

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 17

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal)	NOTICE OF PROPOSED
of ARM 2.21.801 through)	REPEAL
2.21.804, 2.21.810 through)	
2.21.814, and 2.21.820)	NO PUBLIC HEARING
through 2.21.822 pertaining)	CONTEMPLATED
to the Sick Leave Fund)	

TO: All Concerned Persons

1. On October 22, 2004, the Department of Administration proposes to repeal ARM 2.21.801 through 2.21.804, 2.21.810 through 2.21.814, and 2.21.820 through 2.21.822 pertaining to the Sick Leave Fund.

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 no later than 5:00 p.m. on October 1, 2004, to advise us of the nature of the accommodation that you need. Please contact State Personnel Division, Department of Administration, P.O. Box 200127, Helena, MT 59620-0127; telephone (406) 444-3871; Montana Relay Service 711; FAX (406) 444-0544; or E-mail hpeck@state.mt.us.

3. The Department proposes to repeal the rules as follows:

2.21.801 SHORT TITLE found at ARM page 2-701.

AUTH: Sec. 2-18-604, MCA
IMP: Sec. 2-18-618, MCA

2.21.802 POLICY AND OBJECTIVES found at ARM page 2-701.

AUTH: Sec. 2-18-604, MCA
IMP: Sec. 2-18-618, MCA

2.21.803 DEFINITIONS found at ARM pages 2-701 through 2-702.

AUTH: Sec. 2-18-604, MCA
IMP: Sec. 2-18-618, MCA

2.21.804 PROHIBITED USES OF SICK LEAVE FUND AND DIRECT GRANTS found at ARM page 2-702.

AUTH: Sec. 2-18-604, MCA
IMP: Sec. 2-18-618, MCA

2.21.810 STRUCTURE OF SICK LEAVE FUND found at ARM page 2-705.

AUTH: Sec. 2-18-604, MCA
IMP: Sec. 2-18-618, MCA

2.21.811 ADMINISTRATION OF SICK LEAVE FUND found at ARM page 2-705.

AUTH: Sec. 2-18-604, MCA
IMP: Sec. 2-18-618, MCA

2.21.812 MEMBERSHIP IN SICK LEAVE FUND found at ARM pages 2-705 through 2-706.

AUTH: Sec. 2-18-604, MCA
IMP: Sec. 2-18-618, MCA

2.21.813 CONTRIBUTIONS found at ARM pages 2-706 through 2-707.

AUTH: Sec. 2-18-604, MCA
IMP: Sec. 2-18-618, MCA

2.21.814 ELIGIBILITY TO RECEIVE GRANTS FROM THE SICK LEAVE FUND found at ARM pages 2-707 through 2-708.

AUTH: Sec. 2-18-604, MCA
IMP: Sec. 2-18-618, MCA

2.21.820 ADMINISTRATION OF A DIRECT GRANT found at ARM page 2-715.

AUTH: Sec. 2-18-604, MCA
IMP: Sec. 2-18-618, MCA

2.21.821 ELIGIBILITY TO MAKE DIRECT GRANT found at ARM page 2-715.

AUTH: Sec. 2-18-604, MCA
IMP: Sec. 2-18-618, MCA

2.21.822 ELIGIBILITY TO RECEIVE DIRECT GRANTS found at ARM page 2-716.

AUTH: Sec. 2-18-604, MCA
IMP: Sec. 2-18-618, MCA

REASON: Through the passage of Senate Bill 117, the 58th regular session of the Montana Legislature amended the Montana Administrative Procedure Act at 2-4-102(11), MCA. The Legislature clarified that rules concerning the internal management of state government are excluded from the Montana Administrative Procedure Act provided they do not affect the

private rights or procedures available to the public. The Department of Administration believes the sick leave fund rules only concern the implementation of the sick leave fund and direct sick leave grant programs for state employees; they have no effect on the general public. Therefore, in the interests of administrative efficiency and cost savings, it is necessary to repeal these rules from ARM.

4. Concerned persons may submit their data, views or arguments in writing to Hal Peck, State Personnel Division, Department of Administration, P.O. Box 200127, Helena, MT 59620-0127, or E-mail hpeck@state.mt.us. Comments must be received no later than October 4, 2004.

5. If persons who are directly affected by the proposed repeal 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 Hal Peck, State Personnel Division, Department of Administration, P.O. Box 200127, Helena, MT 59620-0127; or E-mail hpeck@state.mt.us to be received no later than 5:00 p.m. October 4, 2004.

6. If the Department of Administration 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 persons directly affected is greater than 25 based on the number of state employees.

7. The Department of Administration maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the department. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding personnel rules. Such written request may be mailed or delivered to Hal Peck, Department of Administration, State Personnel Division, P.O. Box 200127, Helena, MT 59620-0127; E-mailed to hpeck@state.mt.us; or made by completing a request form at any rules hearing held by the Department of Administration.

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

By: /s/ Steve Bender
Steve Bender, Acting Director,
Department of Administration

By: /s/ Dal Smilie
Dal Smilie, Rule Reviewer

Certified to the Secretary of State August 23, 2004.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PROPOSED
amendment of ARM 4.10.201,)	AMENDMENT
4.10.202, 4.10.203, 4.10.205,)	
4.10.401, 4.10.404, 4.10.502,)	NO PUBLIC HEARING
4.10.503, 4.10.709, and)	CONTEMPLATED
and 4.10.1806 relating to)	
pesticide certification)	

TO: All Concerned Persons

1. On October 2, 2004, the Montana Department of Agriculture proposes to amend the above-stated rules relating to pesticide certification.

2. The Department of Agriculture 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 Agriculture no later than 5:00 p.m. on September 16, 2004 to advise us of the nature of the accommodation that you need. Please contact Gregory H. Ames at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-2944; TTY: (406) 444-4687; Fax: (406) 444-5409; or E-mail: agr@state.mt.us.

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

4.10.201 PESTICIDE APPLICATOR LICENSING REQUIREMENTS

(1) An individual who by contract or for hire uses or applies pesticides not under the special supervision of a licensed applicator is required to become a licensed commercial pesticide applicator, except as provided for in these rules. Each pesticide applicator business location must have a licensed pesticide applicator. Any owner or person who has a financial interest in a pesticide applicator business may appoint a partner or salaried employee to become the licensed pesticide applicator. The owner or person having the financial interest in a pesticide application business shall continue to assume and is financially responsible for all uses and applications of a pesticide ~~by the appointed applicator and any other employees whether licensed or not, and must submit a notarized statement to the department stating this responsibility.~~ The owner, manager, or licensed applicator of a pesticide applicator business may elect to have some or all of the employees of the business licensed as applicators.

(2) through (3)(c) remain the same.

(4) An individual applying for a public utility applicator's license or certification-license shall be required to meet the same conditions and standards established

within these rules for commercial applicators. For purposes of this subchapter, "public utility" means any governmental organization supplying water, electricity, transportation, etc. to the public, including utilities operated by a private entity under governmental regulation.

(5) remains the same.

(6) Those individuals who cannot be classified as a commercial, public utility, or government certified pesticide applicator or who cannot be classified as a farm applicator, but desire the use of restricted use pesticides, shall be considered to be certified non-commercial applicators.

(a) The non-commercial applicators desiring to use restricted use pesticides in the state shall be required to meet the same application, examination, qualification, general and specific competency standards, recordkeeping, requalification, and other related pesticide usage and application standards as required of commercial applicators by the Act.

(b) These individuals shall be classified into one of the ~~eleven~~ categories established for commercial applicators.

(c) Certified non-commercial applicators may only use restricted use pesticides on lands owned, rented, or leased by his/her employer or himself/herself.

(d) Non-commercial applicators, whether certified or not, violating the Act or these rules ~~promulgated thereunder~~ shall be subject to the same penalties and administrative procedures as commercial applicators.

(7) through (10)(a) remain the same.

AUTH: 80-8-105, MCA

IMP: 80-8-105, MCA

REASON: The change to (1) will streamline the applicator's requirements for licensing by eliminating the step of notification to the department by notarized statement that the business is financially responsible for all employees. The first part of this sentence already states that the owner or person having financial interest in the business assumes and is financially responsible for all uses and applications of a pesticide. The change in (4) defines what a public utility means for the purpose of licensing pesticide applicators.

4.10.202 CLASSIFICATION OF PESTICIDE APPLICATORS

(1) All applicants applying for a pesticide applicator's license required by ~~Title 80, Chapter 8, part 2 MCA; section 80-8-203 MCA and 80-8-213, MCA respectively~~, or desiring a license, shall be classified as either a commercial pesticide applicator, public utility applicator, ~~or~~ government pesticide applicator, or noncommercial applicator as defined in ARM 4.10.201. Applicants shall be further classified either as individuals using only general use pesticides or as persons using general and restricted use pesticides.

(a) remains the same.

(b) An applicant using general and restricted use pesticides shall be classified as either a certified-licensed commercial, public utility, ~~or~~ government, or noncommercial pesticide applicator.

(2) A person, whether commercial, public utility, ~~or~~ government, or noncommercial licensed or certified-licensed, aerial or ground, shall be further classified into one or more of the specific classifications set forth in this rule. The specific classification(s) shall determine the type, substance, and comprehensiveness of each applicant's examinations and the areas, classes of pesticides, and conditions by which the applicant may conduct pesticide operations.

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

(A) under the special supervision of a certified-licensed applicator ~~;~~ or

(B) and (ii) remain the same.

(A) special supervision of a certified-licensed applicator ~~;~~ or

(B) through (2)(c)(ii) remain the same.

(3) The following classifications are:

(a) Agricultural pest control classification includes any applicator using or supervising the use of pesticides in the following subclasses:

(i) through (g) remain the same.

(i) School ~~pest~~ integrated pest management (IPM) classification includes ~~any~~ applicators using or supervising the use of pesticides in the school environment under a "Model School Integrated Pest and Pesticide Management Safety Program", including but not limited to school yards, buildings, playing fields, and other property under the jurisdiction of the school districts.

(h) and (i) remain the same.

(j) Regulatory pest control classification includes state, federal, or other governmental employees who use or supervise the use of pesticides in the control of regulated pests. The following subclassifications of government applicators are established to more accurately reflect some government applicator's specific duties and areas of operation ~~+~~:

(i) mosquito abatement;

(ii) predator;

(iii) quarantine; ~~rabid skunk;~~

(iv) rodent;

(v) weed;

(vi) school IPM; and

(vii) piscicide.

(k) remains the same.

(i) individuals who ~~demonstrate to the public the proper use and techniques of application of pesticides or supervise such demonstrations~~, as part of their business or job responsibility, demonstrate to the public the proper use of pesticides and pesticide application techniques or supervise such demonstrations or make or approve recommendations on

pesticide product use and/or selection. Such individuals may include extension specialists, county extension agents, government employees, representatives of pesticide manufacturers or related businesses. Not included are individuals licensed as a pesticide dealer or individuals that make recommendations for pesticide products used only for home, yard, lawn or garden use; and

(ii) individuals conducting field research with pesticides and in doing so, use or supervise the use of ~~restricted use pesticides. Included in the first group are such individuals as extension specialists and county agents, commercial representatives demonstrating pesticide products, and those individuals demonstrating methods used in public programs. The second group~~ Such individuals includes state, federal, commercial, and other individuals conducting field research on or utilizing pesticides. Demonstration and research applicators shall qualify in one or more of the classifications in (3)(a) through (j) that best represents their operations or responsibilities.

(l) Special utility classification includes applicators using or supervising the use of pesticides in the maintenance of utility rights of way, substations, and pole conditioning or other similar areas.

(m) Piscicide classification include applicators using or supervising the use of pesticides purposefully applied to waters to eliminate fish species as a fishery management tool.

AUTH: 80-8-105, MCA

IMP: 80-8-105, MCA

REASON: (4.10.202(1), (2)) These changes clarify that pesticide applicators that cannot be designated as commercial, public utility or government and need to apply restricted use pesticides will be classified as noncommercial pesticide applicators. The current rule leaves this subject to interpretation that is sometimes inconsistent.

(4.10.202(3)(i)) This changes "School pest" to "School integrated pest management" to better define this classification. The "Model School Integrated Pest and Pesticide Management Safety Program" was developed and distributed to school districts in July 1994 as outlined in 80-8-404, MCA. This document provides guidance and recommendations to school districts on the management of pests, pesticides and alternatives within schools and on school properties.

(4.10.202(3)(k)(i), (ii)) This change will clarify that those persons who recommend the use of pesticides as part of their job responsibilities and are not licensed as a pesticide dealer, must become licensed as a commercial, noncommercial, public utility or government applicator.

(4.10.202(3)(1) and (m)) Special utility classification and Piscicide classification have been added to comply with the US EPA Pesticide Certification Plan.

4.10.203 COMPETENCY STANDARDS FOR LICENSING AND CERTIFICATION-LICENSING OF PESTICIDE APPLICATORS (1) An individual applying for a commercial, public utility, ~~or governmental, or noncommercial~~ applicator's license or certification-license shall be required to pass a written examination prior to issuance of a license or certification-license.

(a) Examinations may be taken at the department's Helena office or the applicant may make arrangements for examination at other locations in the state or in other states at the convenience and approval of the department.

(b) Any individual applying for a license or a certification-license shall meet the general and specific competency standards of ARM 4.10.204 and 4.10.205.

(c) The competency of applicants shall be determined by their knowledge and passage of written examinations on the subjects set forth in the department's designated manuals for applicators, including revisions, and any other manual, guide, or materials as designated by the department. Examination questions will be derived from these manuals and their degree of difficulty will be based upon the degree of importance established by the department for the various subject areas.

~~(a)~~ (d) The department may accept the applicant's examination scores from other states if the examination or examinations are equivalent to the department's examination. However, all other standards and requirements of the department must be met by the applicant. All out-of-state applicators will be required to take and pass an examination based on the Montana Pesticide Act and these rules ~~adopted thereunder~~. The scores required are set forth in (3)(a) and (b) ~~of this rule~~.

(2) through (4)(a) remain the same.

(5) ~~Requalification~~ Applicators shall be required to requalify for licensing prior to every fifth licensing period.

~~(a) Applicators shall be required to requalify for licensing prior to every fifth licensing period.~~ The department has a staggered four-year requalification time period designated by applicator classification and subclassification. Applicator classifications will requalify by December 31 of the year ~~given below~~ designated by the department. Thereafter the qualification period extends from January 1 through December 31 of the next four-year cycle.

(b) Applicator requalification shall be accomplished by either passing the complete examination series or by attending 12 hours of training approved by the department. Courses must be either ~~a minimum of 6~~ six, five, four, three, or two hours of training (referred to as a long course) or ~~3 hours of training (referred to as a short course).~~ A long course shall satisfy 1/2 of the training required in a qualification period. A short course shall satisfy 1/4 of the training

~~required in a qualification period.~~ An applicator requalifying for licensing by attending pesticide training courses must have written verification of his/her attendance.

(6) The department retains the right to approve or disapprove training courses relative to meeting the qualifications for re-licensing. Training course sponsors must petition the department for approval of their courses at least 30 days prior to being held. The petition must include dates, time, location, projected attendance, speakers and a synopsis of their presentations.

(7) The department may require applicators to pass an examination during any licensing period on new pesticide technology which applies to the applicator's classification.

CATEGORY	YEAR
(c) Agricultural Pest Control:	
(i) Plant	1988
(ii) Animal	1988
(iii) Vertebrate	1989
(d) Forest Pest Control	1986
(e) Ornamental and Turf Pest Control	1986
(f) Seed Treatment and Elevator Pest Control	1987
(g) Aquatic Pest Control	1986
(h) Right of Way Pest Control	1989
(i) Industrial, Institutional, Structural, and Health Related Pest Control:	1987
(i) School Pest	1995
(j) Wood Product Pest Control	1986
(k) Public Health Pest Control	1988
(l) Regulatory Pest Control:	
(i) Mosquito Abatement	1988
(ii) Predator	1989
(iii) Quarantine	1988
(iv) Rabid Skunk	1989
(v) Rodent	1989
(vi) Weed	1989
(m) Demonstration and Research Pest Control	1987

AUTH: 80-8-105, MCA

IMP: 80-8-105 and 80-8-206, MCA

REASON: (4.10.203(1)) This change reflects the same changes needed in ARM 4.10.202.

(4.10.203(5)(b)) Current rules permit recertification credits to be awarded at 3 or 6 credits per training session. The current credit system was set because of the difficulty in tracking a wider range of credits hours, but this also limited the opportunities for pesticide applicators to obtain credits. Advances in computer technology permit easier tracking of credits and this change will provide greater opportunities to the pesticide applicator community for training credits.

(4.10.203(5)(c) through (m)) This is information that is not necessary for listing in rules and frequently changes. It only leads to confusion for the reader.

4.10.205 SPECIFIC STANDARDS OF COMPETENCY FOR EACH APPLICATOR CLASSIFICATION (1) Licensed or certified-licensed commercial, public utility, ~~and government, and noncommercial~~ pesticide applicators shall be particularly examined and qualified with respect to the practical knowledge standards elaborated below:

(a) Agricultural pest control applicators may be classified into one of three areas:

(a)(i) through (g) remain the same.

(i) School integrated pest management ~~pest~~ applicators must demonstrate a practical knowledge in the principles of integrated pest management and a knowledge of pesticides registered for use in the school environment, in addition to the knowledge required by applicators in the industrial, institutional, structural, and health-related category.

(h) and (i) remain the same.

(j) Regulatory pest control. ~~Applicators~~ shall demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulation of pests, and the potential impact on the environment of pesticides used in suppression and eradication programs. They shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. In the case of some federal agency applicators, their knowledge shall extend beyond that required by their immediate duties since their services are frequently required in other areas of the country where emergency measures are invoked to control regulated pests, and where individual judgments must be made in new situations.

(k) Demonstration and research pest control applicators demonstrating the safe and effective use of pesticides to other applicators and the public will be expected to meet comprehensive standards reflecting a broad spectrum of pesticide use. Many different problem situations will be encountered in the course of activities associated with demonstrations. Practical knowledge of problems, pests, and population levels occurring in each demonstration situation is required. Further, they should demonstrate an understanding of pesticide organism interactions and the importance of integrating pesticide use with other control methods. In general, it would be expected that applicators doing demonstration pest control work possess a practical knowledge of all the standards detailed in ARM 4.10.204. In addition, they shall meet the specific standards required for classifications in (1)(a) through ~~(1)(g) of this rule~~ applicable to their particular activity. Persons conducting field research or method improvement work with restricted use pesticides should be expected to know the general standards required for classifications in (1)(a) through ~~(1)(j) of this rule~~, applicable to their particular activity, or

alternatively, to meet the more inclusive requirements listed under "Demonstration".

(l) Special utility pest control applicators shall demonstrate practical knowledge of a wide variety of utility right-of-way environments. They shall demonstrate practical knowledge of problems on runoff, drift and excessive foliage destruction, and ability to recognize target organisms. They shall also demonstrate practical knowledge of the nature of herbicides and soil sterilants, the need for containment of these pesticides within the designated areas, and the impact of their application activities in the adjacent areas. They shall demonstrate practical knowledge of the specific wood preservative products used in their operation. They shall be knowledgeable about the protective clothing and equipment requirements and the requirements for proper care and disposal of work clothing and equipment. They shall demonstrate practical knowledge of application techniques which will prevent direct exposure to domestic animals and livestock, or in contamination of food, feed or drinking and irrigation water. They shall be aware of the prohibitions against eating, drinking and smoking and other potential avenues of work exposure while applying wood preservative chemicals. They must demonstrate practical knowledge of hazards of handling treated products as well as the requirements for proper disposal of pesticide waste.

(m) Piscicide pest control applicators shall demonstrate a knowledge of registered piscicides, and safety practices for use, storage and transportation. They shall demonstrate practical knowledge of the secondary effects which can be caused by improper application rates, incorrect formulations, and faulty application of pesticides used in this classification. They shall demonstrate practical knowledge of various water use situations, the potential of downstream effects and piscicide decontamination procedures. They must have practical knowledge concerning potential pesticide effects on plants, fish, birds, beneficial insects and other organisms which may be present in aquatic environments. They must show practical knowledge of water chemistry, pest identification, and the ecology within the aquatic environment. Applicators must also have knowledge of applicable laws and regulation related to introduction of pesticides into state waters, and demonstrate practical knowledge of the principles of limited area application.

AUTH: 80-8-105, MCA

IMP: 80-8-105 and 80-8-206, MCA

REASON: (4.10.205(1)) This change reflects the same changes needed in ARM 4.10.202.

(4.10.205(1)(g)(i), (l) and (m)) This change is to include "School Integrated Pest Management" as the term defining this classification to correspond with changes made in ARM 4.10.202. Special utility and piscicide standards of

competency have been added to comply with the US EPA Pesticide Certification Plan.

4.10.401 FARM APPLICATOR CERTIFICATION (1) and (1)(a) remain the same.

(b) The certificate shall be in effect for five years from the date of issuance to December 31 of the fifth year except as provided in ~~ARM 4.10.401(1)(a)~~. Farm applicators may renew their certification to purchase and use restricted use pesticides by submitting their application and fee to the department.

(c) through (3) remain the same.

(4) Certified farm applicators shall requalify for certification to use restricted use pesticides prior to issuance of a certificate. Requalification may be achieved by passing an examination or by attending six hours of training approved by the department. Each farm applicator qualification period shall conform to the established staggered system set forth in this rule. The qualification period of each district ends December 31 of the year indicated and every five years thereafter. A listing of counties within each district follows:

	DISTRICT I	1988 <u>2008</u>
Flathead		Missoula
Lake		Ravalli
Lincoln		Sanders
Mineral		
	DISTRICT II	1989 <u>2004</u>
Beaverhead		Lewis & Clark
Broadwater		Madison
Deer Lodge		Meagher
Gallatin		Park
Granite		Powell
Jefferson		Silver Bow
	DISTRICT III	1990 <u>2005</u>
Blaine		Liberty
Cascade		Pondera
Chouteau		Teton
Glacier		Toole
Hill		
	DISTRICT IV	1986 <u>2006</u>
Carter		Prairie
Custer		Richland
Daniels		Roosevelt
Dawson		Rosebud
Fallon		Sheridan
Garfield		Treasure
McCone		Valley
Phillips		Wibaux
Powder River		

	DISTRICT V	1987 2007
Big Horn		Petroleum
Carbon		Stillwater
Fergus		Sweet Grass
Golden Valley		Wheatland
Judith Basin		Yellowstone
Musselshell		

AUTH: 80-8-105, MCA
 IMP: 80-8-105 and 80-8-209, MCA

REASON: The change to the farm applicator certification renewal chart updates the renewal years.

4.10.404 IMPROPER PURCHASE OR USE (1) and (2) remain the same.

(3) For the purposes of applying 80-8-209, MCA, the term "vicinity" will mean using nonrestricted (general use) pesticides on lands immediately adjacent or across a road from lands owned, leased or rented by the farm applicator doing the applications.

AUTH: 80-8-105, 80-8-211 and 80-8-306, MCA
 IMP: 80-8-105, 80-8-209, 80-8-211 and 80-8-306, MCA

REASON: The department is adding this section to clarify where farm applicators may apply nonrestricted pesticides other than on lands owned, leased or rented by them.

4.10.502 RETAIL SALE OF PESTICIDES (1) remains the same.

(a) ~~Label~~ labeled for only home, yard, lawn, and/or garden uses; ~~and~~

~~(b) Containerized or packaged in volumes not greater than those listed below per formulation type:~~

- ~~(i) liquid formulation: 1 gallon~~
- ~~(ii) wettable powders: 5 pounds~~
- ~~(iii) dust: 10 pounds~~
- ~~(iv) granular or pellet insecticides: 30 pounds~~
- ~~(v) granular lawn fertilizer/pesticide mixtures: 80~~

~~lbs.~~

~~(c)~~ (b) ~~C~~classified as general use.

(2) remains the same.

AUTH: 80-8-105, MCA
 IMP: 80-8-105 and 80-8-212, MCA

REASON: The department is eliminating container or package volume restrictions on retail pesticides. Some retail pesticides, especially ready-to-use products, are sold in container volumes exceeding volumes as defined in these rules. The administrative rules need to be updated to meet the current retail product market.

4.10.503 PESTICIDE DEALERS REQUIREMENTS AND STANDARDS

(1) through (3) remain the same.

(4) Dealers shall be required to requalify for licensing prior to December 31, 1986, and by the end of every fourth year thereafter. Dealer requalification shall be accomplished by either passing a dealer examination or by attending ~~twelve (12)~~ hours of training approved by the department. Courses must be either ~~a minimum of six (6)~~ six, five, four, three, or two hours of training (~~referred to as a long course~~) or ~~three (3)~~ hours of training (~~referred to as a short course~~). ~~A long course shall satisfy 1/2 of the training required in a qualification period. A short course shall satisfy 1/4 of the training required in a qualification period.~~ A dealer attending pesticide training courses must have written verification of his/her attendance.

(5) The department retains the right to approve or disapprove training courses relative to meeting the qualifications for re-licensing. Training course sponsors must petition the department for approval of their courses ~~thirty~~ ~~(30)~~ days prior to being held. The petition must include dates, time, location, projected attendance, speakers, and synopsis of their presentations.

(6) The department may require dealers to pass an examination during any licensing period on new pesticide technology.

(5) through (8) remain the same, but are renumbered (7) through (10).

AUTH: 80-8-105, MCA

IMP: 80-8-105, 80-8-207 and 80-8-208, MCA

REASON: Current rules permit recertification credits to be awarded at three or six credits per training session. The current credit system was set because of the difficulty in tracking a wider range of credits hours, but this also limited the opportunities for pesticide dealers to obtain credits. Advances in computer technology permit easier tracking of credits and this change will provide greater opportunities to the pesticide dealer community for training credits.

4.10.709 USE OF PESTICIDES ON PEST INFESTATIONS IN ALFALFA SEED CROPS (1) through (5) remain the same.

~~(6) Producers desiring to purchase and use Pirimor 50 DF or any of the FIFRA Section 24(c) pesticides for use in alfalfa seed production only will be required at the time of purchase to read and sign a form. Such form will acknowledge their receipt of the pesticide and secure their agreement to use the compound only as permitted by this rule and the pesticide label. The form will further secure their agreement that they will not allow any treated alfalfa seed, stock, screenings, or other similar material described above to enter into any human food or animal feed channels. The forms will be maintained in the Department of Agriculture office, Agricultural Sciences Division, P.O. Box 200201, Helena, MT 59620 0201, (406)444-~~

~~5400. The department will make such forms available to the appropriate pesticide manufacturers, dealers, and growers through the Montana alfalfa seed growers association.~~

AUTH: 80-8-105, MCA
IMP: 80-8-105, MCA

REASON: Label directions for use already require that alfalfa seed, screening and forage may not be used for human food or livestock forage. Use of nonfood use agreement forms is burdensome and redundant for producers.

4.10.1806 FEES (1) through (6)(a) remain the same.

(b) commercial applicators shall receive an annual credit of ~~\$30.00~~ \$10.00 for each licensing period that the applicator is licensed. Commercial applicators shall receive an annual credit of \$15.00 for the first two commercial operators operating under their license for each licensing period the operator is licensed. A credit of \$5.00 shall be received for each additional commercial operator operating under the applicator's license for each licensing period the operator is licensed;

(c) government agencies shall receive an annual credit of ~~\$25.00~~ \$10.00 for each licensing period that each applicator is licensed for the first four licensed applicators. A credit of ~~\$15.00~~ \$10.00 shall be received for each additional applicator for each licensing period that the applicator is licensed. The total credit must not exceed ~~\$325.00~~ \$280.00; and

(d) dealers shall receive an annual credit of ~~\$30.00~~ \$10.00 for each licensing period that the dealer is licensed.

AUTH: 80-8-105, MCA
IMP: 80-8-111 and 80-8-112, MCA

REASON: The 2003 Montana Legislature reduced fees to fund the pesticide disposal program which reduced the credit applied toward the disposal fee when an applicator participates in the pesticide disposal program. Section 80-8-111(5)(a), MCA, states that the credit received may not exceed the fee paid to fund the disposal program.

The economic impact of the reduction to the disposal fees is an estimated \$33,000.00 in department revenue and affecting approximately 2,100 persons.

4. Concerned persons may submit their data, views or arguments concerning the proposed amendment in writing to Gregory H. Ames at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or E-mail: agr@state.mt.us. Any comments must be received no later than September 30, 2004.

5. If persons who are directly affected by the proposed amendment 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 they have to Gregory H. Ames at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or E-mail: agr@state.mt.us. A written request for hearing must be received no later than September 30, 2004.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 1,000 persons based on 10,000 pesticide commercial, noncommercial, public utility, and governmental applicators, pesticide dealers and pesticide farm applicators.

7. 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 and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding noxious weed seed free forage, noxious weeds, alfalfa seed, agriculture in Montana schools program, agriculture development, pesticides, warehouseman, produce, mint, seed, alternative crops, wheat research and marketing, rural development and/or hail. Such written request may be mailed or delivered to Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or E-mail: agr@state.mt.us or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

8. An electronic copy of this Notice of Proposed Amendment is available through the Department's website at www.agr.state.mt.us, 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 website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

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

DEPARTMENT OF AGRICULTURE

/s/ Ralph Peck
Ralph Peck
Director

/s/ Tim Meloy
Tim Meloy, Attorney
Rules Reviewer

Certified to the Secretary of State, August 23, 2004.

BEFORE THE CLASSIFICATION REVIEW COMMITTEE
OF THE STATE OF MONTANA

In the matter of the proposed)	AMENDED NOTICE OF PROPOSED
amendment of ARM 6.6.8301,)	AMENDMENT
concerning updating references)	
to the NCCI Basic Manual for)	NO PUBLIC HEARING
new classifications for)	CONTEMPLATED
Social Services Operations)	
and Bottling Operations)	

TO: All Concerned Persons

1. On October 2, 2004, the Montana Classification Review Committee proposes to amend the above-stated rule. On August 19, 2004, the committee published MAR Notice No. 6-148 at page 1874 of the 2004 Montana Administrative Register, Issue Number 16 regarding the proposed amendment of the above-stated rule. The notice of proposed agency action is amended as follows because the original proposed adoption date of September 13, 2004, did not provide for the mandatory 30 days required between the publication date and the adoption date. The date for adoption of the proposed amendment by the Montana Classification Review Committee of ARM 6.6.8301 should have been September 18, 2004.

2. The Montana Classification Review Committee 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 Montana Classification Review Committee no later than 5:00 p.m., on September 13, 2004, to advise us of the nature of the accommodation needed. Please contact the Montana Classification Review Committee, attn: Tim Hughes, National Council on Compensation Insurance, Inc., 10920 W. Glennon Dr., Lakewood, Colorado 80226; telephone (303) 969-9456; fax (303) 969-9423; e-mail tim_hughes@ncci.com.

3. The text in the rule proposed to be amended remains the same.

4. This amendment is intended to be applied retroactively to October 1, 2004.

5. Concerned persons may present their data, views, or arguments concerning the proposed amendment in writing to Tim Hughes, National Council on Compensation Insurance, Inc., 10920 W. Glennon Dr., Lakewood, Colorado 80226, or by e-mail to tim_hughes@ncci.com and must be received no later than 5:00 p.m., September 16, 2004.

6. If persons who are directly affected by the proposed amendment 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 they have to Tim Hughes, National Council on Compensation Insurance, Inc., 10920 W. Glennon Dr., Lakewood, Colorado 80226, or by e-mail to tim_hughes@ncci.com no later than September 16, 2004.

7. If the committee receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 150 persons based on the 15 businesses that have indicated interest in the rules of this committee and who the committee has determined could be directly affected by these rules.

8. The Montana Classification Review Committee maintains a list of concerned persons who wish to receive notices of rulemaking actions proposed by this committee. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specify that the person wishes to receive notices regarding rulemaking actions of the Classification Review Committee. Such written requests may be mailed or delivered to Tim Hughes, National Council on Compensation Insurance, Inc., 10920 W. Glennon Dr., Lakewood, Colorado 80226, or by e-mail to tim_hughes@ncci.com, or by completing a request form at any rules hearing held by the Montana Classification Review Committee.

CLASSIFICATION
REVIEW COMMITTEE

By: /s/ Tom Clarke
Tom Clarke
Review Committee Chairperson

By: /s/ Alicia Pichette
Alicia Pichette
Rule Reviewer

Certified to the Secretary of State on August 23, 2004.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED
amendment of ARM 32.2.403) AMENDMENT
pertaining to diagnostic) NO PUBLIC HEARING
lab fees) CONTEMPLATED

TO: All Concerned Persons

1. On October 2, 2004, the department proposes to amend ARM 32.2.403 pertaining to diagnostic lab fees.

2. The board 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 board of livestock no later than 5:00 p.m. on September 14, 2004, to advise us of the nature of the accommodation that you need. Please contact Marc Bridges, 301 N. Roberts St., Room 308, PO Box 202001, Helena, MT 59620-2001; phone: (406) 444-7323; TTD number: 1-800-253-4091; fax:(406) 444-1929; e-mail: mbridges@state.mt.us.

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

<u>32.2.403 DIAGNOSTIC LABORATORY FEES</u>		
(1) through (1)(b) remain the same.		
(i) aerobic culture (first isolate)	9.00	<u>10.00</u>
(ii) aerobic culture (additional isolates each)	3.00	<u>4.00</u>
(iii) anaerobic culture (facultative)	12.00	<u>14.00</u>
(iv) antibiotic sensitivity per isolate	6.00	<u>7.00</u>
(v) Trichomonas culture	4.00	<u>5.00</u>
(vi) direct microscopy	3.50	<u>6.00</u>
(vii) Clostridium FA	12.00	<u>9.00</u>
(viii) dermatophyte culture and PAS stain	20.00	<u>22.00</u>
(ix) non-dermatophyte fungal culture	15.00	<u>17.50</u>
(x) remains the same.		
(xi) Campylobacter (livestock reproductive disease)	8.00	<u>10.00</u>
(xii) Campylobacter (intestinal contents)	8.00	<u>10.00</u>
(xiii) and (xiv) remain the same.		
(xv) Mycoplasma culture	8.00	<u>10.00</u>
(xvi) remains the same.		
(c) cytology		20.00
(d) remains the same, but is renumbered (c).		
(i) 1 - 2 <u>3</u> slides (one biopsy)	20.00	<u>22.00</u>
(ii) 3 <u>4</u> - 6 slides	25.00	<u>28.00</u>
(iii) 7 - 10 slides	30.00	<u>34.00</u>
(iv) 11 or greater slides	35.00	<u>38.00</u>
(v) duplicate H&E slide	5.00	<u>7.00</u>
(vi) special stains	6.00	<u>7.00</u>

(vii)	remains the same.		
(e)	remains the same, but is renumbered (d).		
(i)	added water	2.00	<u>3.00</u>
(ii)	antibiotic (depending on class of suspected antibiotic)	11.00 to 22.00	<u>12.00 to 23.00</u>
(iii)	Brucella ring test	1.80	<u>2.00</u>
(iv)	coliform (milk and water)	4.50	<u>5.00</u>
(v)	component testing	.50	<u>1.00</u>
(vi)	Gerber	2.30	<u>3.00</u>
(vii)	Listeria culture	30.00	<u>32.00</u>
(viii)	Majonnier	12.00	<u>12.50</u>
(ix)	pesticide (organophosphate and carbamate)		
	(minimum)	23.00	<u>24.00</u>
(x)	pesticide (chlorinated hydrocarbon)	200.00	<u>210.00</u>
(xi)	phosphatase	5.80	<u>6.00</u>
(xii)	somatic cell count (direct microscopy)	4.30	<u>5.00</u>
(xiii)	somatic cell count (electronic)	.50	<u>1.00</u>
(xiv)	standard plate count	5.00	<u>5.50</u>
(xv)	yeast or mold	4.80	<u>5.00</u>
(xvi)	remains the same.		
(f)	remains the same, but is renumbered (e).		
(i)	bovine IgG	10.00	<u>12.00</u>
(ii)	equine IgG	12.00	<u>12.50</u>
(iii)	ocular nitrate	7.50	<u>12.00</u>
(iv)	and (v) remain the same.		
(vi)	after hour fee (pathologist)		<u>up to 50.00</u>
(vii)	and (viii) remain the same.		
(ix)	biohazard disposal (all cases but necropsies)		1.00
(x)	(ix) referral testing: fee of referral laboratory testing costs, mailing costs and \$4.00		\$5.00 handling fee.
(xi)	remains the same, but is renumbered (x).		
(g)	remains the same, but is renumbered (f).		
(i)	remains the same.		
(A)	fetus	30.00	<u>35.00</u>
(B)	through (D) remain the same.		
(ii)	remains the same.		
(A)	fetus	30.00	<u>35.00</u>
(B)	< 20 lbs.	30.00	<u>35.00</u>
(C)	> 20 lbs.	45.00	<u>50.00</u>
(iii)	remains the same.		
(A)	fetus	30.00	<u>35.00</u>
(B)	< 25 lbs.	30.00	<u>35.00</u>
(C)	25-250 lbs.	45.00	<u>50.00</u>
(D)	remains the same.		
(E)	> 500 lbs.	80.00	
(iv)	remains the same.		
(v)	other species (minimum)	30.00	<u>35.00</u>
(vi)	spinal cord removal (in addition to necropsy fees)	75.00	<u>45.00 to 80.00</u>
(vii)	remains the same.		
(A)	and (B) remain the same.		
(viii)	through (x) remain the same.		
(A)	necropsy (minimum)	\$100.00	<u>125.00</u>
(B)	brain removal (minimum)	25.00	<u>30.00</u>

(C)	IHC and ELISA testing: referral fee <u>plus shipping and handling</u>		
(D)	administrative costs	10.00	
(h)	remains the same, but is renumbered (g).		
(i)	includes histopathology and routine bacteriology with additional tests for K-99 E. coli LA, viral agents (EM), Cryptosporidium, endoparasitism, and serum immunoglobulin as history and age of calf dictates, (use SV43 form)	50.00	<u>60.00</u>
(i)	remains the same, but is renumbered (h).		
(i)	adult parasite or arthropod identification (referral):	<u>17.50</u>	<u>23.50</u>
(ii)	cryptosporidia exam	<u>3.50</u>	<u>6.00</u>
(iii)	fecal flotation	<u>7.00</u>	<u>8.00</u>
(iv)	remains the same.		
(v)	Dirofilaria immitis ELISA screening	<u>5.00</u>	<u>7.00</u>
(vi)	remains the same.		
(vii)	special parasite ID procedures		<u>contact lab</u>
(j)	remains the same, but is renumbered (i).		
(i)	through (iii) remain the same.		
(k)	remains the same, but is renumbered (j).		
(i)	anaplasmosis eELISA	<u>4.00</u>	<u>5.00</u>
(ii)	Avian Influenza AGID	<u>4.00</u>	<u>5.00</u>
(iii)	remains the same.		
(iv)	Bluetongue ELISA	<u>7.00</u>	<u>7.50</u>
(v)	remains the same.		
(vi)	Bovine Respiratory Syncytial Virus SN	<u>5.00</u>	<u>referral</u>
(vii)	Bovine Virus Diarrhea Type I and II SN	10.00	<u>12.00</u>
(viii)	remains the same.		
(ix)	> 100 BVD samples (each sample)		<u>4.00</u>
(ix)	and (x) remain the same, but are renumbered (x) and (xi).		
(xi)	(xii) Brucella ovis ELISA, CF	3.00	<u>5.00</u>
(xii)	(xiii) Equine Infectious Anemia AGID (Coggins)	6.50	<u>7.00</u>
(xiii)	and (xiv) remain the same, but are renumbered (xiv) and (xv).		
(xv)	(xvi) Infectious Bovine Rhinotracheitis SN	5.00	<u>6.00</u>
(xvi)	(xvii) Johne's (Paratuberculosis) CF, ELISA	5.00	<u>5.50</u> <u>ELISA/CF referral</u>
(xvii)	through (xix) remain the same, but are renumbered (xviii) through (xx).		
(xx)	(xxi) Parainfluenza-3 HA	5.00	<u>referral</u>
(xxi)	(xxii) Pseudorabies SN, LA	4.00	<u>5.00</u>
(xxii)	and (xxiii) remain the same, but are renumbered (xxiii) and (xxiv).		
(xxiv)	(xxv) Vesicular stomatitis SN (New Jersey or Indiana)	10.00	<u>12.00</u>
(xxvi)	West Nile IgM ELISA		<u>7.00</u>
(l)	remains the same, but is renumbered (k).		
(i)	and (ii) remain the same.		
(iii)	Feline Leukemia ELISA	<u>7.00</u>	<u>10.00</u>
(iv)	Feline Leukemia/Feline Immunodeficiency Virus ELISA	<u>15.00</u>	<u>20.00</u>

(m)	remains the same, but is renumbered (l).		
(i)	remains the same.		
(n)	remains the same, but is renumbered (m).		
(i)	and (ii) remain the same.		
	<u>(iii) > 100 samples (per sample)</u>		<u>4.00</u>
	(iii) and (iv) remain the same, but are renumbered (iv)		
and (v).			
	(v) <u>(vi)</u> virus isolation (livestock only) per virus	15.00	<u>16.00</u>
	<u>(vii) Bovine coronavirus</u>		<u>17.50</u>
	<u>(viii) fluorescent antibody testing (livestock only)</u>		<u>6.00</u>
	(o) remains the same, but is renumbered (n).		
	(i) small animal health screen (SA Chem Panel, CBC/Differential, UA)	30.00	<u>33.00</u>
	(ii) small animal clinical profile (SA Chem Panel, CBC/Differential)	22.00	<u>24.00</u>
	(iii) SA Pre-Anesthetic Profile (BUN, CRE, ALT, ALP, Glu, TP, CBC/Differential)	15.00	<u>17.00</u>
	(iv) Feline ADR Profile (SA Chem Panel, T4, CBC/Differential, FeLV, FIV, FIA)	37.00	<u>45.00</u>
	(v) large animal health screen (LA Chem Panel, CBC/Differential, Fibrinogen, UA)	30.00	<u>33.00</u>
	(vi) large animal clinical profile (LA Chem Panel, CBC/Differential, Fibrinogen)	22.00	<u>24.00</u>
	(vii) LA Pre-Anesthetic Profile (BUN, GGT, AST, CK, CBC/Differential, Fibrinogen)	15.00	<u>17.00</u>
	(viii) Equine Fitness Profile (AST, GGT, Tbili, CK, TP, ALB, Glob, Ca, PO4, Na, K, Cl, TCO2, CBC/Differential, Fibrinogen)	20.00	<u>22.00</u>
	(p) remains the same, but is renumbered (o).		
	(i) small animal Hepatic profile (ALT, AST, ALP, GGT, Tbili, Dbili, TP, ALB, Glob, Chol, BUN, GLU)	10.00	<u>11.00</u>
	(ii) small animal Renal Profile (BUN, CRE, TP, ALB, Glob, Ca, PO4, Na, K, Cl, TCO2)	10.00	<u>11.00</u>
	(iii) Exocrine Pancreatic Profile (BUN, Ca, TP, ALB, Glu, ALP, ALT, AST, Chol, Amylase)	10.00	<u>11.00</u>
	(iv) canine Endocrine Profile (Ca, PO4, TP, ALB, ALP, ALT, AST, Chol, T4, Na, K, Cl, Glu)	14.00	<u>15.00</u>
	(v) canine Thyroid Problem (Chol, T4)	6.00	
	(vi) <u>(v)</u> large animal Hepatic Profile (GGT, AST, Tbili, TP, ALB)	7.00	<u>8.00</u>
	(vii) <u>(vi)</u> large animal Renal Profile (BUN, CRE, TP, ALB, Ca, PO4, Na, K, Cl)	8.00	<u>9.00</u>
	(viii) <u>(vii)</u> SA/LA Gastrointestinal Profile (TP, ALB, Na, K, Cl)	5.00	<u>7.00</u>
	(ix) <u>(viii)</u> feline Thyroid Profile (ALP, ALT, AST, PO4, T4)	8.00	<u>9.00</u>
	(x) <u>(ix)</u> Electrolytes (Na, K, Cl, TCO2)	5.00	<u>6.00</u>
	<u>(x) T4</u>		<u>10.00</u>
	<u>(xi) T3</u>		<u>10.00</u>
	<u>(xii) TSH</u>		<u>10.00</u>
	<u>(xiii) free T4</u>		<u>10.00</u>
	<u>(xiv) cortisol</u>		<u>12.00</u>
	(q) remains the same, but is renumbered (p).		

(i)	small animal Chem Panel	15.00	<u>17.00</u>
(ii)	large animal Chem Panel	15.00	<u>17.00</u>
(iii)	T4 add-on	5.00	<u>7.00</u>
(r)	remains the same, but is renumbered (q).		
(i)	urinalysis (chemical, specific gravity, sediment evaluation)	9.00	<u>10.00</u>
(ii)	urinalysis with culture/sensitivity	17.50	<u>25.00</u>
(s)	and (t) remain the same, but are renumbered (r)		
and (s).			
(i)	solid tissue (FNA, imprint, or smear)	18.00	<u>22.00</u>
(ii)	bone marrow analysis	20.00	<u>24.00</u>
(iii)	fluid analysis (total cell count, TP, SG, Cytology)	23.00	<u>25.00</u>
(iv)	fluid smear (cytology only)	18.00	<u>22.00</u>
(v)	CSF analysis (SG, Microprotein, Cytospin cytology)	38.00	<u>18.00 plus Microprotein referral</u>
(u)	remains the same, but is renumbered (t).		
(i)	through (iii) remain the same.		
(iv)	Buffy coat count	10.00	<u>15.00</u>
(v)	remains the same, but is renumbered (u).		
(i)	through (viii) remain the same.		
(w)	remains the same, but is renumbered (v).		

(2) A 1.5% monthly interest rate will be charged on accounts over 30 days. Any account 90 days delinquent will be discontinued until the entire payment is received. Extenuating fiscal circumstances will be considered upon request and requests must be approved by the board of livestock.

AUTH: Sec. 81-1-102, 81-2-102, MCA
 IMP: Sec. 81-1-301, 81-1-302, 81-2-102, MCA

4. STATEMENT OF REASONABLE NECESSITY ARM 32.4.403 is being amended to change fees that are currently charged by the department of livestock for diagnostic laboratory services. The fees are being increased to reflect increased costs associated with providing those services. The fees must, by statute, be set at levels commensurate with the costs of performing the tests or services listed. The increased fees charged by the department's diagnostic laboratory will potentially affect approximately 25,000 people who may use services at the laboratory. The cumulative amount of the fee increase will be \$100,000.00 based on this number of lab users.

5. Concerned persons may submit their data, views or arguments concerning the proposed amendment in writing to Marc Bridges, 301 N. Roberts St., Room 308, PO Box 202001, Helena, MT 59620-2002, by faxing to (406) 444-1929, or by e-mailing to mbridges@state.mt.us to be received no later than 5:00 p.m., September 30, 2004.

6. If persons who are directly affected by the proposed amendment 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., September 30, 2004.

7. If the board receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a 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 Notice of Public Hearing is available through the Department's site at www.liv.state.mt.us.

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, which includes the name and mailing address of the person to receive notices and specifies the area of interest that the person wishes to receive notices regarding. Such written request may be mailed or delivered to Marc Bridges, 301 N. Roberts St., Room 308, PO Box 202001, Helena, MT 59620-2001; faxed to (406) 444-1929 "attention Marc Bridges"; or e-mailed to mbridges@state.mt.us. Request forms may also be completed at any rules hearing held by the department.

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

DEPARTMENT OF LIVESTOCK

By: /s/ Marc Bridges
Marc Bridges, Exec. Officer,
Board of Livestock
Department of Livestock

By: /s/ Carol Grell Morris
Carol Grell Morris, Rule Reviewer

Certified to the Secretary of State August 23, 2004.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 42.17.101,) ON PROPOSED AMENDMENT
42.17.103, 42.17.105, 42.17.111,) AND REPEAL
42.17.113, 42.17.114, 42.17.120,))
42.17.131, 42.17.134, 42.17.203,))
42.17.204, 42.17.206, 42.17.207,))
42.17.208, 42.17.209, 42.17.210,))
42.17.218, 42.17.219, 42.17.221,))
42.17.222, 42.17.223, 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, and 42.17.316; and)
repeal of ARM 42.17.205,)
42.17.220, 42.17.224, 42.17.307,))
42.17.506, 42.17.508, 42.17.538,))
and 42.17.539 relating to)
business and estimated payment)
taxes)

TO: All Concerned Persons

1. On September 23, 2004, at 1:00 p.m., a public hearing will be held in the Director's Office (Fourth Floor) Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment and repeal of the above-stated rules relating to business and estimated payment taxes.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue not later than 5:00 p.m., September 13, 2004, 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) 459-2646; fax (406) 444-3696; or e-mail canderson@state.mt.us.

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

42.17.101 DEFINITIONS The following terms pertain to this chapter:

(1) ~~"Contribution rate schedule" is the schedule setting the range of contribution rates that may be assigned to employers in each calendar year. The contribution rate schedule is the ratio of the unemployment insurance trust fund~~

~~balance as of October 31 to the total wages in employment for each year, ending June 30. See 39-51-1218, MCA.~~

~~(2)~~ "Employer's agent" with regard to state withholding means a third party that bears no insurance risk and is reimbursed on a cost-plus-fee basis for payment of sick pay and similar amounts.

~~(3)~~(2) "Individual" means a worker who renders service in the course of an occupation.

~~(4)~~(3) "Reporting forms" includes, but is not limited to:

(a) ~~PC~~ M1 - payment coupon;

(b) ~~MTQ~~ ~~Montana Employer's Quarterly Tax Report~~;

~~(c)~~ ~~MTQ Coupon~~ ~~MTQ quarterly coupon~~;

~~(d)~~ MW3 - state income tax withholding reconciliation and transmittal document (W-2); and

~~(e)~~ ~~MW3/AR~~ ~~state income tax withholding transmittal document (W-2) and reconciliation for annual remitters~~; and

~~(f)~~(c) W-2 - wage and tax statement.

~~(5)~~(4) "Sole proprietor," as used in 15-30-256 and ~~39-51-204~~, 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 ~~and unemployment insurance~~.

AUTH: Sec. 15-30-305, ~~39-51-301~~, and ~~39-51-302~~, MCA

IMP: Sec. ~~15-30-105~~, 15-30-201, and 15-30-256, ~~39-51-401~~, ~~39-51-1103~~, ~~39-51-1213~~, and ~~39-51-1218~~, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.17.101 to delete references to unemployment insurance-related definitions and forms since the department will no longer be administering this program. The rule is further amended to clarify that the name of the payment coupon has been changed from PC to M1 and that the MW3 will also be used in the reconciliation process. The form MW3/AR will no longer be required due to a change in the filing requirements. The rule is further amended to clarify that owners of single-member LLCs, who are treated as sole proprietors for income tax purposes because the LLCs are disregarded entities, are also treated as sole proprietors for withholding tax purposes.

42.17.103 OTHER PAYMENTS (1) through (2)(b) remain the same.

(3) Payment of sick pay by a third party, other than an employer's agent, is not subject to withholding tax unless requested in writing by the recipient of the sick pay, or as described in (2)(b) ~~above~~.

(4) through (6)(b) remain the same.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-201, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.17.103 for housekeeping purposes only.

42.17.105 COMPUTATION OF WITHHOLDING (1) Employers

shall calculate the state income tax amount according to the "Montana State Withholding Tax Guide ~~Withholding Tables,~~" effective ~~April 1, 1994, as revised May 2000, which is adopted by reference in this rule provided by the department.~~

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

(a) telephoning: the department at its department of revenue customer service center (406) 444-6900; or by

(b) writing to: Montana Department of Revenue, P.O. Box 5835, Helena, Montana 59604-5835; or

(c) accessing: department of revenue's website www.discoveringmontana.com.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-103, ~~15-30-199,~~ and 15-30-202, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.17.105 to delete references to the Withholding Tax Guide, as the tax tables are considered independent of the Withholding Tax Guide. In addition, the date that the tables were effective and revised was deleted as these dates change.

42.17.111 WHO MUST WITHHOLD MONTANA STATE INCOME TAX AND WHO IS SUBJECT TO WITHHOLDING (1) through (5) remain the same.

(6) Applicable to tax years beginning January 1, 1994, and later. Wages paid to a member of an Indian tribe are subject to withholding unless all of the following conditions are met: Wages paid to an enrolled member of a Native American tribe are subject to withholding except as provided in this rule.

(a) the employee is an enrolled member of a recognized Indian tribe; 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) the wages earned by the employee are derived from reservation sources; and

(iii) 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) a certificate of enrollment is filed by the employee with the employer; 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) the employee resides on his or her tribe's reservation; and 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).

~~(d) the wage is compensation for services performed within the boundaries of the enrolled member's reservation.~~

(7) remains the same.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-202, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.17.111 to bring the rule into conformance with terms used in court cases and federal statutes regarding the determination of Native American issues pertaining to taxation. Similar amendments will be made to ARM 42.15.121 in another ARM proposal notice regarding exemptions for income of enrolled Tribal members.

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 15-30-321, MCA, apply to any violation of the requirement to collect, truthfully account for, and pay amounts required to be deducted from employee wages.

(2) through (3) remain the same.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-1-208, 15-30-204, and 15-30-210, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.17.113 to reflect the uniform penalty and interest statute set forth in 15-1-216, MCA.

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 MW3 must be accompanied by the original copies of each employee's earnings statements on federal form W-2.

(a) through (5) remain the same.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-206, and 15-30-207, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.17.113 to include the new definition proposed for form MW3, as set forth in ARM 42.17.101.

42.17.120 EMPLOYER'S FAILURE TO WITHHOLD (1) If an employer fails to deduct and withhold as required under 15-30-202, 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. 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 provision rule from ~~his~~ their liability for payment of the amounts required to be withheld unless ~~he~~ they can show that the income tax against which the required withholdings may be credited has been paid.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-203, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.17.120 for housekeeping changes only. Gender-related references were deleted.

42.17.131 WITHHOLDING ALLOWANCES (1) For purposes of determining the employee's withholding allowances, the amount ~~of tax to be withheld is the same as or less than those claimed for Montana may be different than the amount~~ claimed on the IRS Form W-4 withholding allowance certificate (on the line stating "Total number of allowances you are claiming"), furnished by the employee to the employer for federal withholding tax purposes. The department may determine the amount claimed on the IRS 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 ~~which that~~ allows extra allowances for federal withholding is not allowed for state purposes when determining the number of allowances for state withholding.

(2) and (3) remain the same.

(4) Any change to the "Total number of allowances you are claiming", on 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) ~~below~~. 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 (W-4) to the Department of Revenue, P.O. Box ~~6339~~ 5805, Helena, Montana 59604-~~6339~~ 5805, on which an employee has claimed more than ~~ten~~ 10 withholding allowances. 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) 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) 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) ~~above~~, the department shall consider:

(a) through (g) remain the same.

(7) If an employee fails to provide the department with sufficient information to make the determination in (6) ~~above~~, the department shall use its best estimate of the employee's eligible exemptions when determining the withholding allowances.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-202, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.17.131 to clarify that the amount of allowances claimed for Montana withholding purposes may also be more than the federal number of allowances, not just the same or less. In addition, the mailing address was changed.

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 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) remains the same.

(c) A copy of the employee's NR-2 must be submitted by the employer to the department ~~during or with the quarterly report for the quarter in which the NR-2 was~~ after it is provided to the employer; and

(d) remains the same.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-202 and 15-30-209, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.17.134 for housekeeping purposes. Specific gender-related references were amended. In addition, amendments reflect that the new business process does not include the filing of quarterly reports.

42.17.203 RECORDS TO BE KEPT BY EMPLOYER (1) As required by ARM 42.2.305, employers must keep employment records for each employee for five years. Such records must show:

(a) For each pay period:

(i) the beginning and ending dates;

(ii) the total wages, as defined in ~~39-51-201~~ and 15-30-201, MCA, for employment in such pay period; and

(iii) the number and date of weeks in which there were one or more employees.

(b) through (2) remain the same.

(3) The department is authorized to examine any and all records necessary for the administration of ~~the unemployment insurance law (Title 39, chapter 51, MCA),~~ and the withholding and estimated tax law (Title 15, chapter 30, part 2, MCA). These records include, but are not limited to:

(a) through (f) remain the same.

(g) any other records which might be necessary to determine ~~claimant eligibility and~~ employer liability.

(4) remains the same.

AUTH: Sec. 15-30-305, ~~39-51-301,~~ and ~~39-51-302,~~ MCA

IMP: Sec. 15-30-204 and ~~39-51-603,~~ MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.17.203 because, due to the transfer of the administration of Unemployment Insurance back to the Department of Labor and Industry, references that pertain only to the administration of unemployment insurance must be deleted.

42.17.204 QUARTERLY REPORTS REMITTANCE OF TAX BY EMPLOYERS (1) Every employer must report information to the department on an approved ~~quarterly report form,~~ payment coupon provided by the taxpayer. ~~except those who qualify and elect to file annually as provided in The remittance schedule is established annually by the department pursuant to 15-30-204, MCA.~~ The department may request any information from the employer necessary for the collection of the tax.

(2) All employers must complete and return this ~~form coupon~~ even if the employer did not pay any wages or withhold from employees during the ~~calendar quarter pay period.~~

(3) Wages become subject to tax when they are actually or constructively paid. Wages must be reported in the ~~calendar quarter period~~ in which they are actually or constructively paid. Wages are constructively paid if they are credited to the employee's account and set apart for an employee so that they may be withdrawn at the employee's discretion.

(4) ~~The quarterly reports must be postmarked by the following dates:~~

Quarter	Months Covered	Due Date
First:	January, February, March	April 30
Second:	April, May, June	July 31
Third:	July, August, September	October 31
Fourth:	October, November, December	January 31

(5) If a due date falls on a weekend or holiday, the next business day becomes the due date for which the ~~quarterly reports payment coupons~~ must be ~~postmarked remitted.~~

AUTH: Sec. 15-30-305, ~~39-51-301,~~ and ~~39-51-302,~~ MCA

IMP: Sec. 15-30-204 and ~~39-51-603~~, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.204 to bring the rule into compliance with the current practice of the department in response to changes required by the implementation of a new computer system. These changes are also beneficial to the taxpayer.

42.17.206 WAGES (1) The term wages, as defined in 15-30-201 and ~~39-51-201~~, MCA, for purposes of reporting and paying withholding and ~~unemployment insurance~~ taxes, includes but is not limited to, the following types of remuneration for services:

(a) through (f) remain the same.

AUTH: Sec. 15-30-305, ~~39-51-301~~, and ~~39-51-302~~, MCA

IMP: Sec. 15-30-201 and ~~39-51-1103~~, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.17.206 because, due to the transfer of the administration of Unemployment Insurance back to the Department of Labor and Industry, references to unemployment insurance must be deleted.

42.17.207 RENTAL OF CAPITAL ASSETS - NOT WAGES

(1) through (1)(e)(v) remain the same.

AUTH: Sec. 15-30-305, ~~39-51-301~~, and ~~39-51-302~~, MCA

IMP: Sec. 15-30-201, ~~39-51-201~~, and ~~39-51-1103~~, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.17.207 to delete the unemployment statutes since this program was transferred back to the Montana Department of Labor and Industry by the 2003 Legislature.

42.17.208 EMPLOYEE EXPENSES - NOT WAGES

(1) through (7) remain the same.

AUTH: Sec. 15-30-305, ~~39-51-301~~, and ~~39-51-302~~, MCA

IMP: Sec. 15-30-201, ~~39-51-201~~, and ~~39-51-1103~~, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.17.208 to delete the unemployment statutes since this program was transferred back to the Montana Department of Labor and Industry by the 2003 Legislature.

42.17.209 JUROR FEES, INSURANCE PREMIUMS, ANNUITIES, DIRECTOR FEES - NOT WAGES (1) through (4) remain the same.

AUTH: Sec. 15-30-305, ~~39-51-301~~, ~~39-51-302~~, and ~~39-51-2407~~, MCA

IMP: Sec. 15-30-201 ~~39-51-201~~ and ~~39-51-1103~~, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.17.209 to delete the unemployment statutes since this program was transferred back to the Montana Department of Labor and Industry by the 2003 Legislature. The department is adding 15-30-201, MCA, to make this rule consistent with the

implementation in ARM 42.17.207 and 42.17.208 because all three support that statute.

42.17.210 DETERMINATION OF INDEPENDENT CONTRACTOR (1) remains the same.

(2) After investigation, the department may issue an initial written determination on whether an individual is an independent contractor. Any person or employing unit aggrieved by this initial determination may request investigation and a determination by the department of labor and industry's independent contractor central unit (ICCU) pursuant to ARM Title 24, chapter 35, sub-chapters 2 and 3, within ~~ten~~ 10 days of notice of the initial determination.

~~(a)(3)~~ A party is considered to have been given notice on the date a written notice is personally delivered or three days after a written notice is mailed to the party.

~~(b)~~ The time limits set forth above may be extended for good cause as provided in ~~39-51-2402~~, MCA.

~~(3)~~ Thereafter, the process set out in ARM Title 24, chapter 35, sub-chapters 2 and 3, controls.

AUTH: Sec. 15-30-305, ~~39-51-301~~, and ~~39-51-302~~, MCA

IMP: Sec. 15-30-201, 15-30-248, and 15-30-303, ~~39-51-201~~, ~~39-51-603~~, and ~~39-51-1103~~, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.210 because, due to the transfer of the administration of unemployment insurance back to the Department of Labor and Industry, references to unemployment insurance must be deleted.

42.17.218 EMPLOYER REGISTRATION (1) Every employer required to withhold state individual income tax ~~or pay unemployment insurance tax~~ must register for a customer Montana tax identification number on a form GenReq, which is provided by the department. A new employer who has acquired the business of another employer must not use the predecessor's identification number. Application for a ~~customer Montana tax~~ identification number is to be sent to the Department of Revenue, P.O. Box ~~6339~~ 5805, Helena, Montana 59604-~~6339~~ 5805.

(2) remains the same.

(3) Failure to register does not relieve an employer from withholding, reporting and remitting state income tax ~~and unemployment insurance tax~~.

AUTH: Sec. 15-30-305 ~~and 39-51-301~~, MCA

IMP: Sec. 15-30-209 ~~and 39-51-202~~, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.17.218 to delete references to unemployment insurance, as the administration of this program has been transferred back to the Department of Labor and Industry. Also, it was necessary to clarify that a Montana tax identification number will now be used instead of a customer identification number. The mailing address was also corrected.

42.17.219 FORMS AND PAYMENTS TO FILE FILINGS AND PAYMENTS DUE AFTER TERMINATION OF WAGE PAYMENTS (1) The following must be filed with the department within 30 days of ceasing to be an employer as defined in 15-30-201 and ~~39-51-202~~, MCA:

(a) the payment coupon with remittance for the final payroll period in which wages were paid;

(b) ~~quarterly filers must file:~~

~~(i) the MTO Employer's Quarterly Tax Report for the final quarter in which wages were paid; and~~

~~(ii) the MW3 with form the W-2 form, reporting individual employee's wages and taxes withheld during the year to the date of termination of wage payments; and~~

(c) annual filers must file the final MW3/AR with the ~~form~~ W-2 form, reporting individual employee's wages and taxes withheld during the year to the date of termination of wage payments.

AUTH: Sec. 15-30-305 and ~~39-51-301~~, MCA

IMP: Sec. 15-30-201, 15-30-204, 15-30-205, 15-30-206, 15-30-207, and 15-30-209 and ~~39-51-202~~, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.17.219 to delete references to unemployment insurance, as the administration of this program has been transferred back to the Department of Labor and Industry. Additional housekeeping changes were made.

42.17.221 DUE DATE AND APPLICATION OF TAXES

(1) ~~Unemployment insurance taxes are due and payable at the same time quarterly reports are due as provided in ARM 42.17.204. Withholding taxes are due as provided in 15-30-204, MCA.~~

(2) remains the same.

(3) Payments submitted with ~~quarterly reports or payment coupons~~ are applied to the that quarter or period noted on the coupon. If an employer pays more than the amount owed for withholding tax on the ~~quarterly report payment coupon~~, the withholding overpayment is applied to other amounts due as provided in (2) above. ~~Unemployment insurance tax overpayments may only be applied to future unemployment insurance tax obligations or refunded to the employer unless the employer has authorized the department to use the amount overpaid for other tax liabilities.~~ The employer may request that payments be applied to a more recent ~~quarter period~~.

AUTH: Sec. 15-30-305, ~~39-51-301~~, and ~~39-51-302~~, MCA

IMP: Sec. 15-1-216, 15-1-708, and 15-30-321, ~~39-51-1103~~, and ~~39-51-1110~~, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.221 to delete references to unemployment insurance, as the administration of this program has been transferred back to the Department of Labor and Industry. Amendments are also proposed for ARM 42.17.221 to bring the rule into

compliance with the current practice of the department in response to changes required by the implementation of a new computer system. These changes will be beneficial to the taxpayer.

42.17.222 DEMAND OF PAYMENT OR REPORTS IF EMPLOYER TRANSFERS OR DISCONTINUES BUSINESS (1) The department may demand that an employer file a ~~quarterly~~ MW3 annual reconciliation report and submit payment ~~before the quarterly due date if the employer~~ within 30 days after ceasing activity. "Ceasing activity" includes, but is not limited to:

- (a) quits doing business;
- (b) sells or transfers the business, or the major portion of the business assets; or
- (c) becomes insolvent.

(2) If the ~~quarterly~~ report and payment are not received within 30 days ~~of demand~~, the accrued taxes are subject to penalty and interest as provided in 15-1-216 ~~and 39-51-1301~~, MCA.

AUTH: Sec. 15-30-305 ~~and 39-51-301~~, MCA

IMP: Sec. 15-1-216, 15-30-204, ~~and 39-51-1103~~, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.222 to bring the rule into compliance with the current practice of the department in response to changes required by the implementation of a new computer system. These changes will be beneficial to the taxpayer.

42.17.223 DETERMINING EMPLOYEE STATUS (1) ~~If there is a dispute as to whether a worker is an employee of a temporary service contractor or a professional employer organization, the matter will be resolved by reference to the provisions of Title 39, chapter 8, MCA, and Title 39, chapter 71, MCA. If such a worker is not the employee of a temporary service contractor or professional employer organization, the worker is deemed to be an employee of the temporary service contractor's or professional employer organization's client.~~

(2) It is the intent of the department that any determination of a worker's status as an employee for ~~unemployment insurance~~ or withholding tax purposes be consistent with the determination of the same person's status under the Workers' Compensation Act, unemployment insurance and the professional employer organization laws.

AUTH: Sec. 15-30-305 ~~and 39-51-301~~, MCA

IMP: Sec. 15-30-248, ~~39-51-202, 39-51-203, 39-51-204, and 39-51-603~~, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.223 to delete references to unemployment insurance, as the administration of this program has been transferred back to the Department of Labor and Industry. In addition, it was determined that the rules pertaining to the classification of a worker as either an employee of a temporary service contractor or a professional employer organization was not

necessary for the administration of the withholding tax.

42.17.304 DEFINITIONS DETERMINATION OF TAX LIABILITY FOR PRECEDING TAX YEAR; DETERMINATION OF TAX PAID FOR CURRENT TAX YEAR (1) ~~As used in this sub chapter, the following definitions apply:~~

~~(a) The term "tax liability" means A taxpayer's tax liability for the preceding tax year is the total tax imposed by Title 15, chapter 30, MCA, less any tax credits allowed under Montana law excluding other than the elderly homeowner/renter credit, as shown on the taxpayer's return. A taxpayer's withholding, estimated tax and the The elderly homeowner/renter credit will be considered as payments prior to the calculation of the deficiency payment is treated as a payment of tax and is added to the taxpayer's withholding and estimated tax payments in determining the amount of tax paid for the current year.~~

Example: A taxpayer has a tax, before credits, of \$5,000. He has ~~\$1,000 in tax credits.~~ He The taxpayer has withholding of \$800 and an elderly homeowner/renter credit of \$400, other tax credits of \$1,000 and employer withholding of \$800. His The taxpayer's tax liability for the prior year for estimated tax purposes is \$4,000 computed as follows:

Tax before credits	\$5,000
Credits	<u>(1,000)</u>
Tax liability	\$4,000

The amount of tax the taxpayer has paid through a combination of employer withholding and estimated payments for the current year for estimated tax purposes is \$1,200 computed as follows:

Tax paid (elderly homeowner/renter credit)	\$ 400
Withholding	800
Total taxes paid	<u>\$1,200</u>

(2) The tax liability for the preceding tax year of a taxpayer who was a participant in a composite return for the preceding year is the participant's composite tax liability. If an individual was required to file a Montana individual income tax return the year preceding a year they participate in a composite return filing, their tax liability for the preceding tax year is their individual liability as determined in (1). Estimated payments made by a partnership or S corporation with respect to a participant's composite tax liability are not taxes paid by the participant for the current tax year. The rules for filing composite returns are located in ARM Title 42, chapter 9, sub-chapter 2.

AUTH: Sec. 15-30-305, MCA
IMP: Sec. 15-30-241, MCA

REASONABLE NECESSITY: The department is amending this rule for housekeeping purposes and to add provisions clarifying the

determination of the tax liability for the preceding tax year and the amount of tax paid for the current year for individuals participating in the filing of a pass-through entity composite return.

42.17.305 ESTIMATED TAX; AND PAYMENT OF INSTALLMENTS; SHORT TAXABLE YEARS (1) Except as provided in 15-30-241, 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, 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.

(2) Taxpayers must complete the 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, 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 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 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 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, MT 59604-6309.

(4) If a taxpayer has not received estimated tax payment coupons from the department before the first installment due date, the payment should be accompanied by a writing 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 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) Estimated tax payments are not required in the case of a short for a taxable year which is less shorter than four months.

(2) Individuals who have a short taxable year of four months or more are required to pay estimated tax on the following dates:

(a) The first installment is due on April 15 or on the 15th day of the fourth month of the taxable year;

(b) The second and third installments are due on the 15th day of the sixth month of the taxable year and the 15th day of the ninth month of the taxable year if the short taxable year does not close prior to these dates; and

(c) The final installment is due on the 15th day of the first month of the succeeding taxable year.

(3)(7) If less 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 taxable 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 taxable year ended on 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: Sec. 15-30-305, MCA

IMP: Sec. 15-30-241, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.17.305 to reference the department's worksheets used to determine estimated tax payments and the requirements to submit the worksheet with the return or maintain a copy of the worksheet when the return is filed electronically. In

addition, this rule further provides procedures to use when remitting estimated payments with a coupon and if no coupon is available, the necessary information which must be supplied with the estimated payment.

42.17.306 APPLICATION WRITTEN REQUEST FOR EXTENSION - PAYMENT OF ESTIMATED TAX (1) ~~An application for A taxpayer may request an extension of time for payment of any installment or for the payment of any deficiency amount shall be made on forms prescribed to pay all or a part of an installment of estimated taxes by making a written request identifying the by the department and shall be accompanied by~~ evidence showing that undue hardship would result to the taxpayer if the extension were refused. The extension will not be granted under a general statement of "hardship."

(2) ~~The application written request,~~ with supporting documents, must 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 5805
Helena, Montana 59604-5805.

(3) ~~The request for extension must be received by the department filed 30 days prior before to the installment date for which the extension is requested. The application will be examined, and within 30 days, if possible, be denied, granted, department will, within 30 days if possible, grant, deny, or tentatively granted the request subject to certain conditions.~~

~~(3)(4)~~ If an extension is granted, no further notice or demand will be given and the taxpayer must pay the estimated payment shall be paid on or before the expiration of the period of the extension without the necessity of notice and demand. 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, 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.

~~(4) The maximum total time period for an extension is six months per year. An estimated tax payment cannot be extended past the due date of the return not including any extension of time to file. The underpayment penalty of 15-30-241(5), MCA, applies to any payments that are paid past the due date whether or not an extension is granted.~~

(5) While the department may grant an extension of up to six months after the installment due date, it will not grant an extension beyond the original due date of the return, typically April 15 following the tax year.

(5) and (6) remain the same but are renumbered (6) and

(7).

~~(7)~~(8) Examples of what does and what does not constitute "hardship" ~~are contained~~ may be found in ARM 42.3.106.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-241, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.17.306 for housekeeping purposes, to update the penalty and interest provisions and to remove reference to an estimated extension application form that does not exist, substituting a written request.

42.17.308 DETERMINATION OF ANNUAL TAXABLE DETERMINING ANNUALIZED INCOME (1) ~~There must be an accurate determination of Taxpayers who use the annualization option in estimating their current year tax must accurately determine the amount of income and deductions for the calendar months in the taxable year preceding the each installment date of which the determination is made period.~~

(2) Income or expenses that are paid occasionally during a year cannot be spread out during the year in determining the required installments. For example, a taxpayer who distributes year-end bonuses to ~~his~~ employees but does not determine the amount of the bonuses until the last month of the taxable year. He may not deduct any portion of such year-end bonuses in determining ~~his~~ taxable income for any installment period other than the final installment period for the taxable year, since deductions are not allowable until paid or accrued, depending on the taxpayer's method of accounting.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-241, MCA

REASONABLE NECESSITY: The department is proposed to amend ARM 42.17.308 for housekeeping purposes.

42.17.309 INCOME ON AN ANNUALIZED BASIS PERIODS (1) ~~A taxpayer whose income fluctuates or is seasonal may be able to lower or eliminate the amount of one or more required estimated tax installments by periodically annualizing his income.~~

~~(2) A taxpayer's income is annualized when his income, deductions and credits that cover a certain period of time are multiplied by annualization factors that arrive at his income projected over twelve months.~~

~~(3) The annualized taxable income for each period is found by multiplying the adjusted gross income and itemized deductions for that period by the annualization factors for that period, less personal exemptions. The standard deduction may be substituted in place of the annualized itemized deductions.~~

(4) For a calendar taxpayer, the annualization periods are January through March, January through May, January through August, and January through December of the tax year.

~~(5)~~(2) For fiscal year taxpayers, the annualization periods all begin on the first day of the taxable year and end

on the last day of the third, fifth, eighth and twelfth months following the beginning of the taxable year.

~~(6) The annualization factors are 4 for the 1st period, 2.4 for the 2nd period, 1.5 for the 3rd period, and 1 for the 4th period.~~

~~(7) The annualized tax less allowable credits is multiplied by 22.5% to find the 1st required installment amount, 45% for the second installment amount, 67.5% for the third period, and 90% for the fourth period. Each annualized installment payment is decreased by the total of any preceding payments to arrive at that periods required payment.~~

~~(8) A taxpayer must file annualization forms provided by the department or have prior approval to use similar forms.~~

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-241, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.309 for housekeeping purposes and to eliminate references to the annualization factors now contained on the annualization form referenced in ARM 42.17.305.

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 taxable year ~~shall~~ must compute their prior year's estimated tax liability as follows:

(a) 100% of the tax liability of the joint return for the preceding taxable year; or

(b) A ~~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 ~~times~~ by the preceding year's joint tax liability.

Example: Husband and wife file a joint return for the calendar year ~~1992~~ 2003 showing taxable income of \$50,000 and a tax of ~~\$3,930~~ \$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 ~~in 1993~~ for calendar year 2004. The tax shown on the return for the preceding taxable year, for purposes of determining if ~~an interest is owed on an~~ underpayment, penalty applies is determined as follows:

Taxable income of husband for 1992:	\$30,000
Tax on \$30,000 (on basis of separate return):	\$ 1,960
Taxable income of wife for 1992:	\$20,000
Tax on \$20,000 (on basis of separate return):	\$ 1,090
Aggregate tax of husband & wife (on basis of separate returns):	\$ 3,050
Portion of 1992 tax shown on joint return attributable to husband (1,960/3,050 times	

3,930):	\$ 2,526
Portion of 1992 tax shown on joint return	
attributable to wife (1,090/3,050) times	
3,930):	\$ 1,404
<u>Taxable income of husband for 2003:</u>	<u>\$30,000</u>
<u>Tax on \$30,000 (on basis of separate return):</u>	<u>\$ 1,712</u>
<u>Taxable income of wife for 2003:</u>	<u>\$20,000</u>
<u>Tax on \$20,000 (on basis of separate return):</u>	<u>\$ 934</u>
<u>Aggregate tax of husband & wife (on basis of</u>	
<u>separate returns):</u>	<u>\$ 2,646</u>
<u>Portion of 2003 tax shown on joint return</u>	
<u>attributable to husband (\$1,712/\$2,646 X \$3,556):</u>	<u>\$ 2,301</u>
<u>Portion of 2003 tax shown on joint return</u>	
<u>attributable to wife (\$934/\$2,646 X \$3,556):</u>	<u>\$ 1,255</u>
<u>AUTH:</u> Sec. 15-30-305, MCA	
<u>IMP:</u> Sec. 15-30-241, MCA	

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.310 for housekeeping purposes by updating the example to include more current year information and changing references to the underpayment penalty to interest on the underpayment consistent with a 1999 amendment to 15-30-241, MCA.

42.17.311 DETERMINATION OF TAX LIABILITY - STATUS CHANGE FROM SEPARATE TO EITHER A JOINT RETURN OR MARRIED FILING SEPARATE (1) ~~In the case of If taxpayers who file a joint return for the taxable year and who filed separate returns for the preceding taxable year file a joint return, the tax liability shown on the return for the preceding taxable year shall be is~~ the sum of both spouses' tax liabilities for the preceding tax year.
AUTH: Sec. 15-30-305, MCA
IMP: Sec. 15-30-241, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.311 for housekeeping purposes only.

42.17.312 ESTIMATED TAX PAYMENTS - DIVORCE (1) ~~If Joint estimated income tax payments made by married individuals who are divorced at the end of the tax year or who are legally separated at the end of a tax year, for which they do not file a joint return must be split equally unless the individuals enter into a written agreement, signed by each, providing a different division. By filing a return claiming other than an equal share of a couple, who is divorced or legally separated, has filed joint estimated income tax payments, the joint payments will be split as follows:~~
~~(a) The joint estimated tax payments will be split equally; or~~
~~(b) As agreed by the two parties a taxpayer represents that a written agreement signed by both parties, as provided in this rule has been executed.~~
(2) ~~If an agreement is reached by the two parties, a copy~~

~~of the agreement showing the division of the payments signed by both parties must accompany both tax returns~~ Duly executed copies of the agreement are tax records and the taxpayer must retain and provide the department with copies on request.

(3) The division of jointly filed estimated payments as provided in this rule does not relieve ~~the~~ either taxpayers from the liability for interest on any underpayment penalty.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-241, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.312 for housekeeping purposes and to eliminate the requirement that an estimated tax sharing agreement be attached to the parties' returns.

42.17.313 PAYMENT OF ESTIMATED TAX - DECEDENT (1) Joint estimated tax payments may not be made after the death of either spouse. The surviving spouse must re-compute his or her estimated tax for the remainder of the year and ~~file a pay~~ separate ~~payment~~ installments for each remaining installment due date.

(2) ~~In the case of a deceased taxpayer, payments of estimated~~ Estimated tax payments are not required after the date of death for a deceased taxpayer.

(3) If a joint return is filed for the last taxable year ~~with the deceased spouse,~~ the taxpayers' joint estimated tax payments ~~of the deceased spouse~~ may be applied on the return.

(4) If separate returns are filed for the last taxable year of ~~the a~~ deceased spouse, any ~~jointly filed~~ estimated tax payments must be split equally.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-241, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.313 for housekeeping only.

42.17.314 NONRESIDENTS AND PART-YEAR RESIDENTS (1) ~~A Non-residents and or part-year residents who did was~~ not have required to file a Montana individual income tax filing requirement in return for the previous tax year are is not required to file pay estimated taxes. ARM 42.15.301 sets forth the rules for determining who must file an individual income tax return.

(2) ~~Nonresidents, other than those in (1), who derive income from Montana are required to file estimated taxes.~~

~~(3) Part-year residents moving out of Montana, other than those in (a)(1), are required to file estimated taxes to cover the amount of income that is taxable to Montana pay.~~

~~(4)(3) Part-year residents moving in or out of Montana are not considered to have a short taxable year unless they have a short taxable year on their federal return.~~

(4) A participant in a composite return for the preceding tax year must pay estimated tax for the current tax year as provided in ARM 42.17.305 if they are not a participant in a

composite return for the current tax year.

(5) A participant in a composite return for the current tax year is not required to pay estimated tax for the current tax year. The rules for filing composite returns are located in ARM Title 42, chapter 9, sub-chapter 2.

(6) A partnership or S corporation must pay estimated tax for the current tax year for each participant included in the filing of the current year composite return.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-241, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.314 for housekeeping purposes and to clarify the estimated tax payment requirements of pass-through entities and participants that have elected to file composite returns.

42.17.315 WAIVER OF INTEREST ON ESTIMATED TAX UNDERPAYMENT PENALTY—WAIVER (1) ~~The department underpayment penalty may be waived if the taxpayer shows there is "reasonable cause" as provided in interest on underpayment of estimated tax as provided in~~ ARM 42.3.105 Title 42, chapter 3, sub-chapter 1.

~~(2) "Hardship" as provided in ARM 42.3.106 constitutes reasonable cause.~~

~~(3) The calculation of the estimated underpayment penalty must be made on forms prescribed by the department EST-P.~~

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-241, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.315 for housekeeping purposes and to cross-reference the department's general rules for waiving interest.

42.17.316 TRUSTS, ESTATES, FIDUCIARIES AND CONSOLIDATED PARTNERSHIP FIDUCIARY RETURNS (1) Trusts, estates and fiduciaries are required to file estimated tax payments and are subject to the underpayment ~~penalties~~ interest.

~~(2) Partners of a partnership that file a consolidated partnership return with Montana are subject to filing estimated tax payments.~~

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-241, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.316 for housekeeping purposes to remove reference to consolidated partnerships. The rules as they relate to pass-through entities filing composite returns are now located in ARM Title 42, chapter 9, sub-chapter 2. In addition, this rule is amended to replace the word penalty with the word interest. The change of underpayment penalty to an underpayment interest is provided in 15-30-241, MCA. Chapter 427 of the 1999 Laws of Montana amended this statute.

4. The rules as proposed to be repealed are:

42.17.205 IDENTIFICATION OF EMPLOYEES which can be found on page 42-1733 of the Administrative Rules of Montana.

AUTH: Sec. 15-30-305, 39-51-301, and 39-51-302, MCA

IMP: Sec. 15-30-204, 15-30-207, 15-30-257, and 39-51-603, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.17.205 because the administration of the unemployment insurance was transferred back to the Department of Labor and Industry and this rule is not considered necessary for the administration of the withholding tax.

42.17.220 CLOSING ACCOUNTS which can be found on page 42-1738 of the Administrative Rules of Montana.

AUTH: Sec. 39-51-301 and 39-51-302, MCA

IMP: Sec. 15-30-201 and 39-51-603, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.17.220 because the administration of unemployment insurance has been transferred back to the Department of Labor and Industry and administrative rules regarding the closing of accounts are not necessary for the administration of the withholding tax.

42.17.224 STATUS OF CERTAIN PERSONAL ASSISTANTS which can be found on page 42-1740 of the Administrative Rules of Montana.

AUTH: Sec. 15-30-305, 39-51-301, 39-51-302, and 53-6-145, MCA

IMP: Sec. 53-6-145, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.17.224 because the administration of unemployment insurance was transferred back to the Department of Labor and Industry and administrative rules regarding the status of certain personal assistants are not necessary for the administration of the withholding tax.

42.17.307 AMENDMENTS OF PREVIOUS INSTALLMENTS which can be found on page 42-1747 of the Administrative Rules of Montana.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-241, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.17.307 because the installments required by this rule when there was a change in circumstances are now located in 15-30-241, MCA, and the rule is no longer necessary.

42.17.506 BENEFIT OVERPAYMENTS - CREDITING EMPLOYER ACCOUNTS which can be found on page 42-1767 of the Administrative Rules of Montana.

AUTH: Sec. 15-30-305, 39-51-301, and 39-51-302, MCA

IMP: Sec. 39-51-1125, 39-51-1212, 39-51-1213, 39-51-1214, and 39-51-1215, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.17.506 because this rule applies only to the administration of unemployment insurance and the 2003 Legislature transferred those duties back to the Department of Labor and Industry. Therefore, the rule is no longer necessary.

42.17.508 OTHER PAYMENTS which can be found on page 42-1767 of the Administrative Rules of Montana.

AUTH: Sec. 15-30-305, 39-51-301, and 39-51-302, MCA

IMP: Sec. 15-30-201 and 39-51-1103, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.17.508 because this rule applies only to the administration of unemployment insurance and the 2003 Legislature transferred those duties back to the Department of Labor and Industry. Therefore, the rule is no longer necessary.

42.17.538 REPORTING OF WAGES IN EXCESS OF TAXABLE WAGE BASE which can be found on page 42-1781 of the Administrative Rules of Montana.

AUTH: Sec. 39-51-301 and 39-51-302, MCA

IMP: Sec. 39-51-1108, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.17.538 because this rule applies only to the administration of unemployment insurance and the 2003 Legislature transferred those duties back to the Department of Labor and Industry. Therefore, the rule is no longer necessary.

42.17.539 DUE DATE OF TAXES FOR NEW EMPLOYERS which can be found on page 42-1781 of the Administrative Rules of Montana.

AUTH: Sec. 15-30-325 and 39-51-301, MCA

IMP: Sec. 15-30-204, 39-51-301, and 39-51-302, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.17.539 because this rule applies only to the administration of unemployment insurance and the 2003 Legislature transferred those duties back to the Department of Labor and Industry. Therefore, the rule is no longer necessary.

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
and must be received no later than October 1, 2004.

6. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

7. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at <http://www.discoveringmontana.com/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 website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Don Hoffman
DON HOFFMAN
Acting Director of Revenue

Certified to Secretary of State August 23, 2004

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 42.21.113;) ON PROPOSED AMENDMENT
42.21.123; 42.21.131; 42.21.137;))
42.21.138; 42.21.139; 42.21.140;))
42.21.151; 42.21.153; 42.21.155;))
and 42.22.1311 relating to)
personal, industrial and)
centrally assessed property tax)
trend table updates)

TO: All Concerned Persons

1. On September 27, 2004, at 1:30 p.m., a public hearing will be held in the Director's Office (Fourth Floor) Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of the above-stated rules, relating to personal, industrial and centrally assessed property tax trend table updates.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue not later than 5:00 p.m., September 14, 2004, 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) 459-2646; fax (406) 444-3696; or e-mail canderson@state.mt.us.

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

42.21.113 LEASED AND RENTAL EQUIPMENT (1) remains the same.

(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.

<u>YEAR</u>	<u>NEW/ACQUIRED</u>	<u>TRENDED % GOOD</u>
2003	<u>2004</u>	70%
2002	<u>2003</u>	43% <u>40%</u>
2001	<u>2002</u>	18% <u>17%</u>
2000	<u>2001</u> and older	9% <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>
2003 <u>2004</u>	85%
2002 <u>2003</u>	69% <u>70%</u>
2001 <u>2002</u>	52%
2000 <u>2001</u>	34%
1999 <u>2000</u> and older	20%

(c) For equipment that has an acquired cost of \$1,501 to \$5,000, the department shall use a 10-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>
2003 <u>2004</u>	92%
2002 <u>2003</u>	85%
2201 <u>2002</u>	77%
2000 <u>2001</u>	69%
1999 <u>2000</u>	60%
1998 <u>1999</u>	51%
1997 <u>1998</u>	41%
1996 <u>1997</u>	32%
1995 <u>1996</u>	27% <u>26%</u>
1994 <u>1995</u> and older	23% <u>22%</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>
2004 <u>2005</u>	80%
2003 <u>2004</u>	65%
2002 <u>2003</u>	58%
2001 <u>2002</u>	53% <u>49%</u>
2000 <u>2001</u>	48% <u>47%</u>
1999 <u>2000</u>	44% <u>40%</u>
1998 <u>1999</u>	41% <u>36%</u>
1997 <u>1998</u>	39% <u>34%</u>
1996 <u>1997</u>	36% <u>31%</u>
1995 <u>1996</u>	33% <u>31%</u>
1994 <u>1995</u>	34% <u>29%</u>
1993 <u>1994</u>	31% <u>28%</u>
1992 <u>1993</u>	29% <u>26%</u>
1991 <u>1992</u>	27% <u>26%</u>
1990 <u>1991</u>	28% <u>25%</u>
1989 <u>1990</u>	26% <u>25%</u>
1988 <u>1989</u>	27% <u>24%</u>
1987 <u>1988</u>	24% <u>23%</u>
1986 <u>1987</u>	22%
1985 <u>1986</u> and older	20%

(e) For rental video tapes the following schedule will be used:

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD</u>
2003 <u>2004</u>	25%
2002 <u>2003</u>	15%
2001 <u>2002</u> and older	10%

(2) through (4) remain the same.

(5) This rule is effective for tax years beginning after December 31, ~~2003~~ 2004.

AUTH: Sec. 15-1-201 and 15-23-108, MCA

IMP: Sec. 15-6-135, 15-6-136, 15-6-138, 15-6-207, 15-24-921, 15-24-922, and 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 so that taxpayers will know 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.

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 ~~2004~~ 2005. 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.

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD</u> <u>AVERAGE WHOLESALE</u>
<u>2004</u> <u>2005</u>	80%
2003 <u>2004</u>	65% <u>66%</u>
2002 <u>2003</u>	64% <u>66%</u>
2001 <u>2002</u>	60% <u>61%</u>
2000 <u>2001</u>	53% <u>57%</u>
1999 <u>2000</u>	47% <u>49%</u>
1998 <u>1999</u>	42% <u>46%</u>
1997 <u>1998</u>	40% <u>42%</u>
1996 <u>1997</u>	40%
1995 <u>1996</u>	34% <u>39%</u>
1994 <u>1995</u>	33%
1993 <u>1994</u>	32%
1992 <u>1993</u>	31% <u>30%</u>
1991 <u>1992</u>	29% <u>30%</u>

1990 <u>1991</u>	28% <u>27%</u>
1989 <u>1990</u>	23% <u>27%</u>
1998 <u>1989</u> and older	20% <u>21%</u>

(6) remains the same.

(7) This rule is effective for tax years beginning after December 31, ~~2003~~ 2004.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-6-135, 15-6-136, 15-6-138, 15-6-207, 15-24-921, 15-24-922, and 15-24-925, MCA

REASONABLE NECESSITY: See the reasonable necessity for ARM 42.21.113.

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 ~~2004~~ 2005. The values derived through the use of these percentages approximate the "quick sale" values as calculated in the guidebooks listed in (1).

HEAVY EQUIPMENT TRENDED DEPRECIATION SCHEDULE

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD</u>
2004 <u>2005</u>	80%
2003 <u>2004</u>	65%
2002 <u>2003</u>	58%
2001 <u>2002</u>	53% <u>49%</u>
2000 <u>2001</u>	48% <u>47%</u>
1999 <u>2000</u>	44% <u>40%</u>
1998 <u>1999</u>	41% <u>36%</u>
1997 <u>1998</u>	39% <u>34%</u>
1996 <u>1997</u>	36% <u>31%</u>
1995 <u>1996</u>	33% <u>31%</u>
1994 <u>1995</u>	34% <u>29%</u>
1993 <u>1994</u>	31% <u>28%</u>
1992 <u>1993</u>	29% <u>26%</u>
1991 <u>1992</u>	27% <u>26%</u>
1990 <u>1991</u>	28% <u>25%</u>
1989 <u>1990</u>	26% <u>25%</u>
1988 <u>1989</u>	27% <u>24%</u>
1987 <u>1988</u>	24% <u>23%</u>
1986 <u>1987</u>	22%
1985 <u>1986</u> and older	20%

(6) This rule is effective for tax years beginning after December 31, ~~2003~~ 2004, and applies to all heavy equipment.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-6-135, 15-6-136, 15-6-138, 15-6-140, 15-6-207, 15-24-921, 15-24-922, and 15-24-925, MCA

REASONABLE NECESSITY: See the reasonable necessity for ARM 42.21.113.

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 ~~2004~~ 2005.

SEISMOGRAPH UNIT

<u>TRENDED</u> <u>YEAR/NEW</u> <u>ACQUIRED</u>	<u>% GOOD</u>	<u>TREND</u> <u>FACTOR</u>	<u>TRENDED</u> <u>% GOOD</u>	<u>WHOLESALE</u> <u>FACTOR</u>	<u>TRENDED</u> <u>WHOLESALE</u> <u>% GOOD</u>
2004	100%	1.000	100%	80%	80%
2003	85%	1.000	85%	80%	68%
2002	69%	1.018	70%	80%	56%
2001	52%	1.024	53%	80%	43%
2000	34%	1.034	35%	80%	28%
1999	20%	1.050	21%	80%	17%
1998	5%	1.056	5%	80%	4%
and older					

2005	100%	1.000	100%	80%	80%
2004	85%	1.000	85%	80%	68%
2003	69%	1.023	71%	80%	56%
2002	52%	1.044	54%	80%	43%
2001	34%	1.049	36%	80%	29%
2000	20%	1.059	21%	80%	17%
1999	5%	1.077	5%	80%	4%
and older					

SEISMOGRAPH ALLIED EQUIPMENT

<u>YEAR/NEW</u> <u>ACQUIRED</u>	<u>% GOOD</u>	<u>TREND</u> <u>FACTOR</u>	<u>TRENDED</u> <u>% GOOD</u>
2004	100%	1.000	100%
2003	85%	1.000	85%
2002	69%	1.018	70%
2001	52%	1.024	53%
2000	34%	1.034	35%
1999	20%	1.050	21%
1998	5%	1.056	5%
and older			

2005	100%	1.000	100%
2004	85%	1.000	85%
2003	69%	1.023	71%
2002	52%	1.044	54%
2001	34%	1.049	36%
2000	20%	1.059	21%
1999	5%	1.077	5%
and older			

(5) This rule is effective for tax years beginning after December 31, ~~2003~~ 2004.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-6-135, 15-6-136, 15-6-138, 15-6-207, 15-24-921, 15-24-922, and 15-24-925, MCA

REASONABLE NECESSITY: See the reasonable necessity for ARM 42.21.113.

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 ~~2004~~ 2005.

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>
2004	100%	1.000	100%
2003	95%	1.000	95%
2002	90%	1.018	92%
2001	85%	1.024	87%
2000	79%	1.034	82%
1999	73%	1.050	77%
1998	68%	1.056	72%
1997	62%	1.066	66%
1996	55%	1.080	59%
1995	49%	1.101	54%
1994	43%	1.142	49%
1993	37%	1.165	43%
1992	31%	1.180	37%
1991	26%	1.189	31%
1990	23%	1.215	28%
1989	20%	1.246	25%
and older			
<u>2005</u>	<u>100%</u>	<u>1.000</u>	<u>100%</u>
<u>2004</u>	<u>95%</u>	<u>1.000</u>	<u>95%</u>
<u>2003</u>	<u>90%</u>	<u>1.023</u>	<u>92%</u>
<u>2002</u>	<u>85%</u>	<u>1.044</u>	<u>89%</u>
<u>2001</u>	<u>79%</u>	<u>1.049</u>	<u>83%</u>
<u>2000</u>	<u>73%</u>	<u>1.059</u>	<u>77%</u>
<u>1999</u>	<u>68%</u>	<u>1.077</u>	<u>73%</u>
<u>1998</u>	<u>62%</u>	<u>1.082</u>	<u>67%</u>
<u>1997</u>	<u>55%</u>	<u>1.093</u>	<u>60%</u>
<u>1996</u>	<u>49%</u>	<u>1.107</u>	<u>54%</u>
<u>1995</u>	<u>43%</u>	<u>1.129</u>	<u>49%</u>
<u>1994</u>	<u>37%</u>	<u>1.170</u>	<u>43%</u>
<u>1993</u>	<u>31%</u>	<u>1.194</u>	<u>37%</u>
<u>1992</u>	<u>26%</u>	<u>1.210</u>	<u>31%</u>
<u>1991</u>	<u>23%</u>	<u>1.219</u>	<u>28%</u>
<u>1990</u>	<u>20%</u>	<u>1.245</u>	<u>25%</u>
<u>and older</u>			

(4) through (4)(c) remain the same.

(d) submersible pumps.

(5) Downhole equipment which is not in an oil or gas well shall be taxed as class eight property.

(5)(6) This rule is effective for tax years beginning after December 31, ~~2003~~ 2004.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-6-135, 15-6-136, 15-6-138, 15-6-207, 15-24-921, 15-24-922, and 15-24-925, MCA

REASONABLE NECESSITY: See the reasonable necessity for ARM 42.21.113.

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 ~~2004~~ 2005.

SERVICE AND WORKOVER RIG TRENDED DEPRECIATION SCHEDULE

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>WHOLESALE FACTOR</u>	<u>TRENDED WHOLESALE % GOOD</u>
2004	100%	1.000	80%	80%
2003	92%	1.000	80%	74%
2002	84%	1.018	80%	68%
2001	76%	1.024	80%	62%
2000	67%	1.034	80%	55%
1999	58%	1.050	80%	49%
1998	49%	1.056	80%	41%
1997	39%	1.066	80%	33%
1996	30%	1.080	80%	26%
1995	24%	1.101	80%	21%
1994	20%	1.142	80%	18%
and older				

2005	100%	1.000	80%	80%
2004	92%	1.000	80%	74%
2003	84%	1.023	80%	69%
2002	76%	1.044	80%	63%
2001	67%	1.049	80%	56%
2000	58%	1.059	80%	49%
1999	49%	1.077	80%	42%
1998	39%	1.082	80%	34%
1997	30%	1.093	80%	26%
1996	24%	1.107	80%	21%
1995	20%	1.129	80%	18%
and older				

(6) This rule is effective for tax years beginning after December 31, ~~2003~~ 2004.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-6-135, 15-6-136, 15-6-138, 15-6-207, 15-24-

921, 15-24-922, and 15-24-925, MCA

REASONABLE NECESSITY: See the reasonable necessity for ARM 42.21.113.

42.21.140 OIL DRILLING RIGS (1) remains the same.

(2) The department shall prepare a 10-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 ~~2004~~ 2005 is listed below.

DRILL RIG TRENDED DEPRECIATION SCHEDULE

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2004	100%	1.000	100%
2003	92%	1.000	92%
2002	84%	1.018	86%
2001	76%	1.024	78%
2000	67%	1.034	69%
1999	58%	1.050	61%
1998	49%	1.056	52%
1997	35%	1.066	37%
1996	30%	1.080	32%
1995	24%	1.101	26%
1994	20%	1.142	23%
and older			
<u>2005</u>	<u>100%</u>	<u>1.000</u>	<u>100%</u>
<u>2004</u>	<u>92%</u>	<u>1.000</u>	<u>92%</u>
<u>2003</u>	<u>84%</u>	<u>1.023</u>	<u>86%</u>
<u>2002</u>	<u>76%</u>	<u>1.044</u>	<u>79%</u>
<u>2001</u>	<u>67%</u>	<u>1.049</u>	<u>70%</u>
<u>2000</u>	<u>58%</u>	<u>1.059</u>	<u>61%</u>
<u>1999</u>	<u>49%</u>	<u>1.077</u>	<u>53%</u>
<u>1998</u>	<u>35%</u>	<u>1.082</u>	<u>38%</u>
<u>1997</u>	<u>30%</u>	<u>1.093</u>	<u>33%</u>
<u>1996</u>	<u>24%</u>	<u>1.107</u>	<u>27%</u>
<u>1995</u>	<u>20%</u>	<u>1.129</u>	<u>23%</u>
<u>and older</u>			

(3) remains the same.

(4) This rule is effective for tax years beginning after December 31, ~~2003~~ 2004.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-6-135, 15-6-136, 15-6-138, 15-6-207, 15-24-921, 15-24-922, and 15-24-925, MCA

REASONABLE NECESSITY: See the reasonable necessity for ARM 42.21.113.

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 ~~2004~~ 2005.

TABLE 1: FIVE-YEAR "DISHES"

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2003	85%	1.000	85%
2002	69%	1.015	70%
2001	52%	1.021	53%
2000	34%	1.030	35%
1999	20%	1.048	21%
and older			
<u>2004</u>	<u>85%</u>	<u>1.000</u>	<u>85%</u>
<u>2003</u>	<u>69%</u>	<u>1.024</u>	<u>71%</u>
<u>2002</u>	<u>52%</u>	<u>1.041</u>	<u>54%</u>
<u>2001</u>	<u>34%</u>	<u>1.047</u>	<u>36%</u>
<u>2000</u>	<u>20%</u>	<u>1.056</u>	<u>21%</u>
<u>and older</u>			

TABLE 2: TEN-YEAR "TOWERS"

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2003	92%	1.000	92%
2002	84%	1.015	85%
2001	76%	1.021	78%
2000	67%	1.030	69%
1999	58%	1.048	61%
1998	49%	1.052	52%
1997	39%	1.061	41%
1996	30%	1.078	32%
1995	24%	1.094	26%
1994	20%	1.134	23%
and older			
<u>2004</u>	<u>92%</u>	<u>1.000</u>	<u>92%</u>
<u>2003</u>	<u>84%</u>	<u>1.024</u>	<u>86%</u>
<u>2002</u>	<u>76%</u>	<u>1.041</u>	<u>79%</u>
<u>2001</u>	<u>67%</u>	<u>1.047</u>	<u>70%</u>
<u>2000</u>	<u>58%</u>	<u>1.056</u>	<u>61%</u>
<u>1999</u>	<u>49%</u>	<u>1.075</u>	<u>53%</u>
<u>1998</u>	<u>39%</u>	<u>1.078</u>	<u>42%</u>
<u>1997</u>	<u>30%</u>	<u>1.088</u>	<u>33%</u>
<u>1996</u>	<u>24%</u>	<u>1.105</u>	<u>27%</u>
<u>1995</u>	<u>20%</u>	<u>1.122</u>	<u>22%</u>
<u>and older</u>			

(5) This rule is effective for tax years beginning after December 31, ~~2003~~ 2004.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-6-135, 15-6-136, 15-6-138, 15-6-140, 15-6-207, 15-24-921, 15-24-922, and 15-24-925, MCA

REASONABLE NECESSITY: See the reasonable necessity for ARM 42.21.113.

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

Installed Cost X Trended Percent Good = Average Market Value

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2003	92%	1.000	92%
2002	84%	1.015	85%
2001	76%	1.021	78%
2000	67%	1.030	69%
1999	58%	1.048	61%
1998	49%	1.052	52%
1997	39%	1.061	41%
1996	30%	1.078	32%
1995	24%	1.094	26%
1994	20%	1.134	23%
and older			
2004	92%	1.000	92%
2003	84%	1.024	86%
2002	76%	1.041	79%
2001	67%	1.047	70%
2000	58%	1.056	61%
1999	49%	1.075	53%
1998	39%	1.078	42%
1997	30%	1.088	33%
1996	24%	1.105	27%
1995	20%	1.122	22%
<u>and older</u>			

(a) through (b)(i) remain the same.

(4) This methodology is effective for tax years beginning after December 31, ~~2003~~ 2004.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-6-135, 15-6-136, 15-6-138, 15-6-207, 15-24-921, 15-24-922, and 15-24-925, MCA

REASONABLE NECESSITY: See the reasonable necessity for ARM

42.21.113.

42.21.155 DEPRECIATION SCHEDULES (1) remains the same.

(2) The trended depreciation schedules for tax year 2003 2004 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 NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2003	70%	1.000	70%
2002	45%	0.956	43%
2001	20%	0.909	18%
2000	10%	0.864	9%
<u>and older</u>			
2004	70%	1.000	70%
2003	45%	0.897	40%
2002	20%	0.858	17%
2001	10%	0.816	8%
<u>and older</u>			

CATEGORY 2

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2003	85%	1.000	85%
2002	69%	0.994	69%
2001	52%	0.996	52%
2000	34%	0.998	34%
1999	20%	1.000	20%
<u>and older</u>			
2004	85%	1.000	85%
2003	69%	1.008	70%
2002	52%	1.000	52%
2001	34%	1.002	34%
2000	20%	1.004	20%
<u>and older</u>			

CATEGORY 3

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2003	85%	1.000	85%
2002	69%	0.989	68%
2001	52%	0.955	50%
2000	34%	0.941	32%
1999	20%	0.928	18%
<u>and older</u>			
2004	85%	1.000	85%

2003	69%	0.982	68%
2002	52%	0.970	50%
2001	34%	0.937	32%
2000	20%	0.922	18%
<u>and older</u>			

CATEGORY 4

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2003	85%	1.000	85%
2002	69%	1.003	69%
2001	52%	1.004	52%
2000	34%	0.986	34%
1999	20%	0.954	19%
<u>and older</u>			

2004	85%	1.000	85%
2003	69%	0.986	68%
2002	52%	0.987	51%
2001	34%	0.987	34%
2000	20%	0.970	19%
<u>and older</u>			

CATEGORY 5

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2003	85%	1.000	85%
2002	69%	1.004	69%
2001	52%	1.006	52%
2000	34%	1.012	34%
1999	20%	1.018	20%
<u>and older</u>			

2004	85%	1.000	85%
2003	69%	1.002	69%
2002	52%	1.006	52%
2001	34%	1.007	34%
2000	20%	1.014	20%
<u>and older</u>			

CATEGORY 6

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2003	85%	1.000	85%
2002	69%	0.997	69%
2001	52%	1.030	54%
2000	34%	1.075	37%
1999	20%	1.121	22%
<u>and older</u>			

2004	85%	1.000	85%
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2003	69%	1.000	69%
2002	52%	0.994	52%
2001	34%	1.028	35%
2000	20%	1.073	21%
<u>and older</u>			

CATEGORY 7

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2003	92%	1.000	92%
2002	84%	0.999	84%
2001	76%	0.999	76%
2000	67%	1.010	68%
1999	58%	1.018	59%
1998	49%	1.026	50%
1997	39%	1.041	41%
1996	30%	1.061	32%
1995	24%	1.088	26%
1994	20%	1.113	22%
<u>and older</u>			

2004	92%	1.000	92%
2003	84%	1.004	84%
2002	76%	1.003	76%
2001	67%	1.003	67%
2000	58%	1.013	59%
1999	49%	1.022	50%
1998	39%	1.030	40%
1997	30%	1.045	31%
1996	24%	1.065	26%
1995	20%	1.092	22%
<u>and older</u>			

CATEGORY 8

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2003	92%	1.000	92%
2002	84%	1.009	85%
2001	76%	1.016	77%
2000	67%	1.028	69%
1999	58%	1.040	60%
1998	49%	1.045	51%
1997	39%	1.057	41%
1996	30%	1.078	32%
1995	24%	1.108	27%
1994	20%	1.135	23%
<u>and older</u>			
2004	92%	1.000	92%
2003	84%	1.008	85%
2002	76%	1.018	77%
2001	67%	1.024	69%
2000	58%	1.036	60%

1999	49%	1.048	51%
1998	39%	1.053	41%
1997	30%	1.066	32%
1996	24%	1.087	26%
1995	20%	1.117	22%
<u>and older</u>			

(3) This rule is effective for tax years beginning after December 31, ~~2003~~ 2004.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-6-135, 15-6-136, 15-6-138, 15-6-139, 15-6-207, 15-24-921, 15-24-922, and 15-24-925, MCA

REASONABLE NECESSITY: See the reasonable necessity for ARM 42.21.113.

42.22.1311 INDUSTRIAL MACHINERY AND EQUIPMENT TREND FACTORS (1) through (2)(cj) 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</u> <u>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</u> <u>Confect.</u>
2003	1.000	1.000	1.000	1.000	1.000
2002	1.016	1.015	1.016	1.016	1.015
2001	1.020	1.022	1.021	1.022	1.021
2000	1.027	1.033	1.030	1.034	1.033
1999	1.046	1.054	1.050	1.053	1.054
1998	1.047	1.057	1.052	1.058	1.057
1997	1.055	1.068	1.060	1.069	1.069
1996	1.068	1.087	1.076	1.086	1.088
1995	1.083	1.103	1.093	1.107	1.105
1994	1.126	1.148	1.136	1.148	1.151
1993	1.155	1.183	1.166	1.175	1.186
1992	1.173	1.206	1.185	1.194	1.208
1991	1.181	1.222	1.197	1.207	1.225
1990	1.200	1.249	1.220	1.234	1.254
1989	1.226	1.283	1.251	1.269	1.291
1988	1.287	1.354	1.324	1.344	1.366
1987	1.346	1.415	1.387	1.390	1.428
1986	1.362	1.439	1.405	1.422	1.453
1985	1.368	1.464	1.415	1.434	1.480
1984	1.386	1.492	1.433	1.455	1.510
2004	1.000	1.000	1.000	1.000	1.000
2003	1.026	1.026	1.024	1.023	1.025
2002	1.044	1.044	1.043	1.041	1.042
2001	1.048	1.051	1.048	1.048	1.049
2000	1.055	1.062	1.057	1.059	1.061
1999	1.075	1.083	1.077	1.079	1.082
1998	1.076	1.087	1.080	1.085	1.086
1997	1.084	1.098	1.088	1.095	1.097
1996	1.097	1.117	1.104	1.113	1.117

1995	1.112	1.134	1.121	1.134	1.135
1994	1.157	1.180	1.166	1.177	1.182
1993	1.187	1.217	1.197	1.205	1.218
1992	1.205	1.240	1.216	1.224	1.240
1991	1.214	1.256	1.228	1.237	1.258
1990	1.233	1.284	1.252	1.265	1.288
1989	1.260	1.320	1.283	1.300	1.326
1988	1.323	1.392	1.358	1.377	1.403
1987	1.383	1.455	1.424	1.439	1.467
1986	1.399	1.479	1.442	1.457	1.492
1985	1.405	1.505	1.452	1.470	1.520

<u>YEAR</u>	<u>TABLE 6</u> <u>Cement</u> <u>Mfg.</u>	<u>TABLE 7</u> <u>Chemical</u> <u>Mfg.</u>	<u>TABLE 8</u> <u>Clay</u> <u>Mfg.</u>	<u>TABLE 9</u> <u>Contractor</u> <u>Eq.</u>	<u>TABLE 10</u> <u>Creamery/</u> <u>Dairy</u>
2003	1.000	1.000	1.000	1.000	1.000
2002	1.019	1.018	1.018	1.014	1.015
2001	1.025	1.024	1.025	1.022	1.021
2000	1.035	1.034	1.036	1.028	1.033
1999	1.053	1.050	1.053	1.046	1.054
1998	1.057	1.056	1.057	1.054	1.058
1997	1.068	1.066	1.068	1.066	1.069
1996	1.081	1.080	1.085	1.087	1.087
1995	1.101	1.101	1.106	1.105	1.106
1994	1.140	1.142	1.144	1.136	1.152
1993	1.166	1.165	1.171	1.164	1.184
1992	1.184	1.180	1.192	1.196	1.203
1991	1.193	1.189	1.204	1.218	1.218
1990	1.217	1.215	1.229	1.247	1.247
1989	1.250	1.246	1.265	1.288	1.283
1988	1.313	1.317	1.331	1.349	1.360
1987	1.359	1.374	1.379	1.394	1.424
1986	1.372	1.389	1.396	1.413	1.447
1985	1.382	1.395	1.408	1.424	1.469
1984	1.402	1.415	1.431	1.442	1.496
2004	1.000	1.000	1.000	1.000	1.000
2003	1.027	1.023	1.025	1.020	1.024
2002	1.048	1.044	1.045	1.036	1.041
2001	1.055	1.049	1.052	1.044	1.048
2000	1.065	1.059	1.064	1.050	1.059
1999	1.083	1.077	1.082	1.069	1.081
1998	1.088	1.082	1.085	1.077	1.085
1997	1.099	1.093	1.097	1.089	1.096
1996	1.112	1.107	1.114	1.111	1.115
1995	1.133	1.129	1.135	1.129	1.134
1994	1.173	1.170	1.174	1.160	1.182
1993	1.199	1.194	1.202	1.189	1.214
1992	1.218	1.210	1.224	1.222	1.234
1991	1.228	1.219	1.236	1.244	1.249
1990	1.252	1.245	1.262	1.274	1.279
1989	1.286	1.277	1.299	1.315	1.316
1988	1.351	1.350	1.366	1.378	1.395
1987	1.398	1.408	1.416	1.424	1.460

1986	1.412	1.423	1.434	1.443	1.484
1985	1.422	1.430	1.445	1.455	1.507

<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/</u> <u>Fish</u>	<u>TABLE 14</u> <u>Flour,</u> <u>Cer. Feed</u>	<u>TABLE 15</u> <u>Cannery/</u> <u>Fruit</u>
2003	1.000	1.000	1.000	1.000	1.000
2002	0.014	0.015	1.016	1.015	1.014
2001	1.011	1.014	1.023	1.021	1.021
2000	1.018	1.021	1.034	1.032	1.032
1999	1.038	1.040	1.054	1.052	1.053
1998	1.033	1.036	1.057	1.057	1.057
1997	1.035	1.041	1.068	1.067	1.066
1996	1.040	1.050	1.088	1.083	1.088
1995	1.049	1.062	1.104	1.100	1.102
1994	1.104	1.113	1.149	1.144	1.144
1993	1.127	1.140	1.186	1.175	1.184
1992	1.135	1.152	1.209	1.194	1.212
1991	1.131	1.154	1.227	1.205	1.233
1990	1.138	1.167	1.255	1.230	1.262
1989	1.157	1.190	1.291	1.262	1.298
1988	1.228	1.257	1.364	1.332	1.371
1987	1.307	1.330	1.426	1.390	1.432
1986	1.316	1.344	1.451	1.408	1.458
1985	1.324	1.350	1.474	1.424	1.482
1984	1.337	1.367	1.502	1.447	1.508

2004	1.000	1.000	1.000	1.000	1.000
2003	1.032	1.029	1.026	1.025	1.026
2002	1.049	1.046	1.045	1.042	1.042
2001	1.045	1.045	1.052	1.048	1.050
2000	1.052	1.053	1.063	1.059	1.060
1999	1.073	1.072	1.084	1.081	1.082
1998	1.068	1.068	1.087	1.085	1.086
1997	1.070	1.073	1.098	1.096	1.096
1996	1.076	1.083	1.118	1.112	1.118
1995	1.085	1.095	1.135	1.130	1.133
1994	1.142	1.147	1.181	1.175	1.176
1993	1.165	1.175	1.220	1.207	1.217
1992	1.173	1.188	1.243	1.226	1.245
1991	1.169	1.189	1.261	1.237	1.268
1990	1.176	1.203	1.291	1.263	1.297
1989	1.196	1.226	1.327	1.296	1.334
1988	1.269	1.296	1.402	1.367	1.409
1987	1.351	1.371	1.467	1.428	1.472
1986	1.361	1.385	1.491	1.446	1.498
1985	1.368	1.392	1.516	1.462	1.523

<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</u> <u>Eq.</u>	<u>TABLE 19</u> <u>Packing/</u> <u>Meat</u>	<u>TABLE 20</u> <u>Metal</u> <u>Work</u>
2003	1.000	1.000	1.000	1.000	1.000
2002	1.013	1.016	1.015	1.015	1.015
2001	1.022	1.022	1.021	1.023	1.017

2000	1.030	1.031	1.027	1.034	1.024
1999	1.052	1.050	1.045	1.053	1.038
1998	1.057	1.052	1.049	1.059	1.038
1997	1.065	1.060	1.058	1.070	1.048
1996	1.091	1.077	1.075	1.090	1.061
1995	1.104	1.094	1.090	1.109	1.080
1994	1.138	1.133	1.125	1.150	1.121
1993	1.180	1.164	1.156	1.184	1.150
1992	1.216	1.186	1.182	1.207	1.167
1991	1.241	1.198	1.201	1.225	1.177
1990	1.270	1.223	1.225	1.256	1.202
1989	1.307	1.257	1.258	1.294	1.235
1988	1.378	1.324	1.316	1.365	1.295
1987	1.432	1.378	1.364	1.420	1.352
1986	1.456	1.399	1.381	1.444	1.369
1985	1.473	1.411	1.391	1.467	1.378
1984	1.495	1.432	1.409	1.497	1.403

2004	1.000	1.000	1.000	1.000	1.000
2003	1.024	1.025	1.025	1.023	1.020
2002	1.040	1.043	1.041	1.041	1.037
2001	1.049	1.049	1.047	1.049	1.039
2000	1.057	1.058	1.053	1.060	1.046
1999	1.080	1.078	1.072	1.080	1.061
1998	1.085	1.080	1.076	1.085	1.060
1997	1.094	1.088	1.085	1.097	1.070
1996	1.119	1.106	1.102	1.117	1.084
1995	1.133	1.123	1.118	1.137	1.103
1994	1.169	1.163	1.153	1.179	1.146
1993	1.211	1.195	1.186	1.214	1.175
1992	1.248	1.217	1.212	1.237	1.192
1991	1.274	1.230	1.232	1.256	1.202
1990	1.303	1.256	1.257	1.287	1.228
1989	1.342	1.290	1.290	1.327	1.262
1988	1.414	1.359	1.350	1.400	1.324
1987	1.470	1.415	1.399	1.456	1.381
1986	1.494	1.436	1.417	1.480	1.399
1985	1.512	1.449	1.427	1.504	1.408

<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>
2003	1.000	1.000	1.000	1.000	1.000
2002	1.018	1.019	1.017	1.015	1.017
2001	1.030	1.024	1.028	1.016	1.026
2000	1.037	1.034	1.041	1.025	1.032
1999	1.055	1.053	1.055	1.039	1.053
1998	1.060	1.056	1.061	1.040	1.055
1997	1.071	1.066	1.075	1.045	1.064
1996	1.088	1.082	1.093	1.062	1.086
1995	1.106	1.102	1.115	1.078	1.100
1994	1.140	1.144	1.156	1.118	1.138
1993	1.171	1.172	1.180	1.146	1.172
1992	1.196	1.192	1.191	1.163	1.199

1991	1.217	1.202	1.200	1.167	1.215
1990	1.244	1.226	1.231	1.184	1.239
1989	1.283	1.259	1.263	1.203	1.271
1988	1.352	1.329	1.327	1.269	1.341
1987	1.395	1.387	1.382	1.329	1.396
1986	1.407	1.405	1.387	1.351	1.414
1985	1.414	1.413	1.388	1.364	1.424
1984	1.431	1.433	1.403	1.383	1.440
2004	1.000	1.000	1.000	1.000	1.000
2003	1.026	1.025	1.024	1.019	1.026
2002	1.045	1.047	1.044	1.036	1.046
2001	1.058	1.053	1.055	1.037	1.055
2000	1.065	1.062	1.068	1.046	1.061
1999	1.083	1.082	1.083	1.060	1.082
1998	1.088	1.085	1.089	1.061	1.085
1997	1.100	1.096	1.104	1.067	1.094
1996	1.118	1.112	1.122	1.084	1.116
1995	1.136	1.132	1.145	1.100	1.131
1994	1.171	1.176	1.186	1.141	1.170
1993	1.203	1.205	1.211	1.169	1.205
1992	1.229	1.225	1.222	1.187	1.233
1991	1.249	1.235	1.232	1.191	1.249
1990	1.278	1.260	1.264	1.208	1.274
1989	1.318	1.293	1.296	1.228	1.307
1988	1.389	1.366	1.363	1.295	1.379
1987	1.433	1.425	1.419	1.356	1.435
1986	1.446	1.444	1.423	1.378	1.454
1985	1.453	1.452	1.424	1.392	1.464

<u>YEAR</u>	<u>TABLE 26</u> <u>Refrig-</u> <u>eration</u>	<u>TABLE 27</u> <u>Rubber</u>	<u>TABLE 28</u> <u>Steam</u> <u>Power</u>	<u>TABLE 29</u> <u>Textile</u>	<u>TABLE 30</u> <u>Ware-</u> <u>housing</u>
2003	1.000	1.000	1.000	1.000	1.000
2002	1.018	1.017	1.018	1.013	1.011
2001	1.026	1.020	1.022	1.017	1.015
2000	1.036	1.029	1.030	1.025	1.021
1999	1.056	1.044	1.046	1.041	1.039
1998	1.061	1.049	1.047	1.042	1.041
1997	1.071	1.060	1.055	1.051	1.044
1996	1.088	1.075	1.066	1.069	1.061
1995	1.108	1.095	1.083	1.083	1.071
1994	1.149	1.134	1.126	1.116	1.101
1993	1.180	1.160	1.150	1.145	1.138
1992	1.203	1.183	1.163	1.167	1.164
1991	1.217	1.195	1.169	1.182	1.180
1990	1.244	1.222	1.188	1.208	1.201
1989	1.277	1.256	1.219	1.239	1.230
1988	1.348	1.321	1.292	1.301	1.285
1987	1.403	1.373	1.353	1.356	1.326
1986	1.423	1.395	1.368	1.378	1.344
1985	1.434	1.406	1.374	1.394	1.354
1984	1.456	1.432	1.396	1.414	1.369

2004	1.000	1.000	1.000	1.000	1.000
2003	1.025	1.025	1.024	1.019	1.025
2002	1.045	1.046	1.045	1.034	1.037
2001	1.054	1.049	1.048	1.039	1.040
2000	1.064	1.058	1.057	1.047	1.046
1999	1.085	1.074	1.073	1.062	1.066
1998	1.089	1.078	1.075	1.064	1.067
1997	1.100	1.090	1.082	1.073	1.071
1996	1.118	1.105	1.093	1.091	1.088
1995	1.138	1.126	1.111	1.106	1.098
1994	1.180	1.165	1.156	1.140	1.129
1993	1.212	1.193	1.180	1.169	1.166
1992	1.235	1.216	1.194	1.192	1.193
1991	1.249	1.228	1.199	1.206	1.210
1990	1.277	1.256	1.219	1.233	1.232
1989	1.311	1.291	1.251	1.264	1.261
1988	1.384	1.358	1.325	1.328	1.317
1987	1.441	1.411	1.388	1.384	1.359
1986	1.461	1.434	1.404	1.407	1.378
1985	1.473	1.445	1.410	1.423	1.388

<u>YEAR</u>	<u>TABLE 31</u> <u>Wood-</u> <u>working</u>	<u>TABLE 32</u> <u>Glass</u> <u>Mfg.</u>
2003	1.000	1.000
2002	1.014	1.018
2001	1.023	1.023
2000	1.024	1.033
1999	1.041	1.052
1998	1.042	1.055
1997	1.047	1.063
1996	1.073	1.077
1995	1.084	1.096
1994	1.115	1.140
1993	1.153	1.166
1992	1.193	1.183
1991	1.216	1.190
1990	1.236	1.211
1989	1.270	1.241
1988	1.340	1.310
1987	1.393	1.369
1986	1.413	1.385
1985	1.422	1.392
1984	1.441	1.409

2004	1.000	1.000
2003	1.021	1.027
2002	1.036	1.047
2001	1.046	1.052
2000	1.047	1.063
1999	1.064	1.083
1998	1.066	1.085
1997	1.071	1.094
1996	1.097	1.109

<u>1995</u>	<u>1.108</u>	<u>1.127</u>
<u>1994</u>	<u>1.140</u>	<u>1.173</u>
<u>1993</u>	<u>1.179</u>	<u>1.200</u>
<u>1992</u>	<u>1.219</u>	<u>1.218</u>
<u>1991</u>	<u>1.243</u>	<u>1.225</u>
<u>1990</u>	<u>1.264</u>	<u>1.246</u>
<u>1989</u>	<u>1.298</u>	<u>1.277</u>
<u>1988</u>	<u>1.370</u>	<u>1.348</u>
<u>1987</u>	<u>1.425</u>	<u>1.409</u>
<u>1986</u>	<u>1.445</u>	<u>1.425</u>
<u>1985</u>	<u>1.453</u>	<u>1.432</u>

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-6-138 and 15-8-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.22.1311 to update the trend tables for centrally assessed property. These tables are updated annually and published in the Administrative Rules of Montana for the convenience of the taxpayer.

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

and must be received no later than October 1, 2004.

5. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at <http://www.discoveringmontana.com/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 website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have

their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Randolph Wilke for
DON HOFFMAN
Acting Director of Revenue

Certified to Secretary of State August 23, 2004

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
adoption of New Rule I and II) ON PROPOSED ADOPTION
relating to capital gain credit)

TO: All Concerned Persons

1. On September 23, 2004, at 11:00 a.m., a public hearing will be held in the Director's Office (Fourth Floor) Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption of New Rule I and II relating to capital gain credit.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue not later than 5:00 p.m., September 13, 2004, 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) 459-2646; fax (406) 444-3696; or e-mail canderson@state.mt.us.

3. The proposed new rules do not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rules provide as follows:

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

(1) "Net capital gain" means an individual's net capital gain included in Montana adjusted gross income as shown on their Montana individual income tax return.

(2) "Tax year 2005" means the taxpayer's tax year beginning after December 31, 2004.

(3) "Tax year 2006" means the taxpayer's tax year beginning after December 31, 2005.

AUTH: Sec. 15-30-303, MCA

IMP: Sec. 15-30-103, 15-30-105, and 15-30-183, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I to define terms used in New Rule II.

NEW RULE II CAPITAL GAIN CREDIT (1) For tax years 2005 and 2006, an individual may claim a credit against their Montana individual income tax of up to 1% of their net capital gain. For tax years beginning after December 31, 2006, an individual may claim a credit against their Montana individual income tax of up to 2% of their net capital gain. The credit

is nonrefundable and may not be carried back or carried forward to any other tax year. The credit must be applied before any other credit.

(2) A nonresident or a part-year resident must apply the credit to Montana tax computed as if he or she were a resident during the entire tax year.

(3) Married taxpayers filing separately must compute and report their capital gains and losses as provided in ARM 42.15.423.

(4) The following are examples of how the credit is applied:

(a) Example: John and Barbara file a joint 2005 federal income tax return reporting \$5,000 of net capital gain. John's income consists of \$50,000 in wages and \$8,000 of net capital gain. Barbara's income consists of \$35,000 in wages and \$3,000 of net capital loss. If they file separately rather than jointly for Montana, they must separately compute and report their capital gains and losses as provided in ARM 42.15.423. John may claim a capital gain credit of up to \$80 against his Montana income tax. Barbara is not entitled to claim any credit against her tax.

	<u>Federal Return</u>	<u>Montana Return</u>	
		<u>Column A</u>	<u>Column B</u>
Wages	\$85,000	\$50,000	\$35,000
Sch. D capital gain (loss)	\$ 5,000	\$ 8,000	(\$ 3,000)
Fed. adjusted gross income	\$90,000	\$58,000	\$32,000
Montana adjustment for capital loss limit			\$ 1,500
Montana adjusted gross income	\$91,000	\$58,000	\$33,500
Capital loss carryover			(\$ 1,500)

(b) Example: For tax year 2006, John, a single Montana resident with \$1,300 of net capital gain, is entitled to an elderly homeowner credit of \$500. His Montana tax, before credits, is \$400. He may claim the \$13 capital gain credit before determining the amount of his refundable elderly homeowner tax credit.

Montana tax before credits	\$ 400
Capital gain credit	<u>(\$ 13)</u>
Montana tax after capital gain credit	\$ 387
Elderly homeowner credit	<u>(\$ 500)</u>
Refund	\$ 113

(c) Example: For tax year 2006, Mary has wages of \$80,000 and has \$50,000 of net capital gain, \$30,000 of which was realized from an investment in a small business investment corporation that is exempt from Montana income tax as provided in 15-33-106, MCA. Mary is entitled to a capital gain credit of \$200, 1% of the \$20,000 net capital gain included in her Montana adjusted gross income.

(d) Example: For tax year 2006, Patrick, a nonresident, has wages of \$50,000, net capital gain of \$8,000, and a

distributive share of \$10,000 of ordinary income from an S corporation. The \$10,000 ordinary income from the S corporation is Montana source income. The wages and capital gain are not Montana source income. Assume that his Montana tax, computed as if he were a resident, on his taxable income after Montana exemptions, exclusions, and deductions, is \$3,000. The capital gain credit of \$80 is applied against the tax determined as if he were a resident.

Montana tax determined as if resident	\$3,000
Capital gain credit	<u>(\$ 80)</u>
Tax to which nonresident ratio applied	\$2,920
Ratio of Montana source income to income from all sources (\$10,000/\$68,000)	.147
Montana tax (\$2,920 x .147)	\$ 429

AUTH: Sec. 15-30-303, MCA

IMP: Sec. 15-30-103, 15-30-105, and 15-30-183, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule II to implement the capital gain credit enacted by the 2003 legislature in chapter 544 and to clarify how taxpayers must compute and claim the credit.

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

and must be received no later than October 1, 2004.

5. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at <http://www.discoveringmontana.com/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 website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Don Hoffman
DON HOFFMAN
Acting Director of Revenue

Certified to Secretary of State August 23, 2004

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION
of new rules I through X)
relating to alternative dispute)
resolutions of seed contract)
disputes)

TO: All Concerned Persons

1. On July 22, 2004, the Department of Agriculture published MAR Notice No. 4-14-138 regarding the proposed adoption of new rules I through X relating to alternative dispute resolutions of seed contract disputes at page 1543 of the 2004 Montana Administrative Register, Issue Number 14.

2. The agency has adopted New Rule I, ARM 4.12.3201; New Rule II, 4.12.3202; New Rule III, 4.12.3203; New Rule IV, 4.12.3204; New Rule V, 4.12.3205; New Rule VI, 4.12.3206; New Rule VII, 4.12.3207; New Rule VIII, 4.12.3208; New Rule IX, 4.12.3209; and New Rule X, 4.12.3210 exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF AGRICULTURE

/s/ W. Ralph Peck
Ralph Peck
Director

/s/ Tim Meloy
Tim Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State, August 23, 2004.

DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT,
of ARM 24.301.138, 24.301.154,) ADOPTION AND REPEAL
and 24.301.622, the adoption of)
New Rules I, II and III, and the)
repeal of ARM 24.301.160,)
pertaining to energy conservation)
and building codes)

TO: All Concerned Persons

1. On June 17, 2004, the Department of Labor and Industry published MAR Notice No. 24-301-182 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules relating to energy conservation and building codes, at page 1375 of the 2004 Montana Administrative Register, issue no. 12.

2. On July 9, 2004 the Department held a public hearing on the proposed amendment, adoption, and repeal in Helena. Three comments were received by the July 19, 2004 deadline.

3. The comments received and the Department's responses are as follows:

COMMENT 1: One comment was received during the hearing regarding the amendment to rule 24.301.154 allowing continuous rain gutters in lieu of a foundation drainage system. The commenter stated that the alternative to a foundation drainage system may result in foundation problems and damage due to the fact that modifications to the original rain gutter installation could drastically affect their effectiveness and that certain soils may settle over time and cause damage to the foundation. The commenter represents a major insurance company and further stated that this type of damage may not be covered by insurance.

RESPONSE 1: This amendment was proposed by the Montana Building Industry Association and was supported by several local building officials and the Building Codes Council. The Department concluded that rain gutters and proper grading would provide adequate drainage in most cases. Building officials may require a foundation drainage system in cases where a high water table exists or a soils engineering report specifies the need for foundation drainage. The Department points out that a visible, aboveground rain gutter drain system is readily observable and allows for repairs or replacement of missing or damaged components. The International Residential Code (IRC) currently allows for an exception to the drainage system for well-drained ground and sand-gravel mixtures. This exception, coupled with the fact that the drainage system stipulated under subsection R405.1 of

the IRC is in addition to the foundation waterproofing and damp proofing required under IRC subsection 406, ensures that all foundations will have some form of moisture damage protection. The Department does not believe that the risks presented by the commenter outweigh the benefits of the proposed amendment.

COMMENT 2: Written comment was received regarding New Rule I and the prescriptive building envelope thermal component criteria found in Chapter 6, Table 602.1 of the International Energy Conservation Code (IECC). Two climate zones addressed in this chapter (Zone 15 and Zone 16) apply to Montana and the requirements for these two zones are essentially the same. Chapter 6 of the IECC specifies that "compliance for detached one- and two-family dwellings shall be demonstrated by meeting the requirements of chapter 6 for buildings with a glazing area that does not exceed 15 percent of the gross area of exterior walls." The commenter requested that the Department remove the 15% limit to provide a simplified prescriptive building envelope thermal component and stated that this recommended change would still provide an acceptable level of compliance with the IECC.

RESPONSE 2: Based on survey and other information provided by Montana Department of Environmental Quality, the average percentage of glazing-to-wall ratio in single-family dwellings built in Montana is 12%. Amending the IECC as the commenter proposed would clearly eliminate the need of calculating the glazing-to-wall ratio to determine which prescriptive path is necessary to achieve IECC compliance. However, applying a specific component path to all residential buildings in Montana based on a 15% glazing-to-wall ratio will put those projects with greater than 15% glazing-to-wall ratios in jeopardy of non-compliance with the provisions of the IECC. The Department determined that to amend the IECC as the commenter proposed at this stage of the rulemaking process would be inappropriate as such an amendment would require a separate proposed rule notice allowing for public comment on the amendment. The Department acknowledges there may exist some benefit in amending the 2003 IECC as the commenter proposed and will further study the issue during a subsequent rulemaking process.

COMMENT 3: One commenter supported the adoption of the 2003 edition of the IECC proposed in New Rule I, stating his experience using the IECC in other states and his opinion that it works well. The commenter stated that in other jurisdictions, a computer printout, signed by the appropriate design professional (an engineer, architect or both), is required to be submitted along with other documentation for building permits for commercial buildings and high end residential construction.

RESPONSE 3: Section 104.1 of the IECC has been amended to allow building officials to require that plans and specifications be prepared by a Montana-licensed engineer or architect. This amendment clearly allows the building official to require a computer printout or any other documents that are deemed necessary to demonstrate compliance with the IECC. Given the relatively small size of many of the buildings in Montana, and the fact that many are constructed using conventional construction methods, the Department determined that it is unnecessary to require a computer printout signed by a design professional for every project.

4. The Department has amended ARM 24.301.138, 24.301.154, and 24.301.622, adopted New Rule I (24.301.161), New Rule II (24.301.162), and New Rule III (24.301.139), and repealed ARM 24.301.160 exactly as proposed.

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

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

Certified to the Secretary of State August 23, 2004.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 42.20.620, 42.20.625,) AND REPEAL
and 42.22.1304; and repeal of)
ARM 42.22.1401 relating to)
industrial, centrally assessed)
and agricultural property)

TO: All Concerned Persons

1. On June 3, 2004, the department published MAR Notice No. 42-2-735 regarding the proposed amendment and repeal of the above-stated rules relating to industrial, centrally assessed and agricultural property at page 1313 of the 2004 Montana Administrative Register, issue no. 11.

2. A public hearing was held on June 25, 2004, to consider the proposed amendments and repeal. Oral comments were received from Senator Jerry Black (SD 44); Representative John Witt (HD 89 - 28); John Youngberg, representing the Montana Stockgrowers Association, Montana Farm Bureau, and the Montana Grain Growers Association; and Mr. Marvin Kimmet, rancher; Dwaine Iverson, CPA - Shelby, Montana; Rodney Peterson, attorney - Peterson, Peterson & Shos, P.C. - Cut Bank; and Senator Black also submitted written testimony. There appear to be two major concerns that are summarized as follows along with the response of the department:

COMMENT NO. 1: The department's interpretation of land ownership is causing many legitimate farm and ranch families to unfairly lose their agricultural status. Many farm operations have separated out ownership of small acreages to protect or build their home, shop buildings, and/or storage facilities in order to secure financing, reduce risk of loss should the farm fail due to drought or low commodity prices, and to ensure the agriculture lifestyle they have chosen to pursue. The Farm Service Agency (FSA) recognizes this problem and allows ownership to pass through entities such as corporations, partnerships, and trusts to the individuals involved thereby treating such situations as single owners.

RESPONSE NO. 1: The definition of an ownership is important when multiple parcels of land are involved in agricultural land eligibility decisions. The definition of an ownership doesn't change as the size of the ownership changes. Only the agricultural eligibility criteria change with variations in ownership size.

The term "owner" is defined in ARM 42.20.601(16) as the applicant and owner of record that are the same individual, corporation, or partnership.

The Department of Revenue has not changed its interpretation of the term "under one ownership" since the

current agricultural land legislation was implemented in 1986. That interpretation is identified in ARM 42.20.601(21).

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

In March 1990, the District Court upheld the Department's interpretation of the term "ownership" in Department of Revenue v. Roy Daryl Proud and N. Bernice Proud.

In the past 15 years, thousands of agricultural land applicants have been reviewed with this interpretation of "ownership". If the Department were to implement an administrative change to the definition of ownership without legislative change to current law, it would contradict the legal guidance provided by the Department's Legal Services Office, be in direct opposition to the Department's historic approach for granting or denying agricultural land classification determinations, and would create significant administrative implementation difficulties. The Department feels strongly that any change to this key definition, which is a cornerstone of 15-7-202, MCA, Eligibility of land for valuation as agricultural, should come as a result of thoughtful discussion by the Montana Legislature.

COMMENT NO. 2: With a broader definition of ownership, the income limitation could be raised and separate the agriculture producers from the hobby farmers. If the gross income from the farming operations as passed through the entities back to the individuals is greater than \$25,000 an agricultural operation would exist. If there is a legitimate agricultural operation it will produce more than \$1,500 in income to have a hobby loss for income tax purposes.

It takes 80 acres or less to support 30 animal units in portions of Glacier County. These 80 acres are valued as ag land but 80 acres of less valuable grass in Toole County is not valued as ag land. The result is that the tax on these 80 acres of grass in Toole County is going to increase 7 times, whereas the tax on the 80 acres of grass in Glacier County does not increase.

In other words, the worse the land, the more the tax, even though both parcels are used for the exact same purpose. The smaller rancher, even though clearly not a hobby rancher, is severely penalized simply because he has 80 acres rather than 120 or because he is in Toole County rather than Glacier County.

RESPONSE NO. 2: Gross agricultural income requirements are the basis for granting agricultural classification to contiguous ownerships under 160 acres in size. The legislature through 15-7-202, MCA, mandates that ownerships that are less than 160 acres in size must produce a minimum of \$1,500 in annual gross agricultural income in order to receive

agricultural classification. Acceptable forms of proof depend on the contiguous ownership size.

The owners or their agents of contiguous ownerships, less than 160 acres in size, that produce agricultural crops must market at least \$1,500 in annual gross agricultural income or consume the equivalent amount. Applicants for contiguous land less than 160 acres in size, that involve livestock production, have difficulty demonstrating that they are meeting that test when they either consume the livestock or do not regularly sell their product in order to take advantage of the market. Additionally, income receipts for livestock, unlike crops produced by the land, do not always represent income produced from the applicant's land for the following reasons:

(a) Livestock can be bought and sold in short timeframes to produce income receipts.

(b) Purchased livestock have an existing value before they are ever placed on the property.

(c) Landowners can overstock their land for a limited time-period, exceeding the carrying capacity to produce agricultural income.

(d) Landowners can feed their livestock with forage, grain or supplements from sources outside the landowner's property.

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

In June 2002, the Governor's Advisory Committee on Agricultural Land Valuation recommended that the department implement a minimum carrying capacity requirement for properties using livestock to meet the agricultural income requirement provided the land is actively devoted to agricultural use. Subsequently, a carrying capacity requirement was developed by University staff at the School of Agricultural Economics and Economics, at Montana State University, using cattle as the basis and a \$1,500 agricultural income requirement. They determined that a 30-AUM carrying capacity figure represents enough grazing forage to support the necessary amount of livestock to produce \$1,500 in annual gross income. The Governor's Advisory Committee adopted that proposal and recommended it be implemented statewide. As a result of the Committee's recommendation, the minimum requirement for carrying capacity was adopted by the Department of Revenue in ARM 42.20.620 and 42.20.625(9). The 30-AUMs requirement for livestock operations replaces the need for providing annual \$1,500 gross agricultural income receipts. ARM 42.20.620(9) specifies:

"If the land is used primarily to raise and market livestock, the land must currently support 30 or more animal unit (AU) months of grazing carrying capacity, with cattle as the base. A nine-month grazing season shall be the basis for calculating the number of animal units based on current carrying capacity. One AU is assumed to consume ~~790~~ 760

pounds of dry herbage production per month. 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."

3. The department introduced amendments at the hearing and there was no objection to those amendments. Therefore, the department amends ARM 42.20.620 and ARM 42.20.625 with the following changes:

42.20.620 CRITERIA FOR AGRICULTURAL LAND VALUATION FOR LAND TOTALING LESS THAN 20 ACRES (1) through (8)(b) remain as proposed.

(9) If the land is used primarily to raise and market livestock, the land must currently support 30 or more animal unit (AU) months of grazing carrying capacity, with cattle as the base. A nine-month grazing season shall be the basis for calculating the number of animal units based on current carrying capacity. One AU is assumed to consume ~~790~~ 760 pounds of dry herbage production per month. 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 estimate is reduced by 75% on non-irrigated grazing land. The department shall use the following formula, based on NRCS soil survey information, to calculate the carrying capacity for non-irrigated grazing land, which does not exhibit significant over-grazing or weed infestation:

(a) through (18) remain as proposed.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-7-201, 15-7-202, 15-7-203, 15-7-206, 15-7-207, 15-7-208, 15-7-209, 15-7-210, and 15-7-212, MCA

42.20.625 CRITERIA FOR AGRICULTURAL LAND VALUATION FOR LAND TOTALING 20 TO 160 ACRES IN SIZE (1) through (8) remain as proposed.

(9) If the land is used primarily to raise and market livestock, the land must currently support 30 or more animal unit (AU) months of grazing carrying capacity, with cattle as the base. A nine-month grazing season shall be the basis for calculating the number of animal units based on current carrying capacity. One AU is assumed to consume ~~790~~ 760 pounds of dry herbage production per month. 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 estimate is reduced by 75% on non-irrigated grazing land. The department shall use the following formula, based on NRCS soil survey information, to calculate the carrying capacity for non-irrigated grazing land, which does not exhibit significant over-grazing or weed infestation:

(a) through (18) remain as proposed.

AUTH: Sec. 15-1-201, MCA

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

4. Therefore, the department amends ARM 42.20.620 and 42.20.625 with the amendments listed above and amends ARM 42.22.1304 and repeals ARM 42.22.1401 as proposed.

5. An electronic copy of this Adoption Notice is available through the Department's site on the World Wide Web at <http://www.discoveringmontana.com/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 Adoption 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 website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Don Hoffman
DON HOFFMAN
Acting Director of Revenue

Certified to Secretary of State August 23, 2004

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 PO Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA
AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- | | |
|-------------------------------|---|
| Known Subject | 1. Consult ARM topical index.
Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute Number and Department | 2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2004. This table includes those rules adopted during the period July 1, 2004 through September 30, 2004 and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 2004, 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 2003 and 2004 Montana Administrative Registers.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

ADMINISTRATION, Department of, Title 2

- I & II Trust Company Examination Fees - Required Bond Amounts for the Licensing of Escrow Businesses, p. 1179, 1947
- I-IX Definitions - Education Provider Requirements - Table Funding - License Transfers and Renewals - Letters of Credit and Surety Bonds - Revocation, Suspension or Surrender of Licenses - Complaint Process - Montana Mortgage Broker and Loan Originator Licensing Act, p. 524, 1133
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