197</u>	<u>1.207</u>	<u>1.237</u>	<u>1.166</u>	<u>1.186</u>
<u>2004</u>	<u>1.298</u>	<u>1.309</u>	<u>1.344</u>	<u>1.244</u>	<u>1.285</u>
<u>2003</u>	<u>1.347</u>	<u>1.359</u>	<u>1.392</u>	<u>1.280</u>	<u>1.335</u>
<u>2002</u>	<u>1.373</u>	<u>1.387</u>	<u>1.419</u>	<u>1.301</u>	<u>1.361</u>
<u>2001</u>	<u>1.389</u>	<u>1.395</u>	<u>1.433</u>	<u>1.302</u>	<u>1.372</u>
<u>2000</u>	<u>1.399</u>	<u>1.408</u>	<u>1.451</u>	<u>1.313</u>	<u>1.380</u>
<u>1999</u>	<u>1.422</u>	<u>1.434</u>	<u>1.472</u>	<u>1.332</u>	<u>1.408</u>
<u>1998</u>	<u>1.429</u>	<u>1.438</u>	<u>1.479</u>	<u>1.333</u>	<u>1.412</u>
<u>1997</u>	<u>1.444</u>	<u>1.452</u>	<u>1.499</u>	<u>1.340</u>	<u>1.424</u>
<u>1996</u>	<u>1.468</u>	<u>1.474</u>	<u>1.524</u>	<u>1.362</u>	<u>1.452</u>
<u>1995</u>	<u>1.491</u>	<u>1.500</u>	<u>1.555</u>	<u>1.382</u>	<u>1.472</u>
<u>1994</u>	<u>1.537</u>	<u>1.558</u>	<u>1.612</u>	<u>1.433</u>	<u>1.522</u>
<u>1993</u>	<u>1.579</u>	<u>1.596</u>	<u>1.645</u>	<u>1.468</u>	<u>1.568</u>
<u>1992</u>	<u>1.613</u>	<u>1.623</u>	<u>1.661</u>	<u>1.491</u>	<u>1.604</u>
<u>1991</u>	<u>1.641</u>	<u>1.637</u>	<u>1.674</u>	<u>1.496</u>	<u>1.626</u>
<u>1990</u>	<u>1.678</u>	<u>1.670</u>	<u>1.717</u>	<u>1.518</u>	<u>1.658</u>

<u>YEAR</u>	<u>TABLE 26</u>	<u>TABLE 27</u>	<u>TABLE 28</u>	<u>TABLE 29</u>	<u>TABLE 30</u>
	<u>Refrigeration</u>	<u>Rubber</u>	<u>Steam Power</u>	<u>Textile</u>	<u>Warehousing</u>
2008	1.000	1.000	1.000	1.000	1.000
2007	1.032	1.029	1.036	1.025	1.026
2006	1.092	1.085	1.106	1.069	1.064
2005	1.145	1.129	1.164	1.109	1.101
2004	1.234	1.211	1.269	1.187	1.178
2003	1.279	1.254	1.316	1.222	1.219
2002	1.305	1.280	1.343	1.240	1.233
2001	1.315	1.283	1.347	1.245	1.238
2000	1.328	1.294	1.358	1.255	1.245
1999	1.354	1.314	1.379	1.274	1.268
1998	1.359	1.319	1.381	1.276	1.270
1997	1.373	1.333	1.391	1.286	1.274
1996	1.395	1.352	1.405	1.308	1.295
1995	1.420	1.377	1.428	1.326	1.306
1994	1.473	1.426	1.485	1.366	1.343
1993	1.512	1.460	1.516	1.401	1.388
1992	1.541	1.488	1.534	1.429	1.420
1991	1.559	1.503	1.541	1.446	1.440
1990	1.594	1.537	1.566	1.478	1.466
1989	1.637	1.580	1.608	1.516	1.500

<u>YEAR</u>	<u>TABLE 26</u>	<u>TABLE 27</u>	<u>TABLE 28</u>	<u>TABLE 29</u>	<u>TABLE 30</u>
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	<u>Refrigeration</u>	<u>Rubber</u>	<u>Steam Power</u>	<u>Textile</u>	<u>Warehousing</u>
<u>2009</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>
<u>2008</u>	<u>1.039</u>	<u>1.042</u>	<u>1.040</u>	<u>1.036</u>	<u>1.037</u>
<u>2007</u>	<u>1.084</u>	<u>1.083</u>	<u>1.090</u>	<u>1.072</u>	<u>1.073</u>
<u>2006</u>	<u>1.148</u>	<u>1.141</u>	<u>1.164</u>	<u>1.118</u>	<u>1.113</u>
<u>2005</u>	<u>1.203</u>	<u>1.188</u>	<u>1.226</u>	<u>1.160</u>	<u>1.152</u>
<u>2004</u>	<u>1.297</u>	<u>1.274</u>	<u>1.336</u>	<u>1.242</u>	<u>1.232</u>
<u>2003</u>	<u>1.344</u>	<u>1.319</u>	<u>1.385</u>	<u>1.278</u>	<u>1.276</u>
<u>2002</u>	<u>1.371</u>	<u>1.346</u>	<u>1.413</u>	<u>1.297</u>	<u>1.290</u>
<u>2001</u>	<u>1.382</u>	<u>1.350</u>	<u>1.418</u>	<u>1.302</u>	<u>1.295</u>
<u>2000</u>	<u>1.395</u>	<u>1.361</u>	<u>1.429</u>	<u>1.313</u>	<u>1.303</u>
<u>1999</u>	<u>1.423</u>	<u>1.382</u>	<u>1.452</u>	<u>1.332</u>	<u>1.327</u>
<u>1998</u>	<u>1.428</u>	<u>1.387</u>	<u>1.453</u>	<u>1.334</u>	<u>1.328</u>
<u>1997</u>	<u>1.443</u>	<u>1.402</u>	<u>1.464</u>	<u>1.345</u>	<u>1.333</u>
<u>1996</u>	<u>1.466</u>	<u>1.422</u>	<u>1.479</u>	<u>1.368</u>	<u>1.355</u>
<u>1995</u>	<u>1.492</u>	<u>1.449</u>	<u>1.503</u>	<u>1.387</u>	<u>1.367</u>
<u>1994</u>	<u>1.548</u>	<u>1.500</u>	<u>1.563</u>	<u>1.429</u>	<u>1.405</u>
<u>1993</u>	<u>1.589</u>	<u>1.535</u>	<u>1.596</u>	<u>1.466</u>	<u>1.452</u>
<u>1992</u>	<u>1.620</u>	<u>1.565</u>	<u>1.614</u>	<u>1.495</u>	<u>1.486</u>
<u>1991</u>	<u>1.638</u>	<u>1.581</u>	<u>1.622</u>	<u>1.513</u>	<u>1.507</u>
<u>1990</u>	<u>1.675</u>	<u>1.617</u>	<u>1.649</u>	<u>1.546</u>	<u>1.533</u>

<u>YEAR</u>	<u>TABLE 31 Woodworking</u>	<u>TABLE 32 Glass Mfg.</u>
2008	1.000	1.000
2007	1.023	1.033
2006	1.064	1.095
2005	1.104	1.154
2004	1.179	1.256
2003	1.215	1.305
2002	1.234	1.331
2001	1.245	1.338
2000	1.246	1.351
1999	1.267	1.376
1998	1.269	1.380
1997	1.274	1.391
1996	1.306	1.409
1995	1.319	1.433
1994	1.357	1.491
1993	1.403	1.525
1992	1.452	1.548
1991	1.480	1.557
1990	1.505	1.583
1989	1.545	1.623

<u>YEAR</u>	<u>TABLE 31</u>	<u>TABLE 32</u>
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	<u>Woodworking</u>	<u>Glass Mfg.</u>
<u>2009</u>	<u>1.000</u>	<u>1.000</u>
<u>2008</u>	<u>1.029</u>	<u>1.039</u>
<u>2007</u>	<u>1.062</u>	<u>1.087</u>
<u>2006</u>	<u>1.105</u>	<u>1.152</u>
<u>2005</u>	<u>1.147</u>	<u>1.215</u>
<u>2004</u>	<u>1.225</u>	<u>1.321</u>
<u>2003</u>	<u>1.262</u>	<u>1.374</u>
<u>2002</u>	<u>1.281</u>	<u>1.401</u>
<u>2001</u>	<u>1.293</u>	<u>1.408</u>
<u>2000</u>	<u>1.294</u>	<u>1.422</u>
<u>1999</u>	<u>1.316</u>	<u>1.448</u>
<u>1998</u>	<u>1.318</u>	<u>1.452</u>
<u>1997</u>	<u>1.324</u>	<u>1.464</u>
<u>1996</u>	<u>1.356</u>	<u>1.483</u>
<u>1995</u>	<u>1.370</u>	<u>1.508</u>
<u>1994</u>	<u>1.410</u>	<u>1.570</u>
<u>1993</u>	<u>1.458</u>	<u>1.605</u>
<u>1992</u>	<u>1.508</u>	<u>1.629</u>
<u>1991</u>	<u>1.537</u>	<u>1.638</u>
<u>1990</u>	<u>1.563</u>	<u>1.666</u>

AUTH: 15-1-201, MCA  
IMP: 15-6-138, 15-8-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.22.1311 to clarify through the trend tables how the department arrives at market value as required by 15-8-111, MCA.

Annually, the department updates these schedules to inform taxpayers of the current percentages used by the department when valuing and taxing their property. To determine the market value of industrial property, the department historically uses and adopts the concept of trending and depreciation. The method by which trended depreciation schedules are derived is described in the existing rule, and that method is not being changed.

The First Judicial District Court indicated in 1986 that the department must publish these trend tables annually and these amendments are in compliance with that order.

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 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov and must be received no later than December 4, 2009.

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 [www.mt.gov/revenue](http://www.mt.gov/revenue), under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." 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 web site accessible at all times, concerned persons should be aware that the web site 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 e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. 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 contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor for House Bill 487, Representative Walter McNutt, was contacted on October 15, 2009, by electronic mail.

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Dan R. Bucks  
DAN R. BUCKS  
Director of Revenue

Certified to Secretary of State October 19, 2009

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM ) NOTICE OF PUBLIC  
42.20.701, 42.20.705, 42.20.715, 42.20.720, ) HEARING ON PROPOSED  
42.20.725, and 42.20.745 relating to forest ) AMENDMENT  
land property )

TO: All Concerned Persons

1. On November 23, 2009, at 9:30 a.m., a public hearing will be held in the Reception Area (Third Floor) Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of the above-stated rules.

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 no later than 5:00 p.m., November 9, 2009, 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 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

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

42.20.701 DEFINITIONS The following definitions apply to this subchapter:

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

(a) forest land that can produce ~~25 cubic~~ 100 board feet or more of ~~stem-wood~~ lumber per acre per year in live softwood trees ~~1.0 inch in diameter at breast height as measured using the Scribner Log Rule,~~ 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) does not ~~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 ten years.

(2) "Board foot" means a block of wood equivalent to one inch thick by 12 inches long by 12 inches wide.

~~(2)~~(3) "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, meandered and returned as navigable by the surveyors employed by the government of the United States, rivers and streams that have been adjudicated as being navigable, 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.

(4) "Cubic foot" means a block of wood equivalent to 12 inches thick by 12 inches long by 12 inches wide. There are approximately three to five board feet of finished lumber in one cubic foot of wood. The midpoint of this board foot to cubic foot conversion range is approximately four. The precise ratio varies with tree diameter, form, taper, and defect. In the productivity model developed by the University of Montana – College of Forestry and Conservation, the conversion factor is one cubic foot will equal four board feet.

(5) "Culmination of mean annual increment" means the point of maximum mean annual volumetric yield production in a tree or stand of trees. This point is also referred to as the biological rotation age.

(3) remains the same but is renumbered (6).

~~(4)~~(7) "Forest site productivity class" means the range of ~~site quality which expresses the timber production potential of a site~~ expressed in terms of cubic-board foot volume growth per acre per year at the culmination of mean annual increment (the point of maximum wood production) in fully stocked natural stands.

(5) remains the same but is renumbered as (8).

(9) "Hardwood Species" means a taxonomic group of species commonly referred to as broadleaf trees. Examples of hardwood species that are native to Montana are alder, Rocky Mountain maple, birch, aspen, and cottonwood. Native hardwood species are generally considered to be noneconomical to process into lumber products in Montana and are not classified as commercial timber species for the purpose of this rule.

(6) remains the same but is renumbered (10).

~~(7)~~(11) "Mean annual increment (MAI)" is a measure of the average yearly increase in volume growth produced on one acre in a tree or a stand of trees. This increment can be calculated by dividing total tree or stand volume growth by the total age. Mean annual growth changes during different growth phases of a tree or stand of trees. MAI typically increases as during the tree or stand's matures juvenile developmental stage, attains a maximum growth increment at a later age point in the stand's middle development, then decreases as the growth rate decreases tree or stand becomes more mature. Volume is expressed in cubic feet.

(8) remains the same but is renumbered (12).

~~(9)~~(13) "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, meandered and returned as navigable by the surveyors employed by the government of the United States, rivers and streams that have been adjudicated as being 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.

~~(40)~~(14) "Nonforest 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 42.20.705. Nonforest land can include rivers and streams, roads, highways, power lines, and railroads, and noncommercial tree species.

(11) through (15) remain the same but renumbered (15) through (19).

(20) "Scribner Log Rule" means a forest industry recognized mathematical formula that estimates the net board foot lumber volume that can be sawn from a log that is scaled to a specific diameter and log length. Volumetric yields are based on softwood trees at least 8.0 inches in diameter at breast height (outside bark). Tree volume is measured from a one-foot stump to a six-inch inside bark minimum top. Board foot estimates using the Scribner Log Rule are based on 16-foot nominal log lengths with five percent hidden defect.

(21) "Softwood species" means conifer species that can be economically processed into lumber. Some examples of softwood species that are native to Montana are ponderosa pine, Douglas-fir, larch, lodgepole pine, spruce, and alpine fir.

(16) remains the same but renumbered (22).

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

(18) remains the same but renumbered (23).

(24) "Timber" means softwood species that can be economically processed into lumber. Whitebark pine, limber pine, and Rocky Mountain juniper are generally considered to be noneconomical to process into lumber products in Montana and are not classified as commercial softwood species for the purpose of this rule.

(19) and (20) remain the same but are renumbered (25) and (26).

(27) "Volume" is expressed in net board feet as measured by the Scribner Log Rule.

AUTH: 15-44-105, MCA

IMP: 15-1-101, 15-44-101, 15-44-102, 15-44-103, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.701 to comply with the statutes implemented for the 2009 reappraisal of forest land.

The new definitions redefine:

(1) the productivity associated with forest land to utilize board feet per acre measurements as board feet per acre is an increasingly common standard of measurement within the forest industry;

(2) board feet per acre is the unit of measure used in the University of Montana - College of Forestry and Conservation productivity model;

(3) the need to further define cubic feet per acre and to provide a description of the associated conversion factors used to convert cubic feet per acre to an expression of board feet per acre; and

(4) provide a description of the Scribner Log Rule used in the determination of board feet per acre productivity formulas.

Specifically the productivity models implemented for the 2009 reappraisal of

forest land are based on a board foot productivity estimate. Other rule changes are for clarification of the existing practices regarding the determination of productivity and value of forest land.

42.20.705 FOREST LAND ASSESSMENT (1) The department shall assess land as forest lands according to the following basic determinations.

(a) Forest lands are:

(i) contiguous forested land of ~~more than~~ 15 acres or more, that is at least 120 feet in width in the same ownership ~~that~~ and is capable of producing timber that can be harvested in commercial quantity;

(ii) land 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 that is not classified as nonforest land. Nonforest land is used for agricultural, nonqualifying agricultural, industrial, commercial, or residential purposes.

AUTH: 15-44-105, MCA

IMP: 15-44-101, 15-44-102, 15-44-103, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.705 for clarification of the existing practices regarding the determination of productivity and value of forest land.

42.20.715 FOREST SITE PRODUCTIVITY CLASSES (1) The department shall assign a weighted mean volumetric average expressed in the number of board feet per acre to all forest land to one of the following forest site productivity class designations:

~~(a) forest site productivity class IV (25 through 44.9 cubic feet of wood per acre per year);~~

~~(b) forest site productivity class III (45 through 64.9 cubic feet of wood per acre per year);~~

~~(c) forest site productivity class II (65 through 84.9 cubic feet of wood per acre per year);~~

~~(d) forest site productivity class I (85 and over cubic feet of wood per acre per year).~~

AUTH: 15-44-105, MCA

IMP: 15-44-101, 15-44-102, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.715 to comply with the statutes implemented for the 2009 reappraisal of forest land and supported by advice from the 209 Legislative Select Sub-Committee on Reappraisal. The weighted mean volumetric average replaces the grading system used in the past and is also supported by the University of Montana productivity model. Classification of the forest remains the responsibility of the department.

Specifically the productivity models implemented for the 2009 reappraisal of

forest land are based on a board foot productivity estimate.

42.20.720 FOREST LAND VALUATION ZONES (1) The department shall divide the state into forest valuation zones, with each zone designated to recognize the uniqueness of marketing areas, timber types, growth rates, access, and other pertinent factors that affect value. The designated forest valuation zones and the counties contained within each zone are:

(a) Zone 1 - Northwest: Flathead, Lake, Lincoln, and Sanders counties;

(b) Zone 2 - ~~West Central~~ Southwest: Beaverhead, Deer Lodge, Granite, Jefferson, Lewis and Clark, Madison, Mineral, Missoula, Powell, and Ravalli, and Silver Bow counties;

(c) Zone 3 - ~~South Central~~: Blaine, Beaverhead, Deer Lodge, Jefferson, Lewis and Clark, Madison and Silver Bow Broadwater, Cascade, Chouteau, Fergus, Gallatin, Glacier, Golden Valley, Hill, Judith Basin, Liberty, Meagher, Park, Pondera, Teton, Toole, and Wheatland counties;

(d) Zone 4 - ~~Central~~: Blaine, Broadwater, Cascade, Chouteau, Fergus, Gallatin, Golden Valley, Glacier, Judith Basin, Meagher, Park, Pondera, and Teton counties; and

(e) Zone 5 ~~4~~ - 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: 15-1-201, 15-44-105, MCA

IMP: 15-44-101, 15-44-102, 15-44-103, 15-44-104, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.720 to comply with the statutes implemented for the 2009 reappraisal of forest land. More specifically, the forest land zones better represent the common forest market areas within the state. This determination was based on an analysis of the market conditions in different areas of the state conducted by Dr. David Jackson, Professor of the University of Montana, College of Forestry and Conservation.

42.20.725 FOREST LAND VALUATION FORMULA (1) and (2) remain the same.

(3) The valuation of forest land shall be based on ~~a five-year~~ the average of income, ~~and expenses, and capitalization rate~~ for the most recent five-year period ending in the calendar year immediately preceding the year published by the department in ARM 42.18.124 and the capitalization rate identified in (5)(c)(i).

(4) Income and expense data is expressed in real dollars using Gross Domestic Price (GDP) indices. Real dollars are brought forward to the closest quarterly calendar date published by the department in ARM 42.18.124.

~~(4)~~(5) The department shall determine the forest potential productivity value for each forest valuation zone using the formula  $V=I/R$ , where:

(a) V is the per-acre forest potential productivity value of the forest land;



(b) I is the per-acre net income of forest lands in each valuation zone and is determined by the department using the formula,  $I = (M \times SV) + NAI - C$ , where:

(i) I is the per-acre net income;

(ii) M is the per-acre mean annual net wood production expressed in board feet per acre;

(iii) SV is the per-acre stumpage value;

(iv) NAI is the per-acre agricultural related income; and

(v) C is the per-unit cost of the forest product and agricultural product produced, if any; and

(c) R is the capitalization rate.

(i) For the appraisal cycle beginning after December 31, 2008, and concluding on December 31, 2014, the capitalization rate used in the determination of value for all forest land in Montana is statutorily established at 8%.

(5) remains the same but is renumbered (6).

~~(6)(7)~~ The mean annual net wood production (M) shall be determined by using the following formula  $M = RA \times MAI$  where: in board feet using the Scribner Log Rule.

~~(a) RA is the cubic foot to board foot ratio which converts cubic feet to board feet; one cubic foot will equal 4.1 board feet; and~~

~~(b) MAI is the arithmetic midpoint weighted mean volumetric average of each forest productivity site class in each forest valuation zone.~~

(7) through (7)(d) remains the same but renumbered (8) through (8)(d).

~~(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: 15-1-201, 15-44-105, MCA

IMP: 15-44-101, 15-44-102, 15-44-103, 15-44-104, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.725 to comply with the statutory change enacted by the 2009 Legislature in the passage of House Bill 658 (Ch. 483, L. 2009), regarding the use of a specific 8% capitalization rate for determining the per-acre value of forest land.

42.20.745 FOREST LAND (1) The following is the schedule for forest land productive capacity values for each year of the reappraisal cycle beginning January 1, 2003: Forest land productivity values are calculated by using the formula defined in 15-44-103, MCA.

(a) Productive capacity Forest land productivity values are calculated by using the formula defined in 15-44-103, MCA. For forest land with an increase in value as a result of the 2009 reappraisal, the department will apply the phase-in percentage as defined in 15-7-111, MCA, and ARM 42.20.503 to the full reappraisal productivity values for forest land for the reappraisal cycle beginning January 1, 2009.

(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. For forest lands with a decrease in value as a result of the 2009 reappraisal, the lower value will be fully implemented immediately and will not be phased in.

(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:

<u>Grade</u>	<u>Zone 1</u>	<u>Zone 2</u>	<u>Zone 3</u>	<u>Zone 4</u>	<u>Zone 5</u>
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:

<u>Grade</u>	<u>Zone 1</u>	<u>Zone 2</u>	<u>Zone 3</u>	<u>Zone 4</u>	<u>Zone 5</u>
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:

<u>Grade</u>	<u>Zone 1</u>	<u>Zone 2</u>	<u>Zone 3</u>	<u>Zone 4</u>	<u>Zone 5</u>
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:

<u>Grade</u>	<u>Zone 1</u>	<u>Zone 2</u>	<u>Zone 3</u>	<u>Zone 4</u>	<u>Zone 5</u>
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:

<u>Grade</u>	<u>Zone 1</u>	<u>Zone 2</u>	<u>Zone 3</u>	<u>Zone 4</u>	<u>Zone 5</u>
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:

<u>Grade</u>	<u>Zone 1</u>	<u>Zone 2</u>	<u>Zone 3</u>	<u>Zone 4</u>	<u>Zone 5</u>
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

(2) 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 x .1666);

(c) Phase-in value (year 2) = value before reappraisal + (change in value x .3342);

(d) Phase-in value (year 3) = value before reappraisal + (change in value x .4998);

(e) Phase-in value (year 4) = value before reappraisal + (change in value x .6664);

(f) Phase-in value (year 5) = value before reappraisal + (change in value x .8330); and

(g) Phase-in value (year 6) = value before reappraisal + (change in value x 1.000).

(3) The following examples demonstrate how the phase-in formula calculates the per-acre assessed value for forest land:

(a) For tax year 2009:

(i) the 2008 full reappraisal value for forest land is \$518.63 per-acre;

(ii) the full reappraisal value for the same forest land in 2014 is \$553.51 per-acre; and

(iii) the change in value is \$34.88 (\$553.51 - \$518.63).

(b) The 2009 phase-in value per-acre = \$518.63 + (34.88 x .1666) = \$518.63 + \$5.81 or \$524.44 per-acre.

(c) For tax year 2013:

(i) the 2008 full reappraisal value for forest land is \$518.63 per-acre;

(ii) the full reappraisal value for the same forest land grade in 2014 is \$553.51 per-acre; and

(iii) the change in value is \$34.88 (\$553.51 - \$518.63).

(d) The 2013 phase-in value = \$518.63 + (34.88 x .8330) = \$518.63 + \$29.06

or \$547.69 per-acre.

AUTH: 15-1-201, 15-44-105, MCA

IMP: 15-44-103, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.745 to address the determination of the change in the per-acre value of forest land and the implementation of the phase-in provisions of Montana law.

The amendments shown in the rule strikes references to the grades associated with forest lands as grades will no longer be used in the determination of the productive value.

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 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail [canderson@mt.gov](mailto:canderson@mt.gov) and must be received no later than December 4, 2009.

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 [www.mt.gov/revenue](http://www.mt.gov/revenue), under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." 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 web site accessible at all times, concerned persons should be aware that the web site 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 e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. 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 contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on July 22, 2009, by regular mail.

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Dan R. Bucks  
DAN R. BUCKS  
Director of Revenue

Certified to Secretary of State October 19, 2009

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I ) NOTICE OF PUBLIC  
through III and amendment of ARM ) HEARING ON PROPOSED  
42.20.307, 42.20.601, 42.20.605, ) ADOPTION AND  
42.20.606,42.20.610, 42.20.620, 42.20.625, ) AMENDMENT  
42.20.650, 42.20.655, 42.20.660, 42.20.665, )  
42.20.670, 42.20.675, and 42.20.680 relating )  
to Agricultural Land Valuation )

TO: All Concerned Persons

1. On November 23, 2009, at 8:30 a.m., a public hearing will be held in the Reception Area (Third Floor) Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption and amendment of the above-stated rules.

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 no later than 5:00 p.m., November 9, 2009, 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 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

3. It is the intent of the department, through the following rule amendments to bring the rules into compliance with the recommendations of the 2006-2008 Governor's Agricultural Land Advisory Council and guidelines from the 2009 Legislative Select Sub-Committee on Reappraisal. In general, the rules are necessary to ensure that the taxpayers and affected public understand how some of the data used in the valuation of agricultural land is gathered and used in the application of the law.

4. The proposed new rules do not replace or modify any sections currently found in the Administrative Rules of Montana. The proposed new rules provide as follows:

NEW RULE I STEPS IN DETERMINING THE CLASSIFICATION OF AGRICULTURAL LAND (1) Steps in the agricultural classification process include the use of the:

- (a) USDA Farm Service Administration (FSA) field delineations, called line work, for initial identification of general agricultural land use;
- (b) initial internal desktop land use classification, using the criteria for each

agricultural land use;

(c) on-site field reviews, operator interviews, and inspection by local department appraisal staff;

(d) producer responses to photomaps mailed to all individual operators; and

(e) digitally identifying each producer's agricultural land use in a Geographic Information System (GIS).

AUTH: 15-7-111, MCA

IMP: 15-7-201, 15-7-202, 15-7-208, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I because it is important to help taxpayers understand the several steps involved in the determination of agricultural land use. The sole intent of the process is to identify the correct and current land use for each producer.

NEW RULE II STEPS NECESSARY TO VALUE AGRICULTURAL LAND THAT DOES NOT HAVE A PUBLISHED SOIL SURVEY (1) Denied access (DA) lands do not currently have any agricultural use productivity information associated with them from a published soil survey.

(a) When denied access lands are encountered in the department's efforts to assign a productivity to an agricultural use, the department will use Geographic Information System (GIS) technology to determine the highest level of productivity in the same agricultural use from the surrounding soils within one mile of the DA land and will assign the highest level of productivity to the denied access lands.

(b) When the owner of the land makes arrangements with the Natural Resource Conservation Service (NRCS) and provides written proof to the department that an arrangement has been made to have a soil survey conducted on their lands, the department will use GIS technology to determine the average level of productivity in the same agricultural use from the surrounding soils within one mile of the denied access land and will assign the average level of productivity to the denied access lands.

(c) Upon completion of the soil survey by the NRCS the department will apply the productivity of the soil to the agricultural use as indicated in the published soil survey.

(d) When the department receives the information in (b) or (c) above within 30 days of receipt of the assessment or the 1st Monday in June, the department will make the adjustments for the current tax year. If the information is received after that date, it will be adjusted for the following tax year.

(2) Not completed (NOTCOM) lands do not have any agricultural use productivity information associated with them from a published soil survey.

(a) When NOTCOM lands are encountered in the department's efforts to assign a productivity to an agricultural use, the department will use GIS technology to determine the average level of productivity in the same agricultural use from the surrounding soils within one mile of the NOTCOM land and will assign the average level of productivity to the NOTCOM lands.

(b) Upon completion and publication of the soil survey by the NRCS the department will apply the productivity of the soil to the agricultural use as indicated

by the published soil survey.

AUTH: 15-7-111, MCA

IMP: 15-7-201, 15-7-202, 15-7-208, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule II because there are instances where soil survey information is not available or not published yet. In these instances, it is important for the department to let taxpayers know how that agricultural land will be classified and valued. The new rules are intended to provide that information.

NEW RULE III STEPS IN DETERMINING THE PRODUCTIVITY OF AGRICULTURAL LAND (1) Productivity is determined using the Natural Resource Conservation Service (NRCS) soil surveys. The productivity determination is specific to the agricultural land use classification under average management practices.

(2) Productivity is adjusted to reflect, as near as possible, average management practices for an area using the following procedures:

(a) for lands whose productivity is based on bushels of spring wheat per acre, the soil survey productivity is adjusted to reflect the 12-year countywide average spring wheat production as reported by Montana Agricultural Statistical Services;

(b) for irrigated lands, the soil survey productivity for tons of irrigated alfalfa hay per acre is adjusted on a county-by-county basis to reflect producer responses received during the 2008-2009 map mailing process and information obtained from irrigation districts. Since the soil survey productivity is based on a full application of water, the adjustment is made based on the amount of water the producer is actually able to apply on a regular basis; and

(c) for grazing land, the midpoint of production for the amount of air-dry herbage grown between "unfavorable" precipitation years and "normal" precipitation years is used to determine the land's productivity.

AUTH: 15-7-111, MCA

IMP: 15-7-201, 15-7-202, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule III because the productivity estimates identified in the respective soil surveys need to be tempered to reflect average management practices. The text contained in New Rule III, sections (1), (2), (2)(a), and (2)(c) was recommended by the 2006-2008 Governor's Agricultural Land Valuation Advisory Committee and is being proposed by the department. Section (2)(b) was developed by the department with the advice of the 2009 Legislative Select Sub-Committee on Reappraisal.

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

42.20.307 VALUATION OF ELIGIBLE MINING CLAIM LAND (1) All land



contained in an eligible mining claim except that land described in ARM 42.20.305 shall be valued as class three grazing land. The appropriate grazing land classification will be G2B productivity and valuation determination will be based on the statewide average productivity value of grazing land.

AUTH: 15-1-201, MCA

IMP: 15-6-101, 15-8-111, MCA

REASONABLE NECESSITY: The amendments proposed to (1) are made to clarify the process to be used by the department for reappraisal cycles beginning January 1, 2009. There will no longer be grades associated with the process. Rather, the values will be determined by the productivity of the soil according to the agricultural use of the land. In this instance the department is required by law to value the land as grazing land. It will be valued at the value assigned to the statewide average productivity value of grazing land in Montana.

42.20.601 DEFINITIONS The following definitions apply to this subchapter:

(1) through (7) remain the same.

(8) "Classification" is the agricultural use of the land. The department classifies agricultural land into one of five agricultural use classes. The department's five agricultural uses are described in 42.20.660 through 42.20.680.

(8) and (9) remain the same but are renumbered (9) and (10).

(11) "Denied access or DA land" is a term used by the United States Department of Agriculture Natural Resource Conservation Service (NRCS) to describe lands where they were prohibited from conducting a soil survey by the owner of the land.

(10) through (19) remain the same but are renumbered (12) through (21).

(22) "Not completed or NOTCOM land" is a term used by the Natural Resource Conservation Service to describe lands where they have not completed a soil survey or have completed the soil survey but the results have not been published for public use.

(20) through (22) remain the same but are renumbered (23) through (25).

(23)(26) "Productive capacity or productivity" 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.

(27) "Productive capacity value and productivity value" are synonymous and interchangeable terms for the per-acre value of the agricultural land based on its productive capacity. The productive capacity value is determined using the formula described in 15-7-201, MCA, and is further identified in ARM 42.20.660, 42.20.665, 42.20.670, 42.20.675, and 42.20.680.

(24) through (26) remain the same but are renumbered (28) through (30).

AUTH: 15-7-111, MCA

IMP: 15-1-101, 15-6-133, 15-7-201, 15-7-202, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM

42.20.601 to help ensure that all Montana taxpayers affected by this rule can clearly understand the data used and the steps and processes taken by the department in the valuation of agricultural land for the correct application of the law.

This rule specifically addresses instances where soil survey information is not available because Natural Resource Conservation Service staff was not allowed access to the land or a soil survey has not been entirely completed or has not been published.

42.20.605 AGRICULTURAL LANDS (1) remains the same.

(2) ~~Current schedules for determining grade, classification~~ land use classifications, productivity levels, and assessed values per acre are adopted in ARM 42.20.660, 42.20.665, 42.20.670, 42.20.675, and 42.20.680.

(3) Taxable values for each land use classification and ~~production category~~ productivity level will be phased in or phased down pursuant to 15-7-111, MCA, and ARM 42.20.503.

AUTH: 15-1-201, MCA

IMP: 15-6-133, 15-7-103, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.605 to make clear the changes in methodology that the department will be using in valuing agricultural land for property tax purposes. The new methodology and approach to land identification, productivity, and valuation is embodied in the Montana Agricultural Land Classification Manual.

These amendments were recommended by the 2006 – 2008 Governor's Agricultural Land Valuation Advisory Committee. As a result, there will no longer be valuation schedules which grouped and averaged large quantities of property together even though variations may have been evident. Rather, each acre of agricultural land will be valued according to the productivity of the specific soil make-up for that acre, and for the agricultural land use to which the acre is classified (i.e. grazing, irrigated farm land, nonirrigated summer fallow farm land, nonirrigated continuously cropped farm land or nonirrigated continuously cropped hay land). The purpose is to result in a more precise, fair, and accurate value for each of the 50 million acres of privately owned agricultural land. The formula for determining the value of each acre of agricultural land is defined in 15-7-201, MCA.

42.20.606 EXCEPTIONS TO AGRICULTURAL LAND ASSESSMENT

(1) The following land shall not be classified and assessed as agricultural land:

(a) land that is used for residential, commercial, or industrial purposes, ~~or has covenants or other restrictions that effectively prohibit agricultural use, including lands described in ARM 42.20.156;~~

(b) land that has covenants or other restrictions that effectively prohibit agricultural use;

(c) land described in ARM 42.20.156; or

~~(b)~~(d) land that meets the provisions of ARM 42.20.705 to be assessed as forest land.

(2) Land described in (1)(a) may not be assessed by the department at a value lower than the agricultural land assessed value previously determined for the land by the department.

(a) For ownerships of contiguous land that are equal to or greater than 160 acres in size, the land which has covenants or other restrictions that effectively prohibit agricultural use as described in (1)(a), shall be assessed as forest land, provided the parcel meets the provisions of ARM 42.20.156, 42.20.705, and 42.20.710 to be assessed as forest land.

(i) The qualifying acres of forest land shall be assessed at the value of the productive grade of forest land that most closely approximates the former assessed value of the property, but in no case will the assessed value be lower than the former assessed value. If there are remaining acres not qualifying for forest land assessment, the remaining acres shall be assessed and taxed as class 4 land.

(ii) If the land does not qualify as forest land, the land shall be assessed and taxed as land not specifically included in another class in accordance with 15-6-134 (1)(a), MCA.

(b) For ownerships of contiguous land that are at least 20 acres but less than 160 acres in size, the land which has covenants or other restrictions that effectively prohibit agricultural use as described in (1)(a), shall be assessed as forest land, provided the parcel meets the provisions of ARM 42.20.705, 42.20.710, and 42.20.156 to be assessed as forest land.

(i) The qualifying acres of forest land shall be assessed at the value of the productive grade of forest land that most closely approximates the former assessed value of the property, but in no case will the assessed value be lower than the former assessed value. If there are remaining acres not qualifying for forest land assessment, the remaining acres shall be assessed and taxed as class 4 land.

(ii) If the land does not qualify as forest land, the land shall be assessed and taxed as land not specifically included in another class in accordance with 15-6-134 (1)(a), MCA.

(c) For ownerships of contiguous land that are less than 20 acres in size, the land which has covenants or other restrictions that effectively prohibit agricultural use as described in (1)(a), shall be assessed as forest land, provided the parcel meets the provisions of ARM 42.20.156, 42.20.705, and 42.20.710 to be assessed as forest land.

(i) The qualifying acres of forest land shall be assessed at the value of the productive grade of forest land that most closely approximates the former assessed value of the property, but in no case will the assessed value be lower than the former assessed value. If there are remaining acres not qualifying for forest land assessment, the remaining acres shall be assessed and taxed as class 4 land.

(ii) If the land does not qualify as forest land, the land shall be assessed and taxed as land not specifically included in another class in accordance with 15-6-134 (1)(a), MCA. If the land does not qualify as agricultural land, it will be reviewed by the department to determine if it qualifies to be classified and valued as Class 10 forest land, and if it does not meet those qualifications, it will be classified and valued as Class 4 tract land.

AUTH: 15-1-201, MCA

IMP: 15-6-133, 15-6-134, 15-7-201, 15-7-202, 15-44-101, 15-44-102, 15-44-103, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.606 to identify lands that don't receive agricultural land classification and valuation. The proposed amendments also provide for the taxpayers the process used by the department to progressively review and determine the correct property tax classification for the land in Montana.

42.20.610 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) and (3) remain the same.

AUTH: 15-7-111, MCA

IMP: 15-7-103, 15-7-201, 15-7-206, MCA

REASONABLE NECESSITY: The department is proposing amendment to ARM 42.20.610 by striking the word "graded," to clarify that agricultural lands are no longer graded. They are valued according to the agricultural use and the productivity level of the soil for the specific agricultural use to which land is being applied. The result is a more accurate identification of individual agricultural land use and agricultural land valuation.

42.20.620 CRITERIA FOR AGRICULTURAL LAND VALUATION FOR LAND TOTALING LESS THAN 20 ACRES (1) through (7) remain the same.

(8) If the land is used primarily to raise and market livestock, the land must be capable of sustaining a minimum number of animal unit months of carrying capacity. The minimum number of animal unit months of carrying capacity must equate to \$1,500 in annual gross income as determined by the Montana State University-Bozeman's Department of Agricultural Economics and Economics, with cattle as the base.

(a) Beef cows are owned to produce calves, usually one calf per year.

(b) The calf is the annual product produced from the grazing land via the beef cow.

(c) Calf prices have averaged approximately \$1.00 per pound. Weaning weights for calves are typically 500 pounds. The average revenue produced by one cow/calf pair is \$500. Three sold calves from three cow/calf pairs would generate \$1,500 in income.

(d) Based on a 10-month grazing season (typical), 30 AUM are required to generate \$1,500 (3 cow/calf pair X 10 months = 30 AUM).

(e) For the reappraisal cycle ending December 31, ~~2008~~ 2014, the Montana State University-Bozeman's Department of Agricultural Economics and Economics determined the minimum number of animal unit months of carrying capacity to be 30 animal unit months. For subsequent reappraisal cycles, the minimum number of animal unit months of carrying capacity needed to equate to \$1,500 in annual gross

income for each cycle will be determined by the Montana State University-Bozeman's Department of Agricultural Economics and Economics for the base year for each cycle. The base year for each cycle will be established by administrative rule.

(f) One animal unit (AU) is assumed to consume 915 pounds of dry herbage production per month from native grazing land. The carrying capacity may 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 may be based on an estimate by the NRCS, the local county agricultural extension agent, or the department. Based on the manner in which the NRCS measures dry herbage production and the lost forage consumption due to grazing livestock and other causes, the per-acre per-year dry herbage production consumed is 25% of the NRCS estimate for ~~an unfavorable~~ the midpoint between the normal and unfavorable precipitation year estimates on nonirrigated grazing land. On nonirrigated domestic grazing land, the department shall increase the estimated nonirrigated native grazing land carrying capacity by 50% (1.5). The department shall use the following formula, based on NRCS soil survey information, to calculate the carrying capacity for nonirrigated native grazing land, which does not exhibit significant overgrazing or weed infestation:

(i) per-acre per-year dry herbage production multiplied by 0.25 equals the per-acre per-year dry herbage production consumed by livestock;

(ii) per-acre per-year dry herbage production consumed by livestock divided by 915 pounds of dry herbage production consumed per-month per-animal unit equals the animal unit months per acre (AUMs/acre); and

(iii) livestock acres grazed multiplied by AUMs/acre equals the total AUMs.

(9) through (14)(c) remain the same.

(15) Land qualifying in (13) and (14) will be ~~graded and~~ assessed as at the value established by the department for the highest productivity level of nonirrigated continuously cropped farm land, grade 1A4.

(16) through (20) remain the same.

AUTH: 15-1-201, MCA

IMP: 15-7-201, 15-7-202, 15-7-203, 15-7-206, 15-7-207, 15-7-208, 15-7-209, 15-7-210, 15-7-212, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.620(8)(e) to correct the ending date for the current reappraisal cycle, December 31, 2014.

The proposed amendments to (8)(f) are made at the recommendation of the 2006-2008 Governor's Agricultural Land Valuation Advisory Committee. The committee determined that the midpoint herbage production estimate between the normal and unfavorable precipitation year estimates provided by NRCS was more accurate. Previously, only the unfavorable precipitation year estimate was used by the department.

The proposed amendments to (15) are made to correct reference from the previous use of grades by the department to the use of a more accurate productivity level approach.

42.20.625 CRITERIA FOR AGRICULTURAL LAND VALUATION FOR LAND TOTALING 20 TO 160 ACRES IN SIZE (1) through (10) remain the same.

(11) If the land is used primarily to raise and market livestock, the land must be capable of sustaining a minimum number of animal unit months of carrying capacity. The minimum number of animal unit months of carrying capacity must equate to \$1,500 in annual gross income as determined by the Montana State University-Bozeman's, Department of Agricultural Economics and Economics, with cattle as the base.

(a) Beef cows are owned to produce calves, usually one calf per year.

(b) The calf is the annual product produced from the grazing land via the beef cow.

(c) Calf prices have averaged approximately \$1.00 per pound. Weaning weights for calves are typically 500 pounds. The average revenue produced by one cow/calf pair is \$500. Three sold calves from three cow/calf pairs would generate \$1,500 in income.

(d) Based on a 10-month grazing season (typical), 30 AUM are required to generate \$1,500 (3 cow/calf pair X 10 months = 30 AUM).

(e) For the reappraisal cycle ending December 31, ~~2008~~ 2014, the Montana State University-Bozeman's Department of Agricultural Economics and Economics determined the minimum number of animal unit months of carrying capacity to be 30 animal unit months. For subsequent reappraisal cycles, the minimum number of animal unit months of carrying capacity needed to equate to \$1,500 in annual gross income for each cycle will be determined by the Montana State University-Bozeman's Department of Agricultural Economics and Economics for the base year for each cycle. The base year for each cycle will be established by administrative rule.

(f) One animal unit (AU) is assumed to consume 915 pounds of dry herbage production per month from native grazing land. The carrying capacity may be based on the information obtained from the NRCS soil survey. If a soil survey does not exist, the carrying capacity may be based on an estimate by the NRCS, the county agricultural extension agent, or the department. Based on the manner in which the NRCS measures dry herbage production and the lost forage consumption due to grazing livestock and other causes, the per-acre per-year dry herbage production consumed is 25% of the NRCS estimate for ~~an unfavorable~~ the midpoint between the normal and unfavorable precipitation year estimates on nonirrigated grazing land. On nonirrigated domestic grazing land, the department shall increase the estimated nonirrigated native grazing land carrying capacity by 50% (1.5). The department shall use the following formula, based on NRCS soil survey information, to calculate the carrying capacity for nonirrigated native grazing land, which does not exhibit significant overgrazing or weed infestation:

(i) per-acre per-year dry herbage production multiplied by 0.25 equals the per-acre per-year dry herbage production consumed by livestock;

(ii) per-acre per-year dry herbage production consumed by livestock divided by 915 pounds of dry herbage production consumed per-month per-animal unit equals the animal unit months per acre (AUMs/acre); and

(iii) livestock acres grazed multiplied by AUMs/acre equals the total AUMs.

(12) through (17)(c) remain the same.

(18) Land qualifying in ~~(13 16)~~ and ~~(14 17)~~ will be ~~graded and~~ assessed as at the value established by the department for the highest productivity level of nonirrigated continuously cropped farm land, grade 1A4.

(19) through (21) remain the same.

AUTH: 15-1-201, MCA

IMP: 15-6-133, 15-6-134, 15-7-201, 15-7-202, MCA

REASONABLE NECESSITY: The department is proposing to amend 42.20.625 to correct the ending date for the current reappraisal cycle, December 31, 2014, in section (11)(e).

The proposed amendments to (11)(f) are made at the recommendation of the 2006-2008 Governor's Agricultural Land Valuation Advisory Committee. The committee determined that the midpoint herbage production estimate between the normal and unfavorable precipitation year estimates provided by NRCS was more accurate. Previously, only the unfavorable precipitation year estimate was used by the department.

The proposed amendments to (18) are made to correct reference from the previous use of grades by the department to the use of a specific productivity level as directed by the 2009 Legislature.

42.20.650 VALUATION OF NONQUALIFIED AGRICULTURAL LAND FROM 20 TO 160 ACRES (1) Parcels of land that meet the criteria as nonqualified agricultural land under ARM 42.20.601 are valued at the ~~productive capacity statewide average productivity 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 42.20.601 are valued at the ~~productive capacity statewide average productivity value of grazing land, grade G3.~~

AUTH: 15-1-201, MCA

IMP: 15-6-133, 15-7-201, 15-7-202, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.650 to clarify the process used by the department for the current and subsequent reappraisal cycles. There will no longer be grades associated with the process. Rather, the values will be determined by the productivity of the soil according to the agricultural use of the land. This change in process was recommended by the 2006-2008 Governor's Agricultural Land Valuation Advisory Committee.

42.20.655 VALUATION OF ONE ACRE BENEATH IMPROVEMENTS ON AGRICULTURAL AND NONQUALIFIED AGRICULTURAL 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 42.20.660, 42.20.665, 42.20.670, 42.20.675, and 42.20.680.

(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~~ highest productivity value 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~~ productivity value for the entire property ownership.

(2) A market value determination will be made for each one-acre area beneath each residence(s) which is located on nonqualified agricultural land.

(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 nonqualified agricultural land as defined in (2) shall be appraised according to market value consistent with that of comparable land.

(d) If the one acre of land is located on a nonqualified agricultural 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.

(e) If the one acre of land is located on a nonqualified agricultural 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~~ statewide average productivity value for the ~~agricultural productive of the grazing land grade 3~~ for the one acre beneath the residence(s) on nonqualified agricultural land improvements must be subtracted from the ~~productive capacity~~ productivity value for the entire property ownership.

(3) remains the same.

AUTH: 15-1-201, MCA

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

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.655 to remove the previous reference of the use of a grade and replace that reference with the correct terminology which is used for the current and subsequent reappraisal cycles.

42.20.660 NONIRRIGATED SUMMER FALLOW FARM LAND (1) ~~The following is the schedule for the n~~Nonirrigated summer fallow farm land ~~productive capacity~~ productivity values for each year of the reappraisal cycle beginning January 1, ~~2003~~ 2009, are:

(a) ~~Productive capacity values are e~~Calculated by using the formula defined



in 15-7-201, MCA., where the agricultural land productivity valuation formula is:

(i)  $V = I/R$ ;

(ii) V is the productivity value of the agricultural land;

(iii) I is the net income attributed to the acre of land using a crop share approach, which means applying the percentage of income from production (the share) that is attributed to the landlord (owner) of the land; and

(iv) R is the capitalization rate or the rate that converts an ongoing income stream into an estimate of value.

(b) For the reappraisal cycle beginning January 1, 2009, the per acre nonirrigated summer fallow farm land value is calculated as follows:

(i) Average price for spring wheat = \$4.58 per bushel;

(ii) Gross income per acre = Number of bushels per acre times \$4.58 per bushel;

(iii) Net income per acre = Gross income per acre times 12.5%, which is the landlords crop share percentage for nonirrigated summer fallow farm land; and

(iv) Productivity value per acre = Net income per acre divided by 0.064, which is the capitalization rate of 6.4%, in decimal form, as set forth in 15-7-201, MCA.

(b)(c) For lands with an increase in value The 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 productivity values for nonirrigated summer fallow farm land for the reappraisal cycle beginning January 1, 2003 2009.

(i) For lands with a decrease in value as a result of the 2009 reappraisal, the lower value will be implemented immediately.

NONIRRIGATED FARMLAND,  
SUMMER FALLOW BASIS

<u>GRADE</u>	<u>Bu. Wheat</u> <u>Per Acre</u> <u>Summer</u> <u>Fallow</u>	<u>2003</u> <u>Assessed</u> <u>Value/AG</u>	<u>2004</u> <u>Assessed</u> <u>Value/AG</u>	<u>2005</u> <u>Assessed</u> <u>Value/AG</u>
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	<del>16-17</del>	\$129.17	\$132.34	\$135.51
3a	<del>14-15</del>	\$113.52	\$116.30	\$119.09
3b	<del>12-13</del>	\$97.86	\$100.26	\$102.66
4a	<del>10-11</del>	\$82.20	\$84.22	\$86.24
4b	<del>8-9</del>	\$66.54	\$68.18	\$69.81
5	<del>&lt;8</del>	\$31.32	\$32.08	\$32.85

NONIRRIGATED FARMLAND,  
SUMMER FALLOW BASIS

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

AUTH: 15-1-201, MCA

IMP: 15-7-103, 15-7-201, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.660 to correct the terminology to that which is currently being used, strikes the valuation schedules that were used previously to value nonirrigated summer fallow farm land, and replaces them with the formula used to calculate the productivity values of nonirrigated summer fallow farm land for the reappraisal cycles.

The new methodology recommended by the 2006-2008 Governor's Agricultural Land Valuation Advisory Committee requires each acre of land to be valued within its agricultural use (i.e. grazing, tillable irrigated farm land, nonirrigated summer fallow farm land, nonirrigated continuously cropped farm land or nonirrigated continuously cropped hay land) according to the soil productivity

indicated for the land. This valuation is to be completed in accordance with the requirements found in 15-7-201, MCA.

The language regarding the "phase in" of values is included to provide knowledge and assurance to landowners that the phase-in provisions of Montana law are also applied to agricultural land.

42.20.665 NONIRRIGATED, CONTINUOUSLY CROPPED FARM LAND

~~(1) The following is the schedule for the non~~Nonirrigated continuously cropped ~~fallow~~ farm land ~~productive capacity~~ productivity values for each year of the reappraisal cycle beginning January 1, ~~2003~~ 2009, are:

(a) ~~Productive capacity values are c~~Calculated by using the formula defined in 15-7-201, MCA, ~~where the agricultural land productivity valuation formula is:~~

(i)  $V = I/R$ ;

(ii) V is the productivity value of the agricultural land;

(iii) I is the net income attributed to the acre of land using a crop share approach, which means applying the percentage of income from production (the share) that is attributed to the landlord (owner) of the land; and

(iv) R is the capitalization rate or the rate that converts an ongoing income stream into an estimate of value.

(b) For the reappraisal cycle beginning January 1, 2009, the per acre nonirrigated continuously cropped farm land value is calculated as follows:

(i) Average price for spring wheat = \$4.58 per bushel;

(ii) Gross income per acre = Number of bushels per acre times \$4.58 per bushel;

(iii) Net income per acre = Gross income per acre times 25%, which is the landlords crop share percentage for nonirrigated continuously cropped farm land; and

(iv) Productivity value per acre = Net income per acre divided by 0.064, which is the capitalization rate of 6.4%, in decimal form, as set forth in 15-7-201(4)(c), MCA.

~~(b)(c) For lands with an increase in value~~ The ~~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~~ productivity values for nonirrigated continuously cropped ~~fallow~~ farm land for the reappraisal cycle beginning January 1, ~~2003~~ 2009.

(i) For lands with a decrease in value as a result of the 2009 reappraisal, the lower value will be implemented immediately.

NONIRRIGATED FARMLAND,  
CONTINUOUSLY CROPPED BASIS

<u>GRADE</u>	<u>Bu. Wheat Per Acre Per Year</u>	<u>2003 Assessed Value/AC</u>	<u>2004 Assessed Value/AC</u>	<u>2005 Assessed Value/AC</u>
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

<u>GRADE</u>	<u>Bu. Wheat</u> <u>Per Acre</u> <u>Per Year</u>	<u>2006</u> <u>Assessed</u> <u>Value/AC</u>	<u>2007</u> <u>Assessed</u> <u>Value/AC</u>	<u>2008</u> <u>Assessed</u> <u>Value/AC</u>
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	36-37	\$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

AUTH: 15-1-201, MCA  
IMP: 15-7-103, 15-7-201, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.665 for the same reason as stated in ARM 42.20.605.

42.20.670 NONIRRIGATED CONTINUOUSLY CROPPED HAY LAND

~~(1) The following is the schedule for the non~~Nonirrigated continuously cropped hay land ~~productive capacity~~ productivity values for each year of the reappraisal cycle beginning January 1, ~~2003~~ 2009, are:

(a) ~~Productive capacity values are~~ Calculated by using the formula defined in 15-7-201, MCA-, where the agricultural land productivity valuation formula is:

(i)  $V = I/R$ ;

(ii) V is the productivity value of the agricultural land;

(iii) I is the net income attributed to the acre of land using a crop share approach, which means applying the percentage of income from production (the share) that is attributed to the landlord (owner) of the land; and

(iv) R is the capitalization rate or the rate that converts an ongoing income stream into an estimate of value.

(b) For the reappraisal cycle beginning January 1, 2009, the per acre nonirrigated continuously cropped hay land value is calculated as follows:

(i) Average price for alfalfa = \$63.04 per ton;

(ii) Gross income per acre = Number of tons per acre times \$63.04 per ton;

(iii) Net income per acre = Gross income per acre times 25%, which is the landlords crop share percentage for nonirrigated continuously cropped hay land; and

(iv) Productivity value per acre = Net income per acre divided by 0.064, which is the capitalization rate of 6.4%, in decimal form, as set forth in 15-7-201, MCA.

~~(b)(c)~~ For lands with an increase in value ~~The~~ 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~~ productivity values for nonirrigated continuously cropped hay land for the reappraisal cycle beginning January 1, ~~2003~~, 2009.

(i) For lands with a decrease in value as a result of the 2009 reappraisal, the lower value will be implemented immediately.

**NONIRRIGATED 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
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NONIRRIGATED 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

AUTH: 15-1-201, MCA

IMP: 15-7-103, 15-7-201, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.670 for the same reason as stated in ARM 42.20.605.

42.20.675 TILLABLE, IRRIGATED FARM LAND (1) ~~The following is the schedule for the full reappraisal productive capacity values for t~~Tillable, irrigated farm land values for each year of the reappraisal cycle beginning January 1, 2003 2009, are:

(a) Productive capacity values are c~~Calculated~~Calculated by using the formula defined in 15-7-201, MCA-, where the agricultural land productivity valuation formula is:

(i)  $V = I/R$ ;

(ii) V is the productivity value of the agricultural land;

(iii) I is the net income attributed to the acre of land using a crop share approach, which means applying the percentage of income from production (the share) that is attributed to the landlord (owner) of the land; and

(iv) R is the capitalization rate or the rate that converts an ongoing income stream into an estimate of value.

(b) For the reappraisal cycle beginning January 1, 2009, the per acre tillable irrigated farm land value is calculated as follows:

(i) Average price for alfalfa = \$63.04 per ton;

(ii) Gross income per acre = Number of tons per acre times \$63.04 per ton;

(iii) Net income per acre = Gross income per acre times 25%, which is the landlords crop share percentage for tillable irrigated farm land;

(iv) Less water cost = Net income per acre minus water cost allowance; and

(v) Productivity value per acre = Net income per acre less water cost allowance divided by 0.064, which is the capitalization rate of 6.4%, in decimal form, as set forth in 15-7-201, MCA.

(c) There are seven allowable water cost classes for tillable irrigated farm land.

ASSESSED VALUE PER ACRE BY WATER CLASS (WC)

Tons		WC1	WC2	WC3	WC4	WC5
Alfalfa		Under	\$20.00	\$25.00	\$30.00	\$35.00
Per Acre		\$19.99	\$24.99	\$29.99	\$34.55	\$40.00
Grade						
	1A	863.19	788.19	710.06	631.94	553.51
4.5+	1B	741.94	666.92	588.81	510.69	432.56
4.0 - 4.4	2	620.69	545.69	467.56	389.44	311.31
3.5 - 3.9	3	499.44	424.44	346.31	268.19	218.25
3.0 - 3.4	4	378.19	303.19	225.06	218.25	218.25
2.5 - 2.0	5	256.94	218.25	218.25	218.25	218.25
<2.0	6	218.25	218.25	218.25	218.25	218.25

WATER COST CLASSES (WC)

<u>WC1</u>	<u>WC2</u>	<u>WC3</u>	<u>WC4</u>	<u>WC5</u>	<u>WC6</u>	<u>WC7</u>
<u>Under</u>	<u>\$20.00</u>	<u>\$25.00</u>	<u>\$30.00</u>	<u>\$35.00</u>	<u>\$40.00</u>	<u>\$45.00</u>
<u>\$19.99</u>	<u>\$24.99</u>	<u>\$29.99</u>	<u>\$34.99</u>	<u>\$39.99</u>	<u>\$44.99</u>	<u>\$49.99</u>

(2) For lands with an increase in value ~~The 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~~ productivity values for tillable, irrigated farm land for the reappraisal cycle beginning January 1, ~~2003~~ 2009, if the values are higher than the base values in effect for tax year ~~2002~~ 2008.

(i) For lands with a decrease in value as a result of the 2009 reappraisal, the lower value will be implemented immediately.

(3) remains the same.

(4) The following examples demonstrate how the phase-in formula calculates the assessed value for irrigated land:

(a) For ~~2002~~ 2008:

(i) the ~~2002~~ 2008 full reappraisal value for irrigated grade 1A land in water class five is \$518.63;

(ii) the full reappraisal value for the same irrigated grade land in water class five in ~~2008~~ 2014 is \$553.51; and

(iii) the change in value is \$34.88 (\$553.51 - \$518.63).

(b) The ~~2003~~ 2009 phase-in value = \$518.63 + (34.88 x .1666) = \$518.63 + \$5.81 or \$524.44.

(c) For ~~2007~~ 2013:

(i) the ~~2002~~ 2008 full reappraisal value for irrigated grade 1A land in water class five is \$518.63;

(ii) the full reappraisal value for the same irrigated grade land in water class five in ~~2008~~ 2014 is \$553.51; and

(iii) the change in value is \$34.88 (\$553.51 - \$518.63).

(d) The ~~2007~~ 2013 phase-in value = \$518.63 + (34.88 x .8330) = \$518.63 + \$29.06 or \$547.69.

(5) The department will not apply a phase-in percentage calculation to the full reappraisal ~~productive capacity~~ productivity values for tillable, irrigated farm land

values for the reappraisal cycle beginning January 1, ~~2003~~ 2009, if the values are lower than the base values in effect for tax year ~~2002~~ 2008. If the full reappraisal ~~productive capacity~~ productivity values for tillable, irrigated farm land are lower than the base values in effect for tax year ~~2002~~ 2008, the full reappraisal ~~productive capacity~~ productivity values for tillable, irrigated farm land will be fully implemented on January 1, ~~2003~~ 2009, and remain in effect for each year of the reappraisal cycle.

(6) Water costs are the combination of allowable labor costs, on-farm energy costs, and a ~~\$40~~ 15 base water cost which is applicable to every acre of irrigated land. Total allowable water costs may not exceed ~~\$40~~ 50 for each acre of irrigated land.

(7) Allowable labor costs which pertain to this rule are \$15 for flood irrigation, \$10 for sprinkler irrigation, and \$5 for pivot irrigation, as provided in 15-7-201, MCA.

(8) through (10) remain the same.

(11) The minimum value of irrigated land is \$411.48 as determined by using 23 bushels of spring wheat and the nonirrigated continuously cropped farmland methodology.

(11) and (12) remain the same but are renumbered (12) and (13).

AUTH: 15-1-201, MCA

IMP: 15-7-103, 15-7-201, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.675 to correct terminology, strike the valuation schedules that were used previously to value tillable irrigated farm land, and replaces them with the formula used to calculate the productivity values of tillable irrigated farm land for the current and subsequent reappraisal cycle.

The new methodology recommended by the 2006-2008 Governor's Agricultural Land Valuation Advisory Committee requires each acre of land to be valued within its agricultural use (i.e. grazing, tillable irrigated farm land, nonirrigated summer fallow farm land, nonirrigated continuously cropped farm land or nonirrigated continuously cropped hay land) according to the soil productivity indicated for the land. This valuation is to be completed in accordance with the requirements found in 15-7-201, MCA.

The changes to the allowable base cost, the allowable labor costs, and the allowable water cost categories are to comply with the provisions of HB 658 (Ch. 483, L. 2009), while the minimum value of irrigated land is determined under the advice provided by the 2009 Legislative Select Sub-Committee on Reappraisal.

42.20.680 GRAZING LAND (1) ~~The following is the schedule for the~~ Grazing land ~~productive capacity~~ productivity values for each year of the reappraisal cycle beginning January 1, ~~2003~~ 2009, are:

(a) ~~Productive capacity values are~~ Calculated by using the formula defined in 15-7-201, MCA, where the agricultural land productivity valuation formula is:

(i)  $V = I/R$ ;

(ii) V is the productivity value of the agricultural land;

(iii) I is the net income attributed to the acre of land using an adjusted average private grazing lease rate; and



(iv) R is the capitalization rate or the rate that converts an ongoing income stream into an estimate of value.

(b) For the reappraisal cycle beginning January 1, 2009, the per acre grazing land value is calculated as follows:

(i) Average private grazing lease = \$15.72 per Animal Unit Month (AUM);

(ii) Less expense allowance = \$ 3.93 per AUM (\$15.72 X 25%);

(iii) Adjusted gross income per AUM = \$11.79 (\$15.72 minus \$3.93);

(iv) Statewide average productivity = 0.31 AUM per acre;

(v) Net income per acre = \$11.79 per AUM times X AUM per acre; and

(vi) Productivity value per acre = Net income per acre divided by 0.064,

which is the capitalization rate of 6.4%, in decimal form, as set forth in 15-7-201(4)(c), MCA.

(b)(c) For lands with an increase in value The 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 productivity values for grazing land for the reappraisal cycle beginning January 1, 2003, 2009.

(i) For lands with a decrease in value as a result of the 2009 reappraisal, the lower value will be implemented immediately.

**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	\$349.96
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	>9.99	\$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+	<del>.51 - .59</del>	<del>\$260.58</del>	<del>\$266.87</del>	<del>\$273.15</del>
1A	<del>.60 - 1.00</del>	<del>\$179.15</del>	<del>\$183.47</del>	<del>\$187.79</del>
1B	<del>1.01 - 1.89</del>	<del>\$98.84</del>	<del>\$101.23</del>	<del>\$103.61</del>
2A	<del>1.90 - 2.19</del>	<del>\$71.66</del>	<del>\$73.39</del>	<del>\$75.12</del>
2B	<del>2.20 - 2.79</del>	<del>\$58.50</del>	<del>\$59.91</del>	<del>\$61.32</del>
3	<del>2.80 - 3.79</del>	<del>\$44.10</del>	<del>\$45.16</del>	<del>\$46.23</del>
4	<del>3.80 - 5.59</del>	<del>\$30.82</del>	<del>\$31.57</del>	<del>\$32.31</del>
5	<del>5.60 - 9.99</del>	<del>\$18.49</del>	<del>\$18.94</del>	<del>\$19.39</del>
6	<del>&gt;9.99</del>	<del>\$11.47</del>	<del>\$11.71</del>	<del>\$12.02</del>

AUTH: 15-1-201, MCA

IMP: 15-7-103, 15-7-201, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.680 for the same reason as stated in ARM 42.20.605.

6. 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 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov and must be received no later than December 4, 2009.

7. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

8. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at [www.mt.gov/revenue](http://www.mt.gov/revenue), under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." 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 web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. 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 e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the person in 6 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.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor, Representative Mike Jopek, was contacted on July 22, 2009, by regular mail. Representative Jopek was also provided with a copy of the proposed rules on October 15, 2009.

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Dan R. Bucks  
DAN R. BUCKS  
Director of Revenue

Certified to Secretary of State October 19, 2009

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )  
42.19.401 and 42.19.501 relating to the )  
property tax assistance program and tax )  
exemptions for disabled veterans )  
NOTICE OF PUBLIC  
HEARING ON PROPOSED  
AMENDMENT

TO: All Concerned Persons

1. On November 24, 2009, at 4:00 p.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of the above-stated rules.

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 no later than 5:00 p.m., November 9, 2009, 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 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

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

42.19.401 PROPERTY TAX ASSISTANCE PROGRAM (1) The property owner of record or the property owner's agent must make application through the local department office, in order to receive the benefit provided for in 15-6-134, MCA. An application must be made on a form available from the local county appraisal/assessment office ~~before March 15 of~~ in the year for which the benefit is sought.

(a) For tax years previous to 2009, Applications ~~applications~~ postmarked after March 15, will not be considered for that tax year unless the department determines the applicant was unable to apply for the current year due to hospitalization, physical illness, infirmity, or mental illness.

(b) For tax year 2009, applications were required to be postmarked by no later than 30 days after the taxpayer received their assessment notice. Applications postmarked after that date will not be considered for that tax year unless the department determines the applicant was unable to apply for the current year due to hospitalization, physical illness, infirmity, or mental illness.

(c) For tax year 2010, applications postmarked after April 15 will not be considered for that tax year unless the department determines the applicant was unable to apply for the current year due to hospitalization, physical illness, infirmity, or mental illness.

(2) 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)~~ (3) The department will review the application and any supporting documents. The department may review income tax records to determine accuracy of information. The department will approve or deny the application. The applicant will be advised in writing of the decision. An annual statement of eligibility is required unless a review of income tax records or other records related to the applicant's income demonstrates that the individual had no significant change in income level and successfully qualified during the preceding 12 months prior to January 1 of the current tax year. In that situation, the department may waive the annual statement of eligibility required.

~~(3)~~ (4) Any reduction in taxable value will apply to the first \$100,000 or less of the taxable market value of any mobile home or improvement on real property and appurtenant land not exceeding five acres.

~~(4)~~ (5) Income must be reported by the applicant as follows:

(a) For the 2009 tax year, The the applicant is required to list total income from all sources, including otherwise tax-exempt income of all types report their federal adjusted gross income as reported on their federal income tax return for the preceding calendar year. An applicant that is not required to file income tax for the preceding calendar year must determine what their federal adjusted gross income would have been had they been required to file.

(b) For the 2010 and subsequent tax years, the applicant is required to list total household income, which includes otherwise tax exempt income of all types.

That income includes, but is not limited to<sub>7</sub> :

- (i) employment income<sub>7</sub> ;
- (ii) gross business income less ordinary operating expenses but before deducting depreciation or depletion allowance<sub>7</sub> ;
- (iii) social security<sub>7</sub> ;
- (iv) railroad pension<sub>7</sub> ;
- (v) teachers' pension<sub>7</sub> ;
- (vi) employment pension<sub>7</sub> ;
- (vii) veterans' pension<sub>7</sub> ;
- (viii) any other pension<sub>7</sub> ;
- (ix) alimony<sub>7</sub> ;
- (x) disability income<sub>7</sub> ;
- (xi) unemployment benefits<sub>7</sub> ;
- (xii) welfare payments<sub>7</sub> ;
- (xiii) aid to dependent children<sub>7</sub> ;
- (xiv) rentals<sub>7</sub> ;
- (xv) interest from investments<sub>7</sub> ;
- (xvi) stock/bond interest or dividends<sub>7</sub> ;
- (xvii) interest from banks and ;
- (xviii) any other income, but not including social security income paid directly

to a nursing home; ;

(xix) food stamps; or

(xx) direct utility payments paid by the energy share program; or

(xxi) capital gains.

(c) Total household income is not reduced or otherwise modified by losses, depletion, depreciation, or any Montana or federal adjustment to income.

(5)(6) Gross business income less ordinary operating expenses but before deducting depreciation or depletion allowance is reported on schedule C, or schedule F, of the federal income tax return. An applicant that is not required to file income tax for the preceding calendar year must determine what their federal adjusted gross income would have been had they been required to file.

(7) The applications described in (5)(a) and (b) will require a copy of the appropriate form to be attached.

AUTH: 15-1-201, MCA

IMP: 15-6-134, ~~15-6-194~~, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.19.401 to better inform all Montana taxpayers about their potential eligibility for the property tax assistance program. Prior to 2009, the income portion of the program required each taxpayer to report their income from all sources. A March 15 application deadline was also a requirement. There was concern that the income requirements were too difficult for taxpayers to gather and provide the information, it was difficult to understand and was an impediment to taxpayers. The March 15 deadline also was viewed as a problem since much of the required information wasn't available to taxpayers until April 15.

Initially the 2009 Legislature through Senate Bill 115 (Ch. 6, L. 2009), addressed those issues by changing the income requirement to the federal adjusted income as identified on the preceding year's federal income tax form. The legislation also extended the application deadline to April 15. Senate Bill 115 provided a straightforward easy location to obtain the information not only from the taxpayer's perspective but also for the department's field staff. It also accommodated the application deadline concerns. The result of all the changes could have meant that a considerable increase in the number of taxpayers that would have been eligible for the program.

As a result of concerns that the new law might provide unwarranted property tax relief to specific groups, the new language was modified further by the 2009 Legislature in House Bill 658 (Ch. 483, L. 2009). That legislation provides that eligibility will be determined from total household income with no deductions for losses, depreciation, depletion, or any Montana or federal adjustment to income. In an effort to give clear direction to potential eligible taxpayers, examples of what are considered household income are specified in the new rule.

The application deadline was extended to July 15 for the 2009 tax year. The provisions of House Bill 658 (Ch. 483, L. 2009) allowed for additional deadline extensions to accommodate reappraisal. For the 2009 tax year, the department extended the July 15 deadline to 30 days after the taxpayer received their assessment notice. That decision was made to allow all eligible taxpayers the

maximum amount of time to make a successful application.

The application deadline for 2010 and subsequent tax years is returned to April 15 in the provisions of House Bill 658 (Ch. 483, L. 2009). These rules acknowledge that action. The rules also continue the long standing practice of asking for a copy of the applicant's federal income tax return.

The department is deleting 15-6-191, MCA as an implementing cite because it has been repealed for 2010 and subsequent tax years.

42.19.501 PROPERTY TAX EXEMPTION FOR QUALIFIED DISABLED VETERANS (1) remains the same.

(2) The following documents must accompany the application:

(a) letter from the Veterans' Administration which verifies that the applicant is currently rated 100% disabled or is paid at the 100% disabled rate; and

(b) copies of the applicant's federal ~~or state~~ income tax return for the ~~tax year immediately preceding calendar~~ the year of the application. For example, complete copies (including all schedules) of the appropriate ~~2004~~ 2008 tax year return must accompany a ~~2005~~ 2009 application for the disabled American veteran application which is due by April 15, ~~2005~~ except that for tax year 2009 it was due 30 days after the taxpayer received their assessment notice. For the 2010 tax year, and subsequent tax years, the disabled American veteran application is due by April 15. An applicant that is not required to file income tax for the preceding calendar year must determine what their federal adjusted gross income would have been had they been required to file.

(3) through (5) remain the same.

(6) Tax exemptions for qualified veterans or their surviving spouses may not be prorated, except as provided for in (c):

(a) If a qualified veteran or their surviving spouse purchases a home and applies for the exemption by the deadline, they would receive the exemption for the full year.

(b) If a qualified veteran or their surviving spouse purchases a home after the application deadline, they would not receive the exemption for that year.

(c) If a qualified veteran or their surviving spouse has the exemption on a home and sells it, the taxes are prorated and assessed to the new owner for the remainder of the year based on 15-16-203, MCA.

(7) remains the same.

AUTH: 15-1-201, MCA

IMP: ~~15-6-194~~, 15-6-211, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.19.501 to better inform all Montana taxpayers about their potential eligibility for the disabled American veteran program. The application deadline for this program has historically been April 15.

The provisions of House Bill 658 (Ch. 483, L. 2009) allowed for additional deadline extensions to accommodate reappraisal. For the 2009 tax year, the department extended the April 15 deadline to 30 days after the taxpayer received their assessment notice. That decision was made to allow all eligible taxpayers the

maximum amount of time to make a successful application. The provisions of House Bill 658 (Ch. 483, L. 2009) returned the application deadline for the 2010 and subsequent tax years to April 15. These rules acknowledge that action.

The department is proposing language that will address questions, regarding the maintenance of exemption qualifications, posed by eligible disabled American veteran taxpayers that buy and sell property throughout the year.

As with the proposed amendments to ARM 42.19.401, the department is deleting 15-6-191, MCA, as an implementing cite because it has been repealed for the 2010 tax year and subsequent tax years.

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 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail [canderson@mt.gov](mailto:canderson@mt.gov) and must be received no later than December 4, 2009.

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 [www.mt.gov/revenue](http://www.mt.gov/revenue), under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." 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 web site accessible at all times, concerned persons should be aware that the web site 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 e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. 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 contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor for Senate Bill 115, Senator Christine Kaufmann, and the primary bill sponsor for House Bill 658, Representative Mike Jopek, were contacted on October 14, 2009, by regular mail.

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Dan R. Bucks  
DAN R. BUCKS  
Director of Revenue

Certified to Secretary of State October 19, 2009

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I, ) NOTICE OF PUBLIC  
II, III, IV and amendment of ARM 42.31.401 ) HEARING ON PROPOSED  
relating to telecommunications 9-1-1 ) ADOPTION AND  
) AMENDMENT

TO: All Concerned Persons

1. On November 23, 2009, at 1:30 p.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption and amendment of the above-stated rules.

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 no later than 5:00 p.m., November 9, 2009, 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 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail [canderson@mt.gov](mailto:canderson@mt.gov).

3. The department entered into negotiated rulemaking with a nine-member committee representing industry, local governments, and state programs. The members participated in discussions concerning the proposed rules in this notice as a means of clarification for collecting the tax associated with prepaid wireless cellular phones.

The 9-1-1 fee is a tax to be paid by the provider not the purchaser and the providers object to paying this tax. Some providers have suggested that the tax be collected at the time the sale occurs but the department does not have the authority under the current law to collect this tax from the retailer.

In the final vote of the negotiated rulemaking committee, seven members of the committee recommended the rules in this notice be developed and two voted against the rules.

Two of the industry members favored the provider payment and two opposed that approach. Those supporting the provider payment approach are paying the full amount of the fees and taxes on the wireless services. These industry members believe they face unfair competition from the prepaid service providers who may not be paying the full amount of tax. They argue that competitive equity should motivate the department to move forward with rules implementing the provider payment approach.

The two industry members voting "no" on the provider payment approach advocate a sales tax approach under which general retailers would collect the 9-1-1

fee. The Department of Revenue has no legal authority to implement such an approach. Beyond this legal barrier to the sales tax approach, the idea of requiring general retailers and convenience stores to invest in expensive sales tax systems to collect a tax or fee on a single product line within a store selling hundreds or thousands of products is not reasonable, administratively feasible, or cost effective.

The advent of wireless technology leads to a need to update 9-1-1 services for Montanans. This is a program that is especially vital to the public health and safety of those who live in or are visiting and traveling through rural Montana. Thus, it is reasonable to expect all wireless providers to participate, as the law requires, in the collection and payment of fees to support this program.

The department is accepting the committee's majority vote and proposing to adopt and amend the rules that were reviewed and recommended by the committee.

4. 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 terms used in this subchapter:

(1) "Average revenue" is defined as \$50 per subscriber.

(2) "Intrastate monthly revenue" is defined as the prepaid service provider's revenue derived from services provided by a wireless provider to subscribers with a Montana area code.

(3) "Prepaid service provider" means a service provider that requires prepayment of its wireless telecommunications service.

(4) "Prepaid subscriber" means a subscriber that is required to prepay for wireless telecommunications services provided by prepaid service providers.

(5) "Service provider" means an entity that offers services to subscribers in Montana to allow two or more persons in different locations to communicate orally, without regard to the technology or medium the entity uses to provide the telecommunications service, and access to telecommunications relay service. The term includes providers of telecommunications service, including but not limited to providers of internet protocol-enabled voice communications service and wireless services.

AUTH: 10-4-203, 10-4-212, 15-1-201, MCA

IMP: 10-4-101, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I to define terms used within these proposed rules which ensure that all providers of telecommunication services collect and remit the 9-1-1 fee.

The average revenue definition adopts the industry average of \$50 and is the denominator factor used in New Rule III to arrive at the number of access lines for calculating the 9-1-1 service fee.

The intrastate revenue definition adopts the subscribers Montana area code in determining what revenues are included in the numerator factor used in New Rule III to arrive at the number of access lines for calculating the 9-1-1 service fee.

Prepaid service provider, prepaid subscriber, and service provider are defined to assist the reader on who is responsible for collecting the 9-1-1 fees, and how to correctly determine the number of access line equivalents.

NEW RULE II CALENDAR YEAR ELECTION (1) The method to calculate the amount of payment of the fees imposed for 9-1-1 services provided by prepaid service providers must be selected as of the first filing of the calendar year and may not be changed until the first filing of the following calendar year.

AUTH: 10-4-203, 10-4-212, 15-1-201, MCA

IMP: 10-4-101, 10-4-201, 10-4-204, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule II to require a prepaid service provider to select one of the two methods allowed in New Rule III(2)(a) by April 30 of each calendar year that will be used for the four quarters of that calendar year. The rule also provides notice to the prepaid service provider that they cannot change their method mid-year.

NEW RULE III COLLECTION AND DETERMINATION OF FEE FOR PREPAID SUBSCRIBERS (1) The subscriber who receives wireless services from a prepaid service provider is subject to the 9-1-1 emergency telephone service fee collected and remitted to the Department of Revenue by the service provider.

(2) All prepaid service providers are required to collect the 9-1-1 emergency telephone service fee from subscribers in the following manner.

(a) A prepaid service provider will impose the 9-1-1 emergency telephone service fees established in 10-4-201, MCA on the subscriber using one of the following options:

(i) on a monthly basis, the prepaid service provider will collect the amount of the fees established in 10-4-201, MCA from each active prepaid subscriber whose account balance is equal to or greater than the fees established in 10-4-201, MCA; or

(ii) the prepaid service provider will divide the total intrastate monthly revenue by the average revenue for each prepaid subscriber of the wireless industry to determine the number of active access lines. The number of access lines is then applied to the fees established in 10-4-201, MCA to arrive at the amount of fees paid by the subscriber.

AUTH: 10-4-203, 10-4-212, 15-1-201, MCA

IMP: 10-4-101, 10-4-201, 10-4-211, 10-4-212, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule III to clarify current law and the department's practice that requires all service providers, which includes both prepaid and post-paid service providers, to collect and remit the 9-1-1 fees to the state of Montana. The rule also provides two methods that a prepaid wireless service provider can use to calculate the amount of 9-1-1 fees.

NEW RULE IV WHEN THE SERVICE FEE IS COLLECTED FROM THE SERVICE SUBSCRIBER (1) The service fee is collected from the subscriber for all months services are provided to the subscriber including the final month in which the subscriber disconnects the access line with the original service provider.

(2) The prepaid service provider that calculates the 9-1-1 fee based upon the average revenue for each prepaid subscriber shall quarterly remit the fee upon the activation of an active prepaid account and upon each replenishment of additional minutes purchased by the prepaid customer during that quarter.

AUTH: 10-4-203, 10-4-212, 15-1-201, MCA

IMP: 10-4-101, 10-4-201, 10-4-203, 10-4-204, 10-4-211, 10-4-212, MCA

REASONABLE NECESSITY: New Rule IV provides how the 9-1-1 service fee is collected by a service provider from a subscriber when the subscriber is in his or her last month of service. New Rule IV also describes how a prepaid service provider will collect the 9-1-1 service fee when a prepaid subscriber adds additional minutes to his or her account balance.

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

42.31.401 REPORTING REQUIREMENTS (1) A provider is required to complete form 9-1-1, Emergency Telephone (9-1-1) Service Fee Return, which is provided by the department, Quarterly reporting forms must be completed by the provider on or before the last day of the month following the end of each calendar quarter.

(2) The quarterly reporting form must provide the following information is required to be reported on form 9-1-1:

(a) the ending date of the calendar quarter covered by for which the return is being filed;

(b) the name and address of the provider of telephone exchange access services or service provider of wireless telephone services;

(c) the type of service provider, whether it is a prepaid wireless provider, wireline service provider, internet/VOIP service provider, wireless service provider, or other service provider;

(d) the total number of access lines for each month of the calendar quarter;

~~(d)~~(e) the number of nonexempt access lines for each month of the calendar quarter;

~~(e) for subscribers connecting or disconnecting during a month, the fee does not apply to the month connected, but does apply to the month disconnected;~~

(f) the number of taxable lines for each month of the calendar quarter;

(g) the amount of fee computed by multiplying the total number of nonexempt taxable access lines times \$.50 per month of service during the quarter the amount stated in 10-4-201, MCA;

(g)(h) the amount of credits for uncollectible accounts, incorrect billings, and any other appropriate adjustments should the provider elect to do so;

(h)(i) the amounts of uncollectible accounts recaptured during the collected

that quarter for any accounts which were listed that were previously deducted as uncollectible accounts in a previous quarter should the provider elect credit under (2)(g); and

(+) (i) the amount of fee remitted with the return.

(3) If the total amount of the fee is less than \$50 in each of the quarters during the preceding calendar year, the taxpayer service provider may file an annual return in lieu of filing the quarterly returns, provided the annual return is filed along with full payment by the last day of the month after the close of the calendar year.

AUTH: 10-4-203, 10-4-212, 15-1-201, MCA

IMP: 10-4-201, 10-4-203, 10-4-204, 10-4-211, 10-4-212, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.31.401 to include the name of the form that is required to be filed by the service provider. This rule clarifies who is responsible for filing the form 9-1-1. The amendments to this rule also address the need for the service provider to define the type of service they provide. This information will assist the department in identifying how to calculate the tax.

Additionally, this rule requires the service providers to disclose the total number of access lines used to calculate the fee. Section (2)(g) strikes the reference to the fee of \$.50 and replaces the language the applicable statute with the current fee, thereby eliminating the need to amend the rule every time the Legislature changes the fee.

Section (2)(e) has been removed because the language on how to handle mid-month disconnecting and connecting situations is addressed more thoroughly in New Rule IV. Sections (2)(h) and (i), as well as section (3) amends the existing rule into a writing style consistent with other department rules.

6. 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 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov and must be received no later than December 4, 2009.

7. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

8. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at [www.mt.gov/revenue](http://www.mt.gov/revenue), under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." 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 web site accessible at all times, concerned persons should be aware that the web site may be unavailable during

some periods, due to system maintenance or technical problems.

9. 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 e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the person in 6 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.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Dan R. Bucks  
DAN R. BUCKS  
Director of Revenue

Certified to Secretary of State October 19, 2009

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT,
ARM 6.6.2801, 6.6.2803, 6.6.2804,	)	REPEAL, AND ADOPTION
6.6.2808, and 6.6.2809, the repeal of	)	
ARM 6.6.2802, 6.6.2805, 6.6.2806,	)	
and 6.6.2807, and the adoption of	)	
NEW RULE I (ARM 6.6.2810)	)	
pertaining to Surplus Lines Insurance	)	
Transactions	)	

TO: All Concerned Persons

1. On July 30, 2009, the State Auditor and Commissioner of Insurance published MAR Notice No. 6-185 regarding the public hearing on the proposed amendment, repeal, and adoption of the above-stated rules at page 1191 of the 2009 Montana Administrative Register, issue number 14.

2. On August 21, 2009, the State Auditor and Commissioner of Insurance held a public hearing to consider the proposed amendment, repeal, and adoption of the above-stated rules.

3. The State Auditor and Commissioner of Insurance has amended ARM 6.6.2801, 6.6.2804, 6.6.2808, and 6.6.2809 exactly as proposed, and has amended 6.6.2803 as proposed, but with the following changes, stricken matter interlined, new matter underlined:

6.6.2803 FILING OF SUBMISSIONS, EXAMINATION OF SUBMISSIONS AND RECORDS RETAINED (1) through (4) remain as proposed.

(5) For electronically filed submissions, the producing insurance producer shall keep a true and correct copy of the notarized affidavit section of the paper submission form ~~affidavit with~~ showing the original signatures of the producing insurance producer and the notary regarding the diligent search and the information provided to the insured under 33-2-310, MCA. The producing insurance producer shall provide a true and correct copy of the notarized affidavit section of the submission form ~~affidavit~~ to the surplus lines insurance producer. These records shall be retained by the producing insurance producer and the surplus lines insurance producer for five years after the issuance of the surplus lines insurance policy to which they relate, and shall be subject to inspection by the department in accord with 33-2-310, MCA.

(6) Surplus lines insurance producers shall retain records of, and supporting documentation for, all inspection fees charged to insureds under ~~33-2-206~~ 33-2-306, MCA, and any assessment, membership, or similar fee or charge to insureds to obtain surplus lines insurance if such assessment, membership, or similar fee or charge was payable separately by the insured in consideration of the policy.

(7) Producing insurance producers and surplus lines insurance producers



may create and retain electronic records to meet the records retention requirements in (5) and (6), provided that the electronic records are:

- (a) archival in nature, such as a scanned copy, so as to preclude the alteration of the record after it is initially stored in the electronic medium; and
- (b) capable of duplication to a paper copy that is as legible as the original.

AUTH: 33-1-313, 33-2-316, MCA

IMP: 33-2-301, 33-2-302, 33-2-303, 33-2-305, 33-2-306, 33-2-307, 33-2-308, 33-2-310, 33-2-311, 33-2-312, 33-2-313, 33-2-316, 33-2-321, 33-2-326, MCA

4. The State Auditor and Commissioner of Insurance has repealed ARM 6.6.2802, 6.6.2805, 6.6.2806, and 6.6.2807 and adopted New Rule I (ARM 6.6.2810) exactly as proposed.

5. Comments were heard at the hearing, and several other written comments were received and appear with the State Auditor and Commissioner of Insurance's responses. Some commenters submitted written comments and also made oral comments at the hearing. Comments were received from: Bob Biskupiak, representing the Montana Surplus Lines Agents' Association; Jeff Watt, a nonresident surplus lines insurance producer; Earnest J. "Bud" Baldwin, a resident surplus lines insurance producer; Gerald L. Silver, representing the Surplus Lines Association of Arizona; Penelope S. Hopper, representing AON Risk Services and AON Client Services, Inc.; Scott M. Anderson, a nonresident surplus lines insurance producer; Bernd G. Heinze, representing the American Association of Managing General Agents; Steven P. Stephan, representing the National Association of Professional Surplus Lines Offices, Ltd.; Scott Tuxbury, a resident surplus lines insurance producer; Roger Smith, representing Marsh USA, Inc.; and Paul Spector, representing the American Association of Managing General Agents.

When the State Auditor and Commissioner of Insurance, hereinafter the commissioner, received several similar comments on the proposed rule changes, it will be noted in the comment summary. The commissioner did not summarize or respond to comments that did not pertain to the proposed rule changes.

#### ARM 6.6.2801 and 6.6.2802

#### Resumption by commissioner and commissioner's authority

COMMENT NO. 1: Several comments were received opposing the repeal of the ARM 6.6.2802 which delegated authority to the surplus lines advisory organization, hereinafter called the association, to operate a surplus lines stamping office. The commenters stated that the association stamping office provided services to member surplus lines insurance producers and acted as a "buffer" between surplus lines producers and the department regarding compliance and administration because some producers were reluctant to ask questions of the department. Some commenters stated that the association stamping office acted as an "enabler" or a "help desk" for producers providing information, guidance, and education on issues unique to surplus lines and encouraging licensee compliance in all surplus lines placements while maintaining records for the commissioner. Two

commenters stated that the review of surplus lines documents by the association stamping office provided consumer protections including verification that all necessary consumer disclosures are made, that only licensees are placing surplus lines risks, that only those lines of business eligible for export are being placed, and that all documentation is completed correctly. Some commenters stated that elimination of the association stamping office will result in additional costs to the department while decreasing the oversight of and service to producers.

RESPONSE NO. 1: The repeal of authority to operate the stamping office does not dissolve the association. The association may still provide services to its members including information, education, and guidance regarding surplus lines.

With regard to oversight and encouraging producer compliance, the department found in previous performance audits of the association stamping office's accepted submissions that a significant number of the audited submissions were not compliant. Areas of noncompliance included incomplete submissions, such as failure to conduct a diligent search and failure to provide or to stamp the declarations pages. Also, many of the submissions that the association stamping office recognized as noncompliant and returned for correction had several areas of noncompliance and some had to be returned to the producer multiple times for correction.

Accordingly, the department disagrees that oversight of and compliance by producers will decrease. Since resuming the stamping office functions on July 1, 2009, the department has received nearly 50 pieces of written correspondence from producers and nearly 75 phone calls from producers with compliance questions. The department believes that oversight of and compliance by producers will increase due to its resumption of the stamping office functions.

With regard to issue of added costs for the department due to its resumption of the stamping office functions, the department disagrees. See Response No. 14 regarding the stamping fee collection by the department.

COMMENT NO.2: Two commentators stated that the intent of the Montana Surplus Lines Insurance Law was that the surplus lines stamping office be run as a self-regulatory organization. The commenters further stated that the commissioner does not have legal authority to repeal the rule delegating authority to the association to operate the stamping office and resume the stamping office functions.

RESPONSE NO. 2: The Commissioner is responsible for administering and enforcing the Montana Insurance Code, 33-1-101, et. seq., MCA, and has the powers and authority expressly conferred or reasonably implied from the laws of the state under 33-1-311(2), MCA. Surplus lines insurance transactions are regulated by the commissioner under the Montana Insurance Code.

In the Surplus Lines Insurance Law, the plain language in 33-2-321, MCA, contemplates that either the Commissioner or an association will engage in the stamping office functions. Further, 33-2-321(5), MCA, provides that the stamping fee will be collected by the person, either the commissioner or the association, performing the stamping office functions and used for those expenses.

In 33-2-316, MCA, the commissioner has rulemaking authority. Previously,

the commissioner adopted rules delegating the commissioner's authority to the association to operate a stamping office, including reviewing and processing surplus lines submissions to ensure compliance with Montana law.

Accordingly, the commissioner is responsible for administering and enforcing the Montana Insurance Code including the Surplus Lines Insurance Law. The commissioner has authority to delegate by rule the stamping office functions to the association or to repeal that delegation based upon reasonable necessity.

COMMENT NO. 3: One commenter stated that the commissioner and department had not shown a reasonable relationship between the exercise of its police power and the protection of the public welfare, health and safety citing Springfield Fire and Marine Ins. Co. v. Holmes, 32 F. Supp. 964 (D. Mont. 1940). The commenter stated that the commissioner and department had not considered any less restrictive methods to adequately comply with the "state's delegation of authority" to the association stamping office and its years of successful operation. The commenter stated that the commissioner's resumption was not grounded in reasonable necessity and was arbitrary and capricious rulemaking that had unconstitutionally taken the assets and duties of an independent non-profit association established for the benefit of administering surplus lines insurance transactions for the benefit of the citizens and businesses, and for the security of the insurance marketplace.

RESPONSE NO. 3: The commissioner has found that it is reasonably necessary to resume direct review and processing of surplus lines submissions. Previous performance audits of the association have repeatedly found that a significant number of the audited submissions were not compliant with Montana law, but the association failed to identify the areas of noncompliance, such as failure to conduct a diligent search, and erroneously accepted the submissions. After being advised of these failings, the association did not make the necessary corrections and continued to accept submissions with the same areas of noncompliance. Further, the most recent performance audit found that less than half of the accepted submissions audited were compliant with Montana law.

The commissioner gave notice to the association in April, 2009, that she planned to repeal the delegation of authority to the association stamping office. The commissioner proposed a transition period from July 1, 2009, through March 31, 2010, in which the association stamping office would continue to operate, but would work with the commissioner to facilitate the department's resumption of the stamping office functions. The association stamping office and its contractor proposed charging an amount in excess of the previous annual contract for the nine month transition period. The commissioner and department did not accept and the association stopped operating the stamping office as of 5:00 p.m. on June 30, 2009. Accordingly, the association has acknowledged the commissioner's authority to resume direct review and processing of surplus lines submissions.

The commenters reliance on Springfield Fire and Marine Ins. Co. v. Holmes , 32 F. Supp. 964 (D. Mont. 1940), is misplaced. The judgment in Springfield Fire was reversed by Osborn v. Ozlin, 310 U.S. 53 (1940). Holmes, 311 U.S. 606 (1940), rehearing denied at 311 U.S. 726 (1940).

The department disagrees that the association has been subjected to an unconstitutional "taking" of private property. The association does not have a cognizable property interest in the subject of the alleged taking. The commissioner is responsible for administering and enforcing the Montana Insurance Code, 33-1-101, et. seq., MCA, including the Surplus Lines Insurance Law, 33-2-301, et seq., MCA. See Response No. 2 regarding the responsibility and authority of the commissioner.

Assuming arguendo that the association had a cognizable property interest, the department disagrees that repealing the rule delegating the commissioner's authority to the association to operate a surplus lines stamping office constitutes a regulatory taking. See Kafka v. Mont. Dept. of Fish, Wildlife and Parks, 2008 MT 460, 348 Mont. 80, 201 P.3d 8 (2008); Buhmann v. State, 2008 MT 465, 348 Mont. 205, 201 P.3d 70 (2008). Insurance is a heavily regulated industry. Another heavily regulated industry in Montana, game farms, had to adapt to significant changes in government regulation – including the prohibition of "fee-shooting" – without the change rising to the level of an unconstitutional "taking" of private property. The Court noted that persons operating in highly regulated fields "should expect that the government can effectively regulate them out of business." Buhmann, 2008 MT at ¶ 84, 348 Mont. at 234, 201 P.3d at 91. Further, the U.S. Supreme Court recently declined to review the decision. Wallace v. Montana, Docket No. 08-1395, U.S. LEXIS 7453, cert. denied October 13, 2009.

The commissioner has responsibility for administering and enforcing the Montana Insurance Code, 33-1-101, et. seq., MCA, including the Surplus Lines Insurance Law, 33-2-301, et seq., MCA. The commissioner is further obligated to carry out that responsibility in the most cost effective and comprehensive manner to protect consumers which made it reasonably necessary to resume direct review and processing of surplus lines submissions.

COMMENT NO. 4: Two commenters stated that they believed there was no investigation or finding by the commissioner that the association stamping office was not operating pursuant to Montana law and that the association stamping office had not been afforded a hearing to contest any such finding. One commenter stated that the commissioner and department had not followed subsection (3) of 33-2-321, MCA, because the association stamping office had not been given the opportunity to request a hearing regarding any finding that it was not operating as set forth in the law. Another commenter stated that the public hearing on August 21, 2009, was "merely window dressing."

RESPONSE NO. 4: The department disagrees with the commenters' assertion that the commissioner lacks authority to repeal the rule delegating authority to the association to operate a surplus lines stamping office. See Response No. 3.

The department also disagrees that 33-2-321(3), MCA, establishes a procedure to be followed by the commissioner and department prior to resuming direct review and processing of surplus lines submissions. Further, the commissioner has already issued an examination report to the association with an opportunity for a hearing as set out in 33-2-321(3), MCA, and the association failed

to request a hearing.

As explained in Response No. 3, the commissioner and department conducted performance audits of the submissions accepted by the association stamping office and have repeatedly found that a significant number of the audited submissions were not compliant with Montana law. See Response No. 3.

COMMENT NO. 5: One commenter stated that there was no evidence that the association stamping office had done anything other than an exemplary job, citing "anecdotal evidence" from producers, insurers, and other association stamping offices and a significant increase in the number of submissions and premiums written in the first six months of 2009 compared to the first six months of 2008. The commenter stated that based on the data developed by the association stamping office, there had been an increase of 44% from \$24 million to \$34.6 million in premiums written in the first six months of 2009 over the same period in 2008. The commenter also indicated the premiums written for years 2005, 2006, 2007, and 2008 and the first six months of 2009 totaled \$280.5 million.

RESPONSE NO. 5: The department's performance audits of the association stamping office revealed significant areas of noncompliance in accepted submissions. See Response No. 3.

The data developed by the association stamping office in the "broker reports" regarding premiums written and taxes and stamping fees owed, and provided to the department, do not support the comment regarding the total premiums written or the increase in premiums written in the first six months of 2009 over 2008. The "broker report" data provided by the association stamping office to the department indicates that the premiums written for years 2005, 2006, 2007, and 2008 and the first six months of 2009 totaled \$270.8 million, which is \$9.7 million less than the total stated by the commenter. The "broker report" information also indicates that the increase in premiums written for first six months of 2009 over the same period in 2008 was \$600,000.00, which is roughly an increase of 2%. Accordingly, the department disagrees with the comment.

The commissioner and department's primary concerns are that risks are appropriately placed in the surplus lines market, correct and timely filed submissions, and collection and remission of the correct fees and premium taxes. The prior performance audits of the association stamping office indicate problems in these areas.

COMMENT NO. 6: One commenter stated that resumption by the commissioner and department will not benefit the public and private sector with surplus lines transaction processing, licensing or compliance. The commenter further stated that direct review and processing of surplus lines submissions by the department would create a nonuniform and inconsistent foundation and refrain creativity, investment, and security provided by the surplus lines market.

RESPONSE NO. 6: The department disagrees. As explained in Response No. 3, the commissioner and department conducted performance audits of the submissions accepted by the association stamping office and have repeatedly found

that a significant number of the audited submissions were not compliant with Montana law. See Response No. 3.

Creativity in the market cannot be achieved or condoned through noncompliance with the law. The commissioner and department intend to consistently and uniformly enforce the law.

COMMENT NO.7: Several commenters stated that there was no reason to think that enactment of federal legislation regulating multi-state surplus lines transactions would lead to a decrease in submissions in Montana and resulting in a decrease in taxes and fees collected.

One commenter stated that, under proposed federal legislation, the home state of the policyholder may actually receive an increase in its share of surplus lines taxes rather than receiving the proportional percentage of premium commensurate with the percentage of operations of the policyholder's risks in that state.

Another commenter stated that the proposed federal legislation and interstate compact working in tandem would streamline multi-state surplus lines transactions by increasing transparency for multi-state surplus lines transactions and standardizing the allocation formula for taxes. The commenter further stated that it is intuitive that tax revenues would increase after enactment of proposed federal legislation and interstate compacts because, under the current the tax system, states do not know what surplus lines transactions have occurred or what portion of the tax is properly allocated to each state. The commenter also stated that under the "Todd Shipyards case," the U. S. Supreme Court found that no state taxes were due on transactions in any state except the state with the transaction – meaning that if the only connection between the state and the insurance transaction at issue is the physical location of the property covered by the insurance, the state may not impose a tax.

RESPONSE NO. 7: The possible passage of the Nonadmitted and Reinsurance Reform Act of 2009, H.R. 2571, 111th Congress, 1st Sess. (2009), (NRRA) and the proposed Surplus Lines Insurance Multi-state Compliance Compact (SLIMPACT) was a consideration, but not the primary consideration for the rule changes. Other than their intuition, the commenters do not provide support that submissions and/or premium tax revenue would increase in Montana upon passage of the NRRA and the proposed SLIMPACT. Accordingly, the department's intuition that submissions and revenues would decrease could just as easily turn out to be correct.

In SLIMPACT, the premium tax data allocation formula for multi-state risks for the purpose of calculating the premium taxes due in each state would be developed by the commission, comprised of compacting states. It is unknown how the commission will allocate multi-state surplus lines premium taxes or whether it may establish a minimum percentage of total risk (i.e., 5%) that must be met before any premium taxes will be due to a compacting state. From the data in SLIMPACT, it appears that Montana's share is 0.21% of the total surplus lines premiums written in the United States. If the commission established minimums that must be met before any premium taxes would be due for a multi-state surplus lines policy, it is possible that some number of the current submissions in Montana would not meet the

minimums which would decrease the premium taxes collected.

In the section of SLIMPACT regarding financing, it appears that the Compact Clearinghouse would collect stamping fees on every multi-state transaction to cover the operating costs of the commission and the Compact Clearinghouse. Additionally, SLIMPACT provides that its rules regarding surplus lines would have the force and effect of law and be binding in all compacting states. Accordingly, it appears that the stamping fee collected by state regulators or outside stamping offices for multi-state risks would instead be collected by the Compact Clearinghouse to fund their operations.

In compacting states, the Compact Clearinghouse appears to supplant the functions of local stamping offices and state regulators in that all multi-state submissions would be made through the Compact Clearinghouse which would review and process the submissions, determine the applicable premium taxes and the "stamping fee" to fund the operations of the Compact Clearinghouse, and provide reports regarding the premium taxes due to the compacting states and surplus lines producers. Accordingly, the passage of NRRRA and SLIMPACT would appear to usurp the functions and the funding of local stamping offices regardless of whether an insurance department or non-profit association of agents was operating the local stamping office.

#### ARM 6.6.2803 – Electronic filing and records retention

COMMENT NO. 8: The department received several comments generally supporting the development of an electronic filing system for surplus lines submissions. One commenter stated that the department had not yet implemented an electronic filing system and had not done a study of the anticipated savings or efficiencies. One commenter stated that an electronic filing system could easily be implemented by the association stamping office without additional state government bureaucracy, expenditure of state funds, or elimination of private sector jobs at the association stamping office. Another commenter stated that the association had tried to implement an electronic filing system but was prevented by the department. Several commenters criticized the continued affidavit and notary requirement for surplus lines submissions in the department's proposed electronic filing system as being antiquated and diminishing the efficiency and effectiveness that could be achieved with an automated electronic filing system.

RESPONSE NO. 8: Although the department has not formally estimated a specific amount of savings to result from efficiencies gained through implementation of electronic filing, the department anticipates that about half the staff-time will be required to review and process electronic filings thereby resulting in a cost savings. To reflect the anticipated savings, the department proposed a 50% decrease in the stamping fee for electronically filed submissions. If the savings is less than or greater than expected, the department will amend the rule to make the stamping fee commensurate with the costs of reviewing and processing surplus lines submissions.

The department disagrees that it prevented the association stamping office from implementing an electronic filing system. The department further disagrees

that the association stamping office could have easily implemented an electronic filing system based on the estimated start-up costs of \$40,000.00 to \$200,000.00 provided by the association stamping office. The department has other electronic filing systems in place, such as insurance producer licensing and continuing education reporting, and has greater capacity to implement an electronic filing system for surplus lines submissions for less cost.

Under 33-2-310, MCA, the producing producer must execute an affidavit. As explained in Response No. 9, an affidavit must be notarized and the department cannot change the statute or ignore it when developing and implementing an electronic filing system for surplus lines submissions.

COMMENT NO. 9: Several commenters opposed retaining paper copies of submission forms for electronically filed submissions as being unnecessary, time consuming, and costly because there would be an electronic record of the submission. One commenter stated that requiring hard copy records was a "band-aid" approach and that the department should address the real issue of the notary requirement to make the electronic filing process effective and efficient for all parties. One commenter stated that the notary requirement was burdensome and should be eliminated as it has been eliminated in many other states. One commenter stated that the notary requirement should be eliminated for electronically filed submissions which could then be electronically stored.

RESPONSE NO. 9: The producing insurance producer is required to execute an affidavit under 33-2-310, MCA, regarding the diligent search and specific disclosures made to the insured. Under Montana law, an affidavit is a written statement, under oath, sworn to or affirmed by the person making it before some person who has authority to administer an oath or affirmation. The maker must have personal knowledge of the information contained in the statement and must swear to its validity. McDermott v. Carie, LLC dba Horse Prairie Ranch, 329 Mont. 295, 307 (2005); Mountain States Resources, Inc. v. Ehlert, 195 Mont. 496, 503, 636 P.2d 868, 872 (1981); MCA 26-1-1001. Accordingly, the affidavit section of the submission form must be completed and signed before a notary.

The department's proposed electronic filing system for surplus lines submissions cannot change the statutory requirement that the producing insurance producer execute an affidavit before a notary. Additionally, the department's proposed electronic filing system does not accommodate an electronic notary. Therefore, the affidavit portion of the submission form must still be completed manually for paper submissions and for electronic submissions.

The department revised the proposed rule to allow for the creation and retention of electronic records. The electronic record format must be archival in nature, such as a scanned copy, so as to preclude the alteration of the record after it is stored in the electronic medium. Additionally, the electronic record must be capable of duplication to a paper copy that is as legible as the original. See also 33-2-313(1)(b), MCA, providing that the commissioner suspend or revoke a surplus lines producer license for failure to keep records.

ARM 6.6.2803 and 6.6.2804 – allowable fees



COMMENT NO. 10: The department received several comments that maintaining records of inspection fees took additional time and made unnecessary work for surplus lines producers. Several commenters stated that the inspection fee is estimated when the premium is quoted and the actual cost of the inspection is not known until the policy has been issued and the property inspected. Therefore, the records retained by the surplus lines producer would pertain to the estimated inspection fee.

RESPONSE NO.10: Presumably the inspection of the risk to be insured is usually conducted before the surplus lines policy is issued in that the inspection would be useful in obtaining information about the risk to assist the insurer in determining whether to offer the requested coverage and on what policy terms and at what premium charge.

If the inspection fee is estimated when the policy is issued, the estimated fee can be used in completing the submission form. After the inspection is completed and the actual inspection costs can be documented and known, the surplus lines producer would file an endorsement cover sheet form to correct the inspection fee and the tax calculation since the inspection fee is included as premium for the tax calculation. For example, if \$2,000.00 is the estimated inspection fee when the policy is issued, but the documented inspection costs only total \$1,000.00, then the surplus lines producer would file an endorsement cover sheet form to correct the inspection fee and the tax and then would refund the excess inspection fee and tax previously collected to the insured. [Note: There would be no change to the stamping fee because the stamping fee is not used in the tax calculation. The stamping fee is calculated on the base premium which does not include the inspection fee.] The surplus lines producer would maintain records of the inspection and costs associated with the inspection.

COMMENT NO. 11: Several commenters stated that if policy fees cannot be charged, insurers and managing general agencies would likely establish higher minimum premium policies or decline a particular submission due to the cost of processing the business which hurts consumers by limiting access. Two commenters speculated that a surplus lines wholesaler closed a local office primarily because it could not charge policy fees. Once commenter stated that policy fees can be charged for insurance from admitted insurers and should be allowed for surplus lines insurance.

RESPONSE NO. 11: Section 33-2-306(3), MCA, provides that a "surplus lines insurance producer" who places or renews surplus lines insurance "may collect an inspection fee for the actual costs of inspecting the risk to be covered." Since 1991, an inspection fee is the only fee that may be charged and collected (retained) by the surplus lines producer. In 1991, the Legislature amended 33-2-306(3), MCA, repealing surplus lines producers ability to charge a placement fee or policy fee. After the repeal of placement or policy fees, surplus lines producers may only charge and retain an inspection fee for the actual costs of inspecting the risk to be covered. This was a legislative action that cannot be changed by administrative rule.

Section 33-15-102(2), MCA, defines premium as "the consideration for insurance, by whatever name called. Any assessment or membership, policy, survey, inspection, service, or similar fee or charge in consideration for an insurance contract is deemed part of the premium." Under Title 33, chapter 16, MCA, admitted property and casualty insurers are required to file their rates and rating plans with the department. Any policy fee to be charged by an admitted insurer is "deemed part of the premium" under 33-15-102(2), MCA, and is included in the rates or rating plans filed with the department under Title 33, chapter 16, MCA, and in the calculation of premium taxes. Additionally, 33-18-212, MCA, prohibits the collection of any sum or charge for insurance, by any person, that is not provided to the insurer and that is not specified in the policy as premium in accordance with the applicable rates filed with the department.

In sum, surplus lines producers may charge and retain inspection fees for the actual cost of inspecting the risk to be covered under 33-2-306(3), MCA. Surplus lines producers are prohibited from charging and retaining any other fees under 33-18-212 and 33-2-306, MCA. Admitted insurers may charge and retain fees, which must be filed with the department with the rates and rating plans, which will be deemed premium under 33-15-102(2), MCA, and on which the insurers will pay premium taxes.

COMMENT NO. 12: One commenter stated that "assessment" and "membership" fee were new language in proposed ARM 6.6.2804(7). The commenter asked why assessment or membership fees could be charged but policy fees could not and what prevented an entity from charging a policy fee but simply calling it an assessment or membership fee.

RESPONSE NO.12: Surplus lines insurers were previously allowed to charge assessment or membership fees under the former (2), now (4), of ARM 6.6.2804. That section still provides that any assessment or membership fee charged would be considered to be premium in calculating the premium tax. New (7), formerly (3), uses the same language as former (2), now (4), to explain that the stamping fee is calculated on the base premium which does not include any assessment, membership, inspection, or similar fee payable separately by the insured in consideration of the policy.

Examples of assessment, membership or similar fees that may be charged by surplus lines insurers include a syndicate charging an assessment or membership fee that could either be separately stated on the declarations pages or included in the premium. Additionally, a surplus lines insurer may use a catastrophe modeling firm in underwriting a risk and may charge a fee for the computer modeling for the catastrophe, such as an earthquake, that could either be separately stated on the declarations pages or included in the premium.

Regardless of what a particular fee is called, whether the fee is allowable will be determined by who is charging and receiving the fee. Surplus lines insurance producers may only charge and receive an inspection fee for the actual cost of the inspection under 33-2-306(2), MCA. Surplus lines insurers may charge and receive fees, which may be listed separately on the declarations pages, such as assessment or membership or modeling fees, in consideration of the policy.

The permissible fees are not changing. The calculation method for the premium tax and the stamping fee are not changing. The stamping fee is calculated on the base premium which is the premium listed on the declarations pages and does not include any other charges listed separately on the declarations pages, such as an assessment, membership, computer modeling, or inspection fee, which are payable by the insured. The premium tax is calculated on all amounts or charges, except the stamping fee, payable by the insured. Section 33-15-102(2), MCA, defines premium as "the consideration for insurance, by whatever name called. Any assessment or membership, policy, survey, inspection, service, or similar fee or charge in consideration for an insurance contract is deemed part of the premium."

ARM 6.6.2804 and New Rule - annual statements  
and annual payment of stamping fees

COMMENT NO.13: Several commenters stated that the association used to provide monthly statements to surplus lines insurance producers which made it easier for the producers to reconcile their records. Several commenters suggested that the department issue monthly or quarterly statements in addition to the annual statements or accommodate requests by producers throughout the year for statements. One commenter stated that if the department only issued an annual statement, it appeared that the department was providing less service than the association did and shifting costs to the producers.

RESPONSE NO. 13: Surplus lines insurance producers have always been responsible for maintaining records of their surplus lines transactions and reconciliation of the premium taxes and stamping fees regarding the same. The department disagrees that producers are additionally burdened when it compiles and issues annual statements to producers for premium taxes and stamping fees owed. Additionally, the department anticipates that the implementation of an electronic filing system will allow surplus lines producers to check the status of their submissions and obtain a running summary of the taxes and fees owed at any time.

ARM 6.6.2804 – Stamping fee

COMMENT NO. 14: Several commenters stated that it appears that the department will be providing fewer services than the association stamping office, specifically the change from monthly to annual statements, and shifting costs to the surplus lines producers. The commenters asked why the stamping fee was not being reduced for all submissions, instead of just electronically filed submissions, or why the stamping fee was not being eliminated. One commenter stated that the stamping fee appeared to only benefit the department and asked how the continuation of the stamping fee would benefit consumers.

RESPONSE NO. 14: Under 33-2-321(5), MCA, there is a stamping fee on surplus lines insurance submissions, of not more than 1% of the premium, which is earmarked to pay the expenses associated with regulating surplus lines transactions. The stamping fee is established by administrative rule.

After the department resumed direct review and processing of the surplus lines submissions, the department could collect the stamping fee. The department anticipates establishing and collecting a stamping fee that is commensurate with its expenses. The department reduced the stamping fee for electronically filed submissions in anticipation that its expenses to review and process these submissions would be lower than for paper submissions.

The department disagrees that it will be providing fewer services. As explained in Response No. 13, the change to an annual statement does not additionally burden surplus lines producers since they have always been responsible for maintaining records of their surplus lines transactions. Further, the implementation of an electronic filing system should allow surplus lines producers to view the status of their submissions and obtain a running summary of the taxes and fees owed at any time.

Montana consumers benefit from the stamping fee in the same way as they previously have. The stamping fee is basically a fee for service in that only those consumers who obtain surplus lines insurance policies pay a stamping fee for the review and processing of the submissions. Further, enforcement of Montana law regarding surplus lines transactions protects and benefits consumers.

ARM 6.6.2809 – Approved risk list

COMMENT NO. 15: Several commentators asked whether the association or any individual producers who served on the committee to develop the approved risk list (ARL) would be reimbursed for the travel and other expenses. One commenter stated that in the past the ARL committee meeting was held in conjunction with the association board meeting so board members serving on the ARL committee were reimbursed by the association.

RESPONSE NO. 15: The department lacks authority to reimburse travel expenses or other expenses for ARL committee members. The department anticipates using teleconference meetings initiated by the department or continuing to schedule ARL meetings in conjunction with the association board meetings to minimize the expense for ARL committee members.

/s/ Christina L. Goe  
Christina L. Goe  
Rule Reviewer

/s/ Robert W. Moon  
Robert W. Moon  
Deputy State Auditor

Certified to the Secretary of State October 19, 2009.

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM ) NOTICE OF AMENDMENT  
23.12.1411, concerning student )  
academic performance requirements at )  
Law Enforcement Academy )

TO: All Concerned Persons

1. On September 10, 2009, the Department of Justice published MAR Notice No. 23-12-213, pertaining to the proposed amendment of the above-stated rule at page 1548 of the 2009 Montana Administrative Register, Issue Number 17.
2. The department has amended the above-stated rule as proposed.
3. No comments or testimony were received.

By: /s/ Steve Bullock  
STEVE BULLOCK  
Attorney General  
Department of Justice

/s/ J. Stuart Segrest  
J. STUART SEGREST  
Rule Reviewer

Certified to the Secretary of State October 19, 2009.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the adoption of NEW ) NOTICE OF ADOPTION  
RULES I through XIII regarding )  
workers' compensation claims )  
examiner certification )

TO: All Concerned Persons

1. On July 30, 2009, the Department of Labor and Industry (department) published MAR Notice No. 24-29-237 regarding the proposed adoption of the above-stated rules at page 1213 of the 2009 Montana Administrative Register, Issue Number 14.

2. On August 21, 2009, the department held a public hearing in Helena at which time members of the public made oral comments. Additional written comments were received during the comment period.

3. The department has thoroughly considered the comments and testimony received from the public. The following is a summary of the public comments received and the department's response to those comments:

Comment 1: A comment was received by Midland Claims Services Inc. (Midland) suggesting deletion of the word "voluntary" in the first sentence of NEW RULE III. Midland comments the purpose statement in NEW RULE I makes clear that rules all apply to a "voluntary", or nonmandatory, system of workers' compensation claims examiner certification so that the use of the word "voluntary" again is redundant. Further, should the system ever change to something other than "voluntary", keeping the definition of the system confined to NEW RULE I will make any future rule changes more simple and effective.

Response 1: The department agrees and has changed NEW RULE III as noted below.

Comment 2: Midland also commented that limiting acceptance of other organizations' approved workers' compensation continuing education courses to 50 percent of the required 24 credits required for certification is contrary to the purpose of the rule. Midland notes that many claims examiners who choose to become certified must also maintain an adjuster license issued by the Montana Insurance Commissioner's office. If an adjuster received 24 continuing education credits for workers' compensation classes approved by the Department of Insurance, only 12 credit hours could be applied to the workers' compensation continuing education requirements for examiner certification. Those individuals that provide both workers' compensation and nonworkers' compensation claims services would be required to obtain 36 continuing education credit hours to stay in good standing with both controlling agencies. Midland comments that this is likely an unintended

consequence and that the result is unfortunately contrary to the spirit of the original proposal.

Response 2: The department agrees and has changed NEW RULE VI to allow acceptance of all continuing education credits that meet the course criteria specified in the workers' compensation claims examiner certification rules.

Comment 3: Midland also commented regarding NEW RULE X5(b) by suggesting that it be reworded. It asserts the meaning of (5)(b) conflicts with (a), by making all charges refunded within 45 days of cancellation. It suggest rewording to "(b) in all instances requiring refunds pursuant to NEW RULE X 5 (a), the charges must be refunded within 45 days of cancellation."

Response 3: The department agrees and has changed NEW RULE X.

Comment 4: A comment was received from the Montana State Fund recommending that the department allow requests for approval of course submissions both prior to and after a course has taken place, similar to what the State Bar of Montana allows for continuing legal education credits.

Response 4: The department agrees and has changed NEW RULE X.

4. The department has adopted the following new rules as proposed, but with the following changes from the original proposal, stricken material interlined, new material underlined:

NEW RULE I (24.29.811) PURPOSE OF RULES (1) remains as proposed.

AUTH: ~~39-71-105, MCA; Chap. 125, section 2, L. of 2009~~ 39-71-203, 39-71-320, MCA

IMP: ~~39-71-105, MCA; Chap. 125, section 2, L. of 2009~~ 39-71-320, MCA

NEW RULE II (24.29.813) DEFINITIONS (1) through (11) remain as proposed.

AUTH: ~~39-71-105, MCA; Chap. 125, section 2, L. of 2009~~ 39-71-203, 39-71-320, MCA

IMP: ~~39-71-105, MCA; Chap. 125, section 2, L. of 2009~~ 39-71-320, MCA

NEW RULE III (24.29.817) APPLICABILITY OF RULES (1) These rules apply to ~~voluntary~~ certification of workers' compensation claims examiners on or after the effective date of these rules.

(2) and (3) remain as proposed.

AUTH: ~~39-71-105, MCA; Chap. 125, section 2, L. of 2009~~ 39-71-203, 39-71-320, MCA

IMP: ~~39-71-105, MCA; Chap. 125, section 2, L. of 2009~~ 39-71-320, MCA

NEW RULE IV (24.29.821) CERTIFICATION OF CLAIMS EXAMINERS

(1) through (3) remain as proposed.

AUTH: ~~39-71-105, MCA; Chap. 125, section 2, L. of 2009~~ 39-71-203, 39-71-320, MCA

IMP: ~~39-71-105, MCA; Chap. 125, section 2, L. of 2009~~ 39-71-320, MCA

NEW RULE V (24.29.824) EXAMINATION FOR CLAIMS EXAMINERS

(1) through (5) remain as proposed.

AUTH: ~~39-71-105, MCA; Chap. 125, section 2, L. of 2009~~ 39-71-203, 39-71-320, MCA

IMP: ~~39-71-105, MCA; Chap. 125, section 2, L. of 2009~~ 39-71-320, MCA

NEW RULE VI (24.29.827) WAIVER OF EXAMINATION (1) remains as

proposed.

AUTH: ~~39-71-105, MCA; Chap. 125, section 2, L. of 2009~~ 39-71-203, 39-71-320, MCA

IMP: ~~39-71-105, MCA; Chap. 125, section 2, L. of 2009~~ 39-71-320, MCA

NEW RULE VII (24.29.834) CONTINUING EDUCATION REQUIREMENTS FOR RENEWAL (1) remains as proposed.

(2) The department may accept workers' compensation continuing education courses approved by the Office of Public Instruction, the state bar of Montana or the Montana Insurance Commissioner for the adjuster license requirements which meet the course criteria specified in these rules toward ~~50 percent~~ of the 24 hours of approved courses required for the claims examiner certification renewal.

(3) remains as proposed.

AUTH: ~~39-71-105, MCA; Chap. 125, section 2, L. of 2009~~ 39-71-203, 39-71-320, MCA

IMP: ~~39-71-105, MCA; Chap. 125, section 2, L. of 2009~~ 39-71-320, MCA

NEW RULE VIII (24.29.831) LAPSE IN CERTIFICATION (1) and (2) remain as proposed.

AUTH: ~~39-71-105, MCA; Chap. 125, section 2, L. of 2009~~ 39-71-203, 39-71-320, MCA

IMP: ~~39-71-105, MCA; Chap. 125, section 2, L. of 2009~~ 39-71-320, MCA

NEW RULE IX (24.29.837) REVIEW AND APPROVAL OF CONTINUING EDUCATION COURSES BY DEPARTMENT (1) through (4) remain as proposed.

AUTH: ~~39-71-105, MCA; Chap. 125, section 2, L. of 2009~~ 39-71-203, 39-71-320, MCA



IMP: 39-71-105, MCA; ~~Chap. 125, section 2, L. of 2009~~ 39-71-320, MCA

NEW RULE X (24.29.841) COURSE SUBMISSIONS (1) The following standards, by which acceptability of submitted courses are evaluated, must all be certified by the sponsoring organization:

- (a) the practical and academic experience of each faculty member is sufficient to teach the subject assigned;
- (b) the course enhances the ability of a claims examiner to provide claims handling services to the public effectively;
- (c) the subject matter relates to professional ethics, where practicable.

(2) Submissions for approval of courses must include at least the following information:

- (a) the name of the sponsoring organization;
- (b) the title of the course;
- (c) the proposed date(s) of offering or the dates the course was held;
- (d) course goals and objectives;
- (e) major course topic(s);
- (f) course length;
- (g) a list of other states, if any, that have approved the course and the credits granted the course in those states;
- (h) a syllabus or course outline;
- (i) a summary of each course outline element;
- (j) method of instruction, such as classroom, self-study, videotape, audiotape, teleconference, etc.;
- (k) method of administering examinations, if any;
- (l) method of attendance verification;
- (m) method of student record maintenance;
- (n) instructors, if any;
- (o) a designated contact person;
- (p) a written explanation of examination security measures and examination administration methods; and
- (q) written notification of additional dates of course offering to the department three days in advance of presentation of any course.

(3) Requests for advance approval of courses must be received by the department no less than 30 days prior to the anticipated starting date of the course.

(4) Requests for approval of courses already held must be received prior to December 31 of the calendar year in which the activity was presented.

(4) remains as proposed but is renumbered (5).

(6) Charges for courses must be clearly disclosed to students before enrollment:

(a) if a course is canceled for any reason, all charges are refundable in full, unless the refund policy is clearly defined in the enrollment application;

(b) in all instances requiring refunds under (6)(a), the charges must be refunded within 45 days of cancellation;

(c) in the event that a continuing education provider postpones a course for any reason, the provider must give the students a choice of attending a course at a later date or having their charges refunded in full. The provider must refund the

charges within 45 days of the postponement unless the student notifies the provider that the student has chosen to attend a later course;

(d) a sponsoring organization may have a refund policy addressing a student's cancellation or failure to complete a course, as long as that policy is made clear to potential students.

(6) through (11) remain as proposed but are renumbered (7) through (12).

AUTH: ~~39-71-105, MCA; Chap. 125, section 2, L. of 2009~~ 39-71-203, 39-71-320, MCA

IMP: ~~39-71-105, MCA; Chap. 125, section 2, L. of 2009~~ 39-71-320, MCA

NEW RULE XI (24.29.844) QUALIFICATIONS FOR INSTRUCTORS

(1) through (4) remain as proposed.

AUTH: ~~39-71-105, MCA; Chap. 125, section 2, L. of 2009~~ 39-71-203, 39-71-320, MCA

IMP: ~~39-71-105, MCA; Chap. 125, section 2, L. of 2009~~ 39-71-320, MCA

NEW RULE XII (24.29.847) FEES FOR CERTIFICATION, EXAMINATION, RENEWAL, AND COURSE SUBMISSION (1) through (4) remain as proposed.

AUTH: ~~39-71-105, MCA; Chap. 125, section 2, L. of 2009~~ 39-71-203, 39-71-320, MCA

IMP: ~~39-71-105, MCA; Chap. 125, section 2, L. of 2009~~ 39-71-320, MCA

NEW RULE XIII (24.29.851) MAINTENANCE OF CERTIFICATION DOCUMENTATION (1) The department may maintain the records required by [~~Chap. 125, section 2, L. of 2009~~] 39-71-320, MCA, in an electronic format.

AUTH: ~~39-71-105, MCA; Chap. 125, section 2, L. of 2009~~ 39-71-203, 39-71-320, MCA

IMP: ~~39-71-105, MCA; Chap. 125, section 2, L. of 2009~~ 39-71-320, MCA

/s/ PAMELA D. BUCY  
Pamela D. Bucy  
Alternate Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State on October 19, 2009.

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

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 24.162.420 fee schedule, )  
24.162.501 documentation for )  
licensure, 24.162.506 temporary )  
permit, 24.162.510 reciprocity )  
licenses, and 24.162.2105 continuing )  
education )

TO: All Concerned Persons

1. On July 16, 2009, the Board of Nursing Home Administrators (board) published MAR Notice No. 24-162-38 regarding the public hearing on the proposed amendment of the above-stated rules, at page 1072 of the 2009 Montana Administrative Register, issue no. 13.

2. On August 11, 2009, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Several comments were received by the August 19, 2009, deadline.

3. The board has thoroughly considered the comments received. A summary of the comments received and the board's responses are as follows:

Comments 1 through 5 pertain to ARM 24.162.420.

COMMENT 1: Two commenters were concerned that physicians currently pay less to renew their licenses than nursing home administrators.

RESPONSE 1: The board agrees that physicians do pay lower renewal fees than nursing home administrators, but notes that there are more than ten times as many licensed physicians as nursing home administrators. More licensees creates an economy of scale and allows the costs of licensing to be more spread out.

COMMENT 2: A commenter stated that the proposed fees represent a wide range of increases and that some surrounding states have lower renewal fees.

RESPONSE 2: The board reviewed renewal costs, compared them with smaller boards' renewal fees, and researched surrounding states' renewal fees. The board ultimately decided to increase various fees, instead of a percentage increase in all fees, because the greatest revenue share comes from renewal fees. The proposed renewal fee increases are commensurate with associated board costs.

COMMENT 3: One commenter suggested the board consider a smaller increase or using a tiered approach to increase fees over the next several years.

RESPONSE 3: The board concluded that if a lesser increase or a tiered method of increasing fees over several years were used, board legal fees and the costs associated with rule notices would increase. The board is proposing to raise fees sufficiently at this time so that fees will not have to be raised on an annual basis. The board previously discussed increasing fees over the last two years, but being conscious of the financial situation for many administrators in the state, had avoided raising them. The board has also seen a decline in the number of licensees in recent years, which has led to a decrease in board revenue.

COMMENT 4: A commenter suggested that expenses should decline, since board staff will no longer be preapproving continuing education.

RESPONSE 4: The board's CE approval is currently done in conjunction with regularly scheduled meetings to save costs. Because preapproval takes a minimal portion of the meetings, any costs savings following the change will be negligible.

COMMENT 5: One commenter asked that the department be prudent and control expenses and not combine the board with any other board.

RESPONSE 5: The board agrees and will forward the comments to the department.

Comments 6 through 10 pertain to ARM 24.162.2105.

COMMENT 6: Three commenters asked the board to allow licensees to carry over at least some of the required continuing education (CE) into the next year and suggested allowing ten hours of carryover.

RESPONSE 6: The board has reviewed CE requirements in other states, as per the National Association of Long Term Care Administrator Boards (NAB) index. Following the comments, the board is amending ARM 24.162.2105 to allow up to ten hours of CE carryover in the succeeding year.

COMMENT 7: A commenter asked the board to clarify the requirement in (4)(c) that CE programs deal with nursing home issues as set forth in state and federal mandates and provided some alternative rule language.

RESPONSE 7: In response to the comment, the board is amending the rule to clarify the requirement.

COMMENT 8: One commenter stated that the language of (5) regarding cassettes and video tapes is obsolete and recommended the board amend the rule to broaden the electronic technology acceptable for CE credit.

RESPONSE 8: The board agrees with the commenter and is amending the rule accordingly.

COMMENT 9: One commenter suggested that the board preapprove certain known CE providers and others as appropriate. The commenter stated that this will give licensees notice of some approved CE events and would reduce the number of appeals coming before the board.

RESPONSE 9: The board never intended to ignore CE associations' offerings, but proposed the deletion of the preapproved requirement because licensees are competent to determine whether a course would meet the guidelines and should be responsible for attending quality CE courses. The board proposed the change so that licensees would select CE based upon course content instead of the provider. The board also notes that any changes to a preapproved CE list would require a rule change and entail extra costs. The board is amending the rule exactly as proposed.

COMMENT 10: One commenter requested that the board notify licensees of their CE audit results.

RESPONSE 10: The board notes that a process already exists in which board staff addresses individual concerns and responds to both CE requests and audits.

COMMENT 11: Two commenters stated that experience does count and appreciates that the board is not amending the educational requirements in ARM 24.162.501 to require a Bachelor's degree.

RESPONSE 11: The board appreciates all comments made during the rulemaking process.

4. The board has amended ARM 24.162.420, 24.162.501, 24.162.506, and 24.162.510 exactly as proposed.

5. The board has amended ARM 24.162.2105 with the following changes, stricken matter interlined, new matter underlined:

24.162.2105 CONTINUING EDUCATION (1) through (4)(b) remain as proposed.

(c) deal primarily with substantive nursing home management issues as ~~contained in state and federal mandates.~~

(5) A CE program means a class, institute, lecture, conference, workshop, ~~cassette audio, videotape~~ video, internet or correspondence course or peer-reviewed publication of a journal article(s) or textbook(s) that meets the requirements of (4). Programs that promote a company, individual, or product are excluded.

(6) through (8) remain as proposed.

(9) Up to ten hours earned in excess of 20 hours in a calendar year may be carried over into the succeeding year.

(9) through (11) remain as proposed but are renumbered (10) through (12).

BOARD OF NURSING HOME  
ADMINISTRATORS  
CARLA NEIMAN, CHAIRPERSON

/s/ DARCEE L. MOE  
Darcee L. Moe  
Alternate Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 19, 2009

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

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 37.107.107 pertaining to fee )  
reduction for medical marijuana )  
patients )

TO: All Concerned Persons

1. On August 27, 2009, the Department of Public Health and Human Services published MAR Notice No. 37-483 pertaining to the proposed amendment of the above-stated rule at page 1462 of the 2009 Montana Administrative Register, Issue Number 16.

2. The department has amended ARM 37.107.107 as proposed.

3. No comments or testimony were received.

4. The department intends for the amendment of this rule to be applied retroactively to October 1, 2009. There will be no negative impact resulting from the retroactive application.

/s/ Lisa Swanson  
Rule Reviewer

/s/ Anna Whiting Sorrell  
Anna Whiting Sorrell, Director  
Public Health and Human Services

Certified to the Secretary of State October 19, 2009.

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

In the matter of the amendment of ) NOTICE OF AMENDMENT
ARM 37.81.1002, 37.81.1018, )
37.86.805, 37.86.1105, 37.86.1506, )
37.86.2105, 37.86.2207, 37.86.2405, )
37.86.2505, 37.86.2605, and )
37.86.2907 pertaining to Montana )
PharmAssist Program and Medicaid )
reimbursement rates for some )
services with rates not set under )
resource based relative value scale )
(RBRVS) )

TO: All Concerned Persons

1. On September 10, 2009, the Department of Public Health and Human Services published MAR Notice No. 37-484 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1570 of the 2009 Montana Administrative Register, Issue Number 17.

2. The department has amended ARM 37.81.1002, 37.81.1018, 37.86.805, 37.86.1105, 37.86.1506, 37.86.2105, 37.86.2207, 37.86.2405, 37.86.2505, and 37.86.2605 as proposed.

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

37.86.2907 INPATIENT HOSPITAL PROSPECTIVE REIMBURSEMENT, APR-DRG PAYMENT RATE DETERMINATION (1) The department's APR-DRG prospective payment rate for inpatient hospital services is based on the classification of inpatient hospital discharges to APR-DRGs. The procedure for determining the APR-DRG prospective payment rate is as follows:

(a) through (b) remain as proposed.

(c) The department computes a Montana average base price per case. Effective July 1, 2009 the average base price, including capital expenses, is \$4,209 \$4,235. Disproportionate share payments are not included in this price.

(i) through (2) remain as proposed.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA

IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA



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

COMMENT #1: ARM 37.86.2907(1)(c) states the prospective payment rate for inpatient hospital services. The department proposed to change the average base price from \$ 4,129 to \$4,209 because of the 2% increase appropriated in House Bill 2 by the 2009 Montana Legislative Session. The Health Resource Division of the Department of Public Health and Human Services incorrectly calculated the average base price in the rule as proposed. The correct amount is \$4,235.

RESPONSE #1: The department is adopting the correctly calculated base rate of \$4,235.

5. The department intends for the amendment of ARM 37.81.1002, 37.81.1018, 37.86.805, 37.86.1105, 37.86.1506, 37.86.2105, 37.86.2405, 37.86.2505, 37.86.2605, and 37.86.2907 to be applied retroactively to July 1, 2009. The department intends to apply ARM 37.86.2207(9) retroactively to October 1, 2009. A retroactive application of the proposed rules does not result in a negative impact to any affected party.

/s/ Geralyn Driscoll  
Rule Reviewer

/s/ Anna Whiting Sorrell  
Anna Whiting Sorrell, Director  
Public Health and Human Services

Certified to the Secretary of State October 19, 2009.

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 1.2.419 regarding the )  
scheduled dates for the 2010 )  
Montana Administrative Register )

TO: All Concerned Persons

1. On September 10, 2009, the Secretary of State's Office published MAR Notice No. 44-2-159 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1586 of the 2009 Montana Administrative Register, Issue Number 17.

2. The Secretary of State has amended the above-stated rule as proposed.

3. No comments or testimony were received.

/s/ Jorge Quintana  
JORGE QUINTANA  
Rule Reviewer

/s/ Linda McCulloch  
LINDA MCCULLOCH  
Secretary of State

Dated this 19th day of October, 2009.

## **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;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

#### **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.

#### **Energy and Telecommunications Interim Committee:**

- Department of Public Service Regulation.

**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 P.O. 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 or Register)** 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<br>Subject | 1. Consult ARM Topical Index.<br>Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute          | 2. Go to cross reference table at end of each number and title which lists MCA section numbers and department 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 June 30, 2009. This table includes those rules adopted during the period July 1, 2009, through September 30, 2009, 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 include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 2009, 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 2009 Montana Administrative Register.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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## BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in September 2009 appear. Vacancies scheduled to appear from November 1, 2009, through January 31, 2010, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

### IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of October 1, 2009.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

**BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2009**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Banking</b> (Administration)			
Rep. Mark E. Noennig Billings Qualifications (if required): public representative	Governor	reappointed	9/18/2009 7/1/2012
Mr. Jon Redlin Lambert Qualifications (if required): state bank officer, large size bank	Governor	reappointed	9/18/2009 7/1/2012
<b>Board of Private Security</b> (Labor and Industry)			
Mr. Leo C. Dutton Helena Qualifications (if required): county sheriff's office representative	Governor	reappointed	9/23/2009 8/1/2012
Mr. Scott Swingley Helena Qualifications (if required): licensed private investigator	Governor	Sanem	9/23/2009 8/1/2012
Mr. Daniel Taylor Glasgow Qualifications (if required): contract security company representative	Governor	reappointed	9/23/2009 8/1/2012
Mr. Ronald Young Joliet Qualifications (if required): city police department representative	Governor	Sanem	9/23/2009 8/1/2012



**BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2009**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Community Service Commission</b> (Labor and Industry)			
Ms. Laura Pflum Missoula	Governor	Jacobson	9/3/2009 7/1/2010
Qualifications (if required): youth representative			
<b>Economic Development Advisory Council</b> (Commerce)			
Mr. Jim Atchison Colstrip	Governor	reappointed	9/3/2009 7/23/2012
Qualifications (if required): public representative			
Ms. Elizabeth Marchi Polson	Governor	reappointed	9/3/2009 7/23/2012
Qualifications (if required): public representative			
Mr. Joe Menicucci Belgrade	Governor	reappointed	9/3/2009 7/23/2012
Qualifications (if required): public representative			
Mr. Richard Sangrey Box Elder	Governor	reappointed	9/3/2009 7/23/2012
Qualifications (if required): public representative			
Mr. Wade Sikorski Baker	Governor	Lee	9/3/2009 7/23/2012
Qualifications (if required): public representative			

**BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2009**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Economic Development Advisory Council (Commerce) cont.</b>			
Mr. Curt Starr Billings	Governor	Tafoya	9/3/2009 7/23/2011
Qualifications (if required): public representative			
<b>Family Education Savings Oversight Committee (Higher Education)</b>			
Mr. Robert W. Minto Jr. Missoula	Governor	Buchanan	9/4/2009 7/1/2013
Qualifications (if required): public representative			
Mr. Jon Satre Helena	Governor	reappointed	9/4/2009 7/1/2013
Qualifications (if required): public representative			
<b>Ground Water Assessment Steering Committee (UM Montana Tech)</b>			
Mr. Scott Cooney Missoula	Governor	not listed	9/23/2009 0/0/0
Qualifications (if required): development community representative			
Mr. Tad Dale Butte	Governor	Jenkins	9/23/2009 0/0/0
Qualifications (if required): industrial water users representative			
Ms. Jane Holzer Conrad	Governor	Silva	9/23/2009 0/0/0
Qualifications (if required): conservation organization representative			

**BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2009**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Ground Water Assessment Steering Committee</b> (UM Montana Tech) cont.			
Mr. Walter Sales Manhattan	Governor	Dupea	9/23/2009 0/0/0
Qualifications (if required): agriculture water users representative			
<b>Montana Heritage Preservation and Development Commission</b> (Commerce)			
Rep. Bob Lawson Whitefish	Governor	Swanson	9/23/2009 5/23/2011
Qualifications (if required): public representative			
<b>Montana Organic Commodity Advisory Committee</b> (Agriculture)			
Ms. Sharon Lindquist Bloomfield	Director	not listed	9/21/2009 8/18/2011
Qualifications (if required): none specified			
Sen. Gene Thayer Great Falls	Director	not listed	9/21/2009 8/18/2011
Qualifications (if required): none specified			
<b>Montana Wheat and Barley Committee</b> (Agriculture)			
Mr. Melvin Goffena Wilsall	Governor	reappointed	9/3/2009 8/20/2012
Qualifications (if required): wheat and/or barley producer in District 6			
Mr. Buzz Mattelin Culbertson	Governor	Kaae	9/3/2009 8/20/2012
Qualifications (if required): wheat and/or barley producer in District 1			

**BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2009**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Montana Wheat and Barley Committee</b> (Agriculture) cont.			
Mr. Bruce Myllymaki Stanford	Governor	Holzer	9/3/2009 8/20/2012
Qualifications (if required): wheat and/or barley producer in District 5			
<b>Public Defender Commission</b> (Administration)			
Ms. Caroline Fleming Miles City	Governor	reappointed	9/18/2009 7/1/2011
Qualifications (if required): public representative nominated by the Speaker of the House			
Mr. Terry Jessee Billings	Governor	Miller	9/18/2009 7/1/2012
Qualifications (if required): public representative nominated by the President of the Senate			
Mr. Charles Petaja Helena	Governor	reappointed	9/18/2009 7/1/2012
Qualifications (if required): an attorney nominated by the State Bar			
Ms. Majel Russell Billings	Governor	reappointed	9/18/2009 7/1/2012
Qualifications (if required): member of organization advocating on behalf of racial minorities			
<b>Southwestern Montana State Veterans' Home Site Selection Committee</b> (Public Health and Human Services)			
Ms. Susan Cobb Twin Bridges	Governor	Blazer	9/18/2009 4/1/2010
Qualifications (if required): resident of Madison County and an honorably discharged veteran			

**BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2009**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>State Workforce Investment Board (Labor and Industry)</b>			
Mr. Evan Barrett Butte Qualifications (if required): governor's representative	Governor	reappointed	9/3/2009 7/1/2011
Ms. Martina Copps Broadus Qualifications (if required): private sector representative	Governor	reappointed	9/3/2009 7/1/2011
Mr. Dave Crum Great Falls Qualifications (if required): private sector representative	Governor	reappointed	9/3/2009 7/1/2011
Mr. Thomas Curry Billings Qualifications (if required): labor representative	Governor	reappointed	9/3/2009 7/1/2011
Mr. John DeMichiei Roundup Qualifications (if required): private sector representative	Governor	Tochihara	9/3/2009 7/1/2011
Mr. Michael DesRosier Browning Qualifications (if required): county commissioner	Governor	reappointed	9/3/2009 7/1/2011
Mr. Henry Dykema Red Lodge Qualifications (if required): private sector representative	Governor	Richardson	9/3/2009 7/1/2011

**BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2009**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>State Workforce Investment Board</b> (Labor and Industry) cont.			
Commissioner Connie Eissinger Brockway Qualifications (if required): private sector representative	Governor	reappointed	9/3/2009 7/1/2011
Mr. Brad Eldridge Helena Qualifications (if required): public sector representative (Higher Education)	Governor	reappointed	9/3/2009 7/1/2011
Ms. Georgia Gibbs-Atkinson Poplar Qualifications (if required): private sector representative	Governor	reappointed	9/3/2009 7/1/2011
Mr. Michael Grove White Sulphur Springs Qualifications (if required): private sector representative	Governor	reappointed	9/3/2009 7/1/2011
Mr. Kirk Hammerquist Kalispell Qualifications (if required): private sector representative	Governor	reappointed	9/3/2009 7/1/2011
Ms. Jacquie Helt Missoula Qualifications (if required): labor representative	Governor	reappointed	9/3/2009 7/1/2011
Ms. Vicki Judd Missoula Qualifications (if required): private sector representative	Governor	O'Neill	9/3/2009 7/1/2011

**BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2009**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>State Workforce Investment Board</b> (Labor and Industry) cont.			
Superintendent Denise Juneau Helena	Governor	reappointed	9/3/2009 7/1/2011
Qualifications (if required): public sector representative (Superintendent of Public Instruction)			
Director Keith Kelly Helena	Governor	reappointed	9/3/2009 7/1/2011
Qualifications (if required): public sector representative (Department of Labor and Industry Director)			
Ms. Maureen Kenneally Butte	Governor	reappointed	9/3/2009 7/1/2011
Qualifications (if required): private sector representative			
Mr. George Kipp Browning	Governor	reappointed	9/3/2009 7/1/2011
Qualifications (if required): Section 166 representative			
Mr. Robbe Lindsay Missoula	Governor	reappointed	9/3/2009 7/1/2011
Qualifications (if required): private sector representative			
Mr. Michael McGinley Dillon	Governor	reappointed	9/3/2009 7/1/2011
Qualifications (if required): county commissioner			
Mr. Thomas McKenna Lewistown	Governor	reappointed	9/3/2009 7/1/2011
Qualifications (if required): private sector representative			

**BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2009**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>State Workforce Investment Board (Labor and Industry) cont.</b>			
Mr. Dan Miles Butte	Governor	reappointed	9/3/2009 7/1/2011
Qualifications (if required): private sector representative			
Mr. Rodney Miller Wolf Point	Governor	reappointed	9/3/2009 7/1/2011
Qualifications (if required): Section 166 representative			
Mrs. Sandi Miller Helena	Governor	reappointed	9/3/2009 7/1/2011
Qualifications (if required): private sector representative			
Mr. Jim Paquette Billings	Governor	Sullivan	9/3/2009 7/1/2011
Qualifications (if required): private sector representative			
Director Anthony Preite Helena	Governor	reappointed	9/3/2009 7/1/2011
Qualifications (if required): public sector representative (Department of Commerce Director)			
Mr. Jeff Rupp Bozeman	Governor	reappointed	9/3/2009 7/1/2011
Qualifications (if required): public sector representative (nonprofit organization)			
Mr. Alan Skari Chester	Governor	reappointed	9/3/2009 7/1/2011
Qualifications (if required): private sector representative			



**BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2009**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>State Workforce Investment Board</b> (Labor and Industry) cont.			
Ms. Anna Whiting-Sorrell Helena	Governor	reappointed	9/3/2009 7/1/2011
Qualifications (if required): public sector representative (Public Health and Human Services Director)			
Ms. Linda Woods Darby	Governor	reappointed	9/3/2009 7/1/2011
Qualifications (if required): public sector representative (job corps)			
<b>Teachers' Retirement Board</b> (Administration)			
Mr. Robert Pancich Great Falls	Governor	reappointed	9/3/2009 7/1/2014
Qualifications (if required): public representative			

**VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2009 THROUGH JANUARY 31, 2010**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Alternative Livestock Advisory Council</b> (Fish, Wildlife and Parks)            Dr. Don E. Woerner, Laurel            Qualifications (if required): veterinarian</p>	Governor	1/1/2010
<p>Mr. Stan Frasier, Helena            Qualifications (if required): sportsperson</p>	Governor	1/1/2010
<p>Mr. James Bouma, Choteau            Qualifications (if required): alternative livestock industry representative</p>	Governor	1/1/2010
<p><b>Board of Chiropractors</b> (Labor and Industry)            Dr. Thomas P. Fullerton DC, Kalispell            Qualifications (if required): practicing chiropractor with at least one year experience</p>	Governor	1/1/2010
<p><b>Board of Horse Racing</b> (Livestock)            Ms. Susan Austin, Kalispell            Qualifications (if required): resident of district 5</p>	Governor	1/20/2010
<p>Mr. Charles Carruthers, Butte            Qualifications (if required): industry representative</p>	Governor	1/20/2010
<p>Mr. Ray "Topper" Tracy, Stevensville            Qualifications (if required): industry representative</p>	Governor	1/20/2010
<p>Mr. John Ostlund, Billings            Qualifications (if required): resident of district 2</p>	Governor	1/20/2010

**VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2009 THROUGH JANUARY 31, 2010**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Pardons and Parole</b> (Corrections)		
Mr. Darryl Dupuis, Polson Qualifications (if required): education or experience in criminology, education, psychiatry, psychology, law & sociology	Governor	1/1/2010
Ms. Margaret Hall-Bowman, Pablo Qualifications (if required): education or experience in criminology, education, psychiatry, psychology, law & sociology	Governor	1/1/2010
<b>Capital Finance Advisory Council</b> (Administration)		
Attorney General Mike McGrath, Helena Qualifications (if required): Attorney General	Governor	11/22/2009
Mr. Fred Flanders, Helena Qualifications (if required): representative of the Montana Higher Educational Student Assistance Corporation	Governor	11/22/2009
Rep. David Ewer, Helena Qualifications (if required): Budget Director	Governor	11/22/2009
Superintendent Linda McCulloch, Helena Qualifications (if required): Secretary of State	Governor	11/22/2009
Director Janet Kelly, Helena Qualifications (if required): Department of Administration Director	Governor	11/22/2009
Sen. Rick Laible, Victor Qualifications (if required): Legislator	Governor	11/22/2009
Director Mary Sexton, Helena Qualifications (if required): Department of Natural Resources Director	Governor	11/22/2009

**VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2009 THROUGH JANUARY 31, 2010**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Capital Finance Advisory Council</b> (Administration) cont. Director Anthony Preite, Helena Qualifications (if required): Department of Commerce Director	Governor	11/22/2009
Director Richard Opper, Helena Qualifications (if required): Department of Environmental Quality Director	Governor	11/22/2009
Director Jim Lynch, Helena Qualifications (if required): Department of Transportation Director	Governor	11/22/2009
Mr. J.P. Crowley, Helena Qualifications (if required): Board of Housing representative	Governor	11/22/2009
Secretary Brad Johnson, Helena Qualifications (if required): Secretary of State	Governor	11/22/2009
Ms. Teresa Cohea, Helena Qualifications (if required): Board of Investments representative	Governor	11/22/2009
Rep. Franke Wilmer, Bozeman Qualifications (if required): Legislator	Governor	11/22/2009
Mr. Stephen M. Barrett, Bozeman Qualifications (if required): Board of Regents representative	Governor	11/22/2009
Mr. Bill Kearns, Townsend Qualifications (if required): Facility Finance Authority representative	Governor	11/22/2009

**VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2009 THROUGH JANUARY 31, 2010**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Capital Finance Advisory Council</b> (Administration) cont.                      Attorney General Steve Bullock, Helena                      Qualifications (if required): Attorney General</p>	Governor	11/22/2009
<p><b>Children's Trust Fund</b> (Public Health and Human Services)                      Rep. Rosalie Buzzas, Missoula                      Qualifications (if required): public representative</p>	Governor	1/1/2010
<p>Ms. Betty Hidalgo, Great Falls                      Qualifications (if required): public representative</p>	Governor	1/1/2010
<p>Ms. Mary Gallagher,                      Qualifications (if required): agency representative</p>	Governor	1/1/2010
<p>Ms. Nancy Wikle, Helena                      Qualifications (if required): agency representative</p>	Governor	1/1/2010
<p>Ms. Tara Jensen, Helena                      Qualifications (if required): agency representative</p>	Governor	1/1/2010
<p>Ms. JoAnn Eder, Red Lodge                      Qualifications (if required): public representative</p>	Governor	1/1/2010
<p><b>Crime Victims Advisory Council</b> (Corrections)                      Ms. Anita Richards, Seeley Lake                      Qualifications (if required): Victim</p>	Director	12/1/2009

**VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2009 THROUGH JANUARY 31, 2010**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Crime Victims Advisory Council</b> (Corrections) cont.		
Ms. Mikie Hajek, Great Falls Qualifications (if required): Crime Victim and Cascade County victim/witness advocate	Director	12/1/2009
Ms. Tanya Campbell, city not listed Qualifications (if required): Crime Victim and Missoula County victim/witness advocate	Director	12/1/2009
Rep. Tim Furey, Milltown Qualifications (if required): mother of a negligent homicide (DUI) victim	Director	12/1/2009
Ms. Rose Everett, city not listed Qualifications (if required): Victim and professional mediator	Director	12/1/2009
Ms. Darla Gillespie, city not listed Qualifications (if required): Victim and Dawson County victim/witness advocate	Director	12/1/2009
Ms. Cathy Johnson, city not listed Qualifications (if required): Victim Services staff/Board of Pardons and Parole	Director	12/1/2009
Ms. Eve Malo, city not listed Qualifications (if required): Victim/professor of Restorative Justice at UM-Dillon	Director	12/1/2009
Ms. Linda Moodry, city not listed Qualifications (if required): Montana State Prison Victim Information Officer	Director	12/1/2009
Ms. Linda Paulsen, city not listed Qualifications (if required): Victim of attempted deliberate homicide	Director	12/1/2009

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<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Crime Victims Advisory Council</b> (Corrections) cont. Ms. Lori Ruttenbur, city not listed Qualifications (if required): Victim	Director	12/1/2009
Ms. Annamae Siegfried-Derrick, city not listed Qualifications (if required): Montana Women's Prison Victim Information Officer	Director	12/1/2009
Ms. Wendy Sturn, city not listed Qualifications (if required): Board of Crime Control staff	Director	12/1/2009
Ms. Dawn Wakefield, city not listed Qualifications (if required): Victim	Director	12/1/2009
Mr. Jeff Walter, city not listed Qualifications (if required): Victim Services staff/Board of Pardons and Parole	Director	12/1/2009
<b>Judicial Nomination Commission</b> (Justice) Judge Ted O. Lympus, Kalispell Qualifications (if required): elected	District Court	1/1/2010
Mr. Paul Tuss, Havre Qualifications (if required): public representative	Governor	1/1/2010
<b>Lottery Commission</b> (Administration) Mr. Thomas M. Keegan, Helena Qualifications (if required): attorney	Governor	1/1/2010

**VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2009 THROUGH JANUARY 31, 2010**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Lottery Commission</b> (Administration) cont.                      Ms. Beth O'Halloran, Missoula                      Qualifications (if required): public member</p>	Governor	1/1/2010
<p><b>Montana Alfalfa Seed Committee</b> (Agriculture)                      Mr. Tim Wetstein, Joliet                      Qualifications (if required): alfalfa seed grower</p>	Governor	12/21/2009
<p>Mr. John Wold, Laurel                      Qualifications (if required): alfalfa seed grower</p>	Governor	12/21/2009
<p><b>Montana Council on Developmental Disabilities</b> (Commerce)                      Ms. Sara Casey, Helena                      Qualifications (if required): agency representative</p>	Governor	1/1/2010
<p>Sen. Carol Williams, Missoula                      Qualifications (if required): legislator</p>	Governor	1/1/2010
<p>Mr. Roger Holt, Billings                      Qualifications (if required): advocacy representative</p>	Governor	1/1/2010
<p>Ms. Anna Whiting-Sorrell, Helena                      Qualifications (if required): DPHHS Director</p>	Governor	1/1/2010
<p>Rep. Tim Furey, Milltown                      Qualifications (if required): legislator</p>	Governor	1/1/2010



**VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2009 THROUGH JANUARY 31, 2010**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana Grass Conservation Commission</b> (Natural Resources and Conservation) Mr. Sonny Obrecht, Turner Qualifications (if required): grazing district preference holder	Governor	1/1/2010
<b>Small Business Health Insurance Pool Board</b> (State Auditor) Ms. Gail Briese-Zimmer, Helena Qualifications (if required): management level individual with knowledge of Medicaid services	Governor	1/1/2010
Ms. Betty Beverly, Helena Qualifications (if required): consumer	Governor	1/1/2010
<b>State Employee Charitable Giving Campaign Advisory Council</b> (Administration) Ms. JereAnn Nelson, Helena Qualifications (if required): Department of Administration representative	Director	1/4/2010
Mr. Dave Paton, Helena Qualifications (if required): Department of Administration representative	Director	1/4/2010
<b>State Employee Group Benefits Advisory Council</b> (Administration) Ms. Amy Sassano, Helena Qualifications (if required): Executive Branch Agencies representative	Director	1/23/2010
<b>Statewide Independent Living Council</b> (Public Health and Human Services) Ms. Peggy Williams, Helena Qualifications (if required): Independent Living Center representative	Governor	12/1/2009
Rep. Carol Lambert, Broadus Qualifications (if required): public representative	Governor	12/1/2009

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<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Statewide Independent Living Council</b> (Public Health and Human Services) cont. Sen. Gerald Pease, Lodge Grass Qualifications (if required): public representative	Governor	12/1/2009
Mr. Robert Bushing, Billings Qualifications (if required): public representative	Governor	12/1/2009
Mr. Gerald Hutch, Helena Qualifications (if required): public representative	Governor	12/1/2009
Mr. Dave Swanson, Billings Qualifications (if required): public representative from the disabilities community	Governor	12/1/2009
<b>Traumatic Brain Injury Advisory Council</b> (Public Health and Human Services) Mr. Ian Elliot, Billings Qualifications (if required): survivor	Governor	1/1/2010
Mr. James Hunt, Helena Qualifications (if required): advocate for brain injured	Governor	1/1/2010