ISSUE NO. 1

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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PROPOSAL NOTICE SECTION

BEFORE THE BOARD OF HOUSING
DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 8.111.602 pertaining to the low income housing tax credit program and ARM 8.111.603 pertaining to tax credit allocation procedure	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On February 11, 2012, the Board of Housing proposes to amend the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Commerce no later than 5:00 p.m. on January 23, 2012, to advise us of the nature of the accommodation that you need. Please contact Paula Loving, Board of Housing, Department of Commerce, 301 South Park Avenue, P.O. Box 200528, Helena, Montana, 59620-0528; telephone (406) 841-2840; fax (406) 841-2841; TDD (406) 841-2702; or e-mail ploving@mt.gov.

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

8.111.602 DEFINITIONS

(1) and (2) remain the same.

(3) "QAP" means the board's "Low Income Housing Tax Credit Program 2012 Qualified Allocation Plan ~~– 2011", as amended November 15, 2010~~, which sets forth the selection criteria used by the board for determining housing priorities and the allocation of tax credits for calendar year ~~2011~~ 2012, copies of which may be obtained by contacting the Board of Housing by mail at P.O. Box 200528, Helena, MT 59620-0528, by telephone at (406) 841-2845 or (406) 841-2838, or at the board's web site www.housing.mt.gov.

(4) remains the same.

AUTH: 90-6-106, MCA
IMP: 90-6-104, MCA

REASON: The proposed amendments to ARM 8.111.602 are necessary to update the Qualified Allocation Plan ("QAP") definition to reference the 2012 Qualified Allocation Plan for the Low Income Housing Tax Credit Program. Low income housing tax credits are allocated by the federal government to the states, according to their population, for allocation to particular buildings by each state's housing credit agency. The Low Income Housing Tax Credit Program ("Program") is administered

and tax credits are allocated by a state's housing credit agency. The Montana Board of Housing is Montana's housing credit agency for purposes of the Program. Federal law requires that the tax credits allocated to the state by the federal government must be allocated by the state pursuant to a "qualified allocation plan" or "QAP". The 2012 QAP was approved by the board on October 17, 2011 and approved by the Governor on November 2, 2011. The 2012 QAP will govern the tax credit application and award process for the 2012 tax credit application cycle and eligible competition periods. The proposed amendment is necessary to allow for the tax credit application and allocation process in 2012.

A copy of the 2012 QAP is available on the internet at http://housing.mt.gov/content/About/MF/docs/LIHTCAllocation/2012QAP.pdf or by requesting a copy from: Mary Bair, Board of Housing, Department of Commerce, 301 South Park Avenue, P.O. Box 200528, Helena, Montana, 59620-0528; telephone (406) 841-2845; fax (406) 841-2841; or e-mail mbair@mt.gov.

8.111.603 TAX CREDIT ALLOCATION PROCEDURE

(1) and (2) remain the same.

(3) Following submittal of all applications for allocation of tax credits for each calendar year and prior to scoring and formulation of recommendations by board staff, the board will provide an opportunity for applicants to present their respective projects and applications to the board and for public comment on proposed projects and applications. Following such opportunity for presentation and comment, board staff will evaluate each project for conformance with the criteria in the QAP, using the point system provided for therein. The points awarded to each project are for the purpose of establishing that the projects meet the criteria set forth in the QAP, and not for purposes of ranking projects for allocation of tax credits. Following their evaluation, board staff will provide recommendations to the board for allocation of tax credits to qualifying projects.

(4) and (5) remain the same.

(6) ~~All applicants for projects meeting the minimum criteria in the QAP will be given the opportunity at the hearing to further explain the benefits of and the need for their respective project.~~ After scoring and formulation of recommendations by board staff, applicants will not be permitted to make additional presentations to the board but should be available to the board to answer questions regarding their respective applications.

(7) remains the same.

AUTH: 90-6-106, MCA
IMP: 90-6-104, MCA

REASON: The proposed amendments to ARM 8.111.603 are necessary to revise the application and allocation process to provide opportunity for applicant presentation and public comment prior to staff scoring of applications and staff recommendations regarding award of allocations. Under prior year QAPs and the current rule, applications were evaluated and scored by staff, and staff presented recommendations to the board at the tax credit allocation hearing in April or May of

each year. There was no opportunity for applicant presentation or public comment prior to the allocation hearing. The 2012 QAP approved by the board provides for such application presentation and public comment after submission of applications, but before staff scoring and recommendations. *See* 2012 QAP, Section 4. The board determined that allowing presentation and comment at an earlier stage would provide a better opportunity for applicants and the public to provide relevant information to the board and would also provide a better opportunity for the board, staff, and interested parties to address questions or concerns that may arise regarding particular applications before the award determinations are made at the allocation hearing.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Mary Bair, Board of Housing, Department of Commerce, 301 South Park Avenue, P.O. Box 200528, Helena, Montana, 59620-0528; telephone (406) 841-2845; fax (406) 841-2841; or e-mail mbair@mt.gov, and must be received no later than 5:00 p.m., February 9, 2012.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Mary Bair at the above address no later than 5:00 p.m., February 9, 2012.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 25 persons based on the number of individuals who are interested in low income housing tax credits.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at http://sos.mt.gov/ARM/Register. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed

text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

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

/s/ DORE SCHWINDEN
DORE SCHWINDEN
Director
Department of Commerce

Certified to the Secretary of State January 3, 2012.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.30.617 and 17.30.638 pertaining to outstanding resource water designation for the Gallatin River	)))))	NOTICE OF EXTENSION OF COMMENT PERIOD ON PROPOSED AMENDMENT (WATER QUALITY)

TO: All Concerned Persons

1. On October 5, 2006, the Board of Environmental Review published MAR Notice No. 17-254 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 2294, 2006 Montana Administrative Register, issue number 19. On March 22, 2007, the board published MAR Notice No. 17-257 regarding a notice of extension of comment period on the proposed amendment of the above-stated rules at page 328, 2007 Montana Administrative Register, issue number 6. On September 20, 2007, the board published MAR Notice No. 17-263 regarding a notice of extension of comment period on the proposed amendment of the above-stated rules at page 1398, 2007 Montana Administrative Register, issue number 18. On March 13, 2008, the board published MAR Notice No. 17-268 extending the comment period on the proposed amendment of the above-stated rules at page 438, 2008 Montana Administrative Register, issue number 5. On September 11, 2008, the board published MAR Notice No. 17-276 extending the comment period on the proposed amendment of the above-stated rules at page 1953, 2008 Montana Administrative Register, issue number 17. On February 26, 2009, the board published MAR Notice No. 17-276 extending the comment period on the proposed amendment of the above-stated rules at page 162, 2009 Montana Administrative Register, issue number 4. On August 13, 2009, the board published MAR Notice No. 17-276 extending the comment period on the proposed amendment of the above-stated rules at page 1324, 2009 Montana Administrative Register, issue number 15. On February 11, 2010, the board published MAR Notice No. 17-276 extending the comment period on the proposed amendment of the above-stated rules at page 264, 2010 Montana Administrative Register, issue number 3. On July 29, 2010, the board published MAR Notice No. 17-276 extending the comment period on the proposed amendment of the above-stated rules at page 1648, 2010 Montana Administrative Register, issue number 14. On January 27, 2011, the board published MAR Notice No. 17-276 extending the comment period on the proposed amendment of the above-stated rules at page 89, 2011 Montana Administrative Register, issue number 2. On July 14, 2011, the board published MAR Notice No. 17-276 extending the comment period on the proposed amendment of the above-stated rules at page 1244, 2011 Montana Administrative Register, issue number 13.

2. During the initial comment period and extensions of the original comment period, the board was advised that members of the Big Sky community, which would be affected by this rulemaking, had formed a collaborative, called the "Wastewater Solutions Forum," and had hired an engineering firm, which completed a feasibility

study on extending the coverage of the Big Sky Water and Sewer district service area. The board received comments indicating that this would protect water quality in the Gallatin River as well as or better than adoption of the proposed rule. The Forum was exploring funding options when the economic downturn began. That downturn resulted in an interruption of those efforts. However, those efforts have now resumed. During the comment period, the board received comments indicating that the Forum has funding for and is conducting a pilot test to determine the feasibility of disposing of wastewater from the Big Sky and Yellowstone Mountain Club wastewater treatment facilities using snow making at a confined site at the Yellowstone Mountain Club. If successful, this will provide a method for disposal of wastewater without affecting the Gallatin River, which may allow for expansion of the sewer system and protection of the Gallatin. During the most recent comment period, the board received a comment requesting that the board further extend the comment period. The board has determined that it will further extend the comment period in order to allow submission of comments and information on the feasibility of this option.

3. Written data, views, or arguments may be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana, 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than April 24, 2012. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

4. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking action or need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 5:00 p.m., January 30, 2012, to advise us of the nature of the accommodation that you need. Please contact the board secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or e-mail ber@mt.gov.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North BY: */s/ Joseph W. Russell*
JOHN F. NORTH JOSEPH W. RUSSELL, M.P.H.
Rule Reviewer Chairman

Certified to the Secretary of State, January 3, 2012.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 23.16.1702, 23.16.1705, 23.16.1712 and 23.16.1714, concerning sports pool card interval payouts, authorized sports pools, design and conduct of sports tab game payouts, and sports tab game prizes	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On February 1, 2012, at 9:30 a.m., the Montana Department of Justice will hold a public hearing in the conference room at the Gambling Control Division, 2550 Prospect Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on January 26, 2012, to advise the department of the nature of the accommodation that you need. Please contact Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; telephone (406) 444-1971; fax (406) 444-9157; Montana Relay Service 711; or e-mail rask@mt.gov.

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

23.16.1702 SPORTS POOL CARD (1) through (3)(g) remain the same.

(h) predetermined intervals, as provided in ARM 23.16.1705(3), ~~that~~ for which a ~~pay-out~~ prize will be ~~made~~ awarded, if any ~~and the amount of each pay-out~~;

(i) through (5) remain the same.

AUTH: 23-5-115, 23-5-512, MCA
IMP: 23-5-502, 23-5-503, 23-5-512, MCA

RATIONALE AND JUSTIFICATION: This proposed rule amendment is necessary to make reference to the requirements for interval sports pool prize awards contained in the proposed amendments to ARM 23.16.1705 under this notice. This amendment is also reasonable and necessary because it adds the qualifying term "predetermined" to "intervals" which may be identified in the design of a sports pool. This will make clear that any sports event intervals upon which prizes will be awarded must be identified prior to the sale of any sports pool chances. Additionally, because the term "predetermined interval" is used in ARM 23.16.1714

relating to interval prize awards for sports tab games, this amendment will make consistent the terminology used in both rules, and avoid possible confusion.

23.16.1705 AUTHORIZED SPORTS POOLS (1) through (3) remain the same.

(a) A "traditional sports pool" involving a single sports event with two competitors that is conducted on a sports pool card containing a master square with 25, 50, or 100 spaces. Each space is randomly assigned a unique pair of numbers from the vertical and horizontal axis of the master square.

(i) A winner is determined by matching the numbers assigned to a space with the only or last digit of the score of each competitor in the sports event ~~at predetermined intervals during the event or~~ at the end of the event.

(ii) Winners may also be determined by the score at predetermined intervals during the event as long there is also a winner and prize awarded based upon the score at the end of the event. If any prize is awarded for a score attained at a predetermined interval, the value of any such prize may not exceed the value of the prize awarded for the score attained at the end of the event.

(b) through (g) remain the same.

AUTH: 23-5-115, 23-5-512, MCA
IMP: 23-5-502, 23-5-503, 23-5-512, MCA

RATIONALE AND JUSTIFICATION: This amendment explicitly requires that every sports pool design be based upon the entire sports event. A sports pool based upon the outcome of a sports event is an authorized gambling activity. 23-5-501, MCA. By rule, the department defines a "sports event" as an athletic game, race, or contest in which a winner is determined by score or placement. ARM 23.16.1701. In certain types of sports pools, the department by rule allows prizes to be awarded based upon event interval scores or placements. ARM 23.16.1705. However, because a sports pool, including the price-per-chance and prize limits established by the Legislature, is based on the outcome of a sports event, the department has long determined that a sports pool that awards prizes based upon event intervals must also award a prize based upon the final outcome of the sport event. For example, a sports pool may be designed to pay prizes based upon scores attained at the conclusion of every quarter of a football game. However, it may not be designed to award a prize based solely upon the scores attained at half-time. This is because no sports event winner is determined based only upon the first half of a football game.

On December 12, 2011, the Montana Eighth Judicial District Court (Cause No. ADV-11-091) determined that ARM 23.16.1705 authorizes interval payouts alone in a sports pool, and the department's interpretation that a sports pool must be based on the event outcome (i.e., the final score) was in error. The court reasoned that the requirement for a final score prize award was not expressly required by law or the department's own administrative rule. This proposed rule amendment is reasonable and necessary, therefore, to explicitly require that every sports pool design be based upon the entire sports event. The amendment is intended to make clear that if a prize is awarded based upon the scores achieved at a predetermined

interval (a score or event occurring between the start and finish of the sports event), then a prize must also be awarded based upon the event's final score.

Additionally, the proposed amendment requires that the value of the prize that is awarded based upon the final score or placement may not be less than the value of any prize awarded for an interval score or placement. This amendment will prevent the award of a nominal prize for the final score, which would circumvent the requirement that a sports pool to be based upon the outcome of a sports event, and it will become consistent with the same interval prize award restrictions for sports tab games under ARM 23.16.1714.

23.16.1712 DESIGN AND CONDUCT OF SPORTS TAB GAME

(1) remains the same.

(2) A winner or winners of a sports tab game are determined by matching the appropriate numbers on a participant's sports tab with the only or last digit of the competitors' score at the end of the sports event, and if designated before the event by the sponsor, at intervals during the sports event, as provided in ARM 23.16.1714.

(3) through (3)(h) remain the same.

(i) predetermined intervals, as provided in ARM 23.16.1714, during the sports event for which prizes are to be awarded, if any; and

(j) through (5) remain the same.

AUTH: 23-5-115, MCA
IMP: 23-5-501, 23-5-502, 23-5-503, MCA

RATIONALE AND JUSTIFICATION: This proposed amendment adds the qualifying term "predetermined" to "intervals" of a sports tab game. This is necessary because it will make clear that any sports event interval upon which prizes will be awarded must be identified prior to the sale of any tabs in a sports tab game. Additionally, because the term "predetermined interval" is used in ARM 23.16.1714 relating to interval prize awards for sports tab games, this amendment will make the terminology consistent in both rules, and avoid possible confusion. This proposed rule amendment is also reasonable and necessary to make reference to the requirements for interval sports tab game prize awards contained in ARM 23.16.1714.

23.16.1714 PRIZES (1) remains the same.

(2) Winners may be determined by the score at predetermined intervals during the event as long there is also a winner and prize awarded based upon the score attained at the end of the event. If ~~a~~ any prize is awarded for ~~scores~~ a score attained at a predetermined interval during a sports event, the value of ~~the~~ any such prize ~~awarded at the interval~~ may not exceed the value of the prize awarded for the score at the end of the event.

(3) through (7) remain the same.

AUTH: 23-5-115, MCA
IMP: 23-5-502, 23-5-503, MCA

RATIONALE AND JUSTIFICATION: This proposed rule amendment is reasonable and necessary to explicitly require that every sports tab game be based upon the entire sports event. Consistent with the proposed amendment to ARM 23.16.1705 under this notice, this amendment will make clear that if a sports tab game is designed to award a prize based upon the scores achieved at a predetermined interval, a prize must also be awarded based upon the event's final score. The proposed amendment also makes other minor changes to the current language of the rule to make it consistent with the language used in proposed amendment to ARM 23.16.1705, and should avoid possible confusion for anyone who offers a sports tab game.

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 Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; fax (406) 444-9157; or e-mail rask@mt.gov, and must be received no later than February 9, 2012.

5. An electronic copy of this Notice of Proposed Amendment is available through the Department of Justice's web site at http://doj.mt.gov/agooffice/administrative-rules/. 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 works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices of rules regarding the Crime Control Division, the Central Services Division, the Forensic Sciences Division, the Gambling Control Division, the Highway Patrol Division, the Law Enforcement Academy, the Division of Criminal Investigation, the Legal Services Division, the Consumer Protection Division, the Motor Vehicle Division, the Justice Information Systems Division, or any combination thereof. Such written request may be mailed or delivered to Rick Ask, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; fax (406) 444-9157; or e-mail rask@mt.gov, or may be made by completing a request form at any rules hearing held by the department. A copy of the interested persons request form may be printed from the department web site at http://www.doj.mt.gov/resources/forms/interestedperson.pdf, and mailed to the rule reviewer.

7. Cregg Coughlin, Assistant Attorney General, Gambling Control Division, has been designated to preside over and conduct the hearing.

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

By: /s/ Steve Bullock
STEVE BULLOCK
Attorney General
Department of Justice

/s/ J. Stuart Segrest
J. STUART SEGREST
Rule Reviewer

Certified to the Secretary of State January 3, 2012.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.21.113, 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 property taxes and the trend tables for valuing property	))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On February 6, 2012, at 11:00 a.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of the above-stated rules.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m. January 27, 2012, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov.

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

42.21.113 LEASED AND RENTAL EQUIPMENT (1) Leased or rental equipment that is leased or rented on an hourly, daily, weekly, semimonthly, or monthly basis, but is not exempt under 15-6-219(5) or 15-6-202(4), MCA, will be valued in the following manner:

(a) For equipment that has an acquired cost of $0 to $500, the department shall use a four-year trended depreciation schedule. The trended schedule will be the same as ARM 42.21.155, category 1.

YEAR NEW/ACQUIRED	TRENDED % GOOD
~~2010~~	~~70%~~
~~2009~~	~~43%~~
~~2008~~	~~18%~~
~~2007 and older~~	~~8%~~
2011	70%
2010	41%

2009	18%
2008 and older	8%

(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.

YEAR NEW/ACQUIRED	TRENDED % GOOD
~~2010~~	~~85%~~
~~2009~~	~~66%~~
~~2008~~	~~54%~~
~~2007~~	~~36%~~
~~2006 and older~~	~~21%~~
2011	85%
2010	69%
2009	50%
2008	35%
2007 and older	21%

(c) For equipment that has an acquired cost of $1,501 to $5,000, the department shall use a ten-year trended depreciation schedule. The trended schedule will be the same as ARM 42.21.155, category 8.

YEAR NEW/ACQUIRED	TRENDED % GOOD
~~2010~~	~~92%~~
~~2009~~	~~84%~~
~~2008~~	~~81%~~
~~2007~~	~~73%~~
~~2006~~	~~65%~~
~~2005~~	~~57%~~
~~2004~~	~~47%~~
~~2003~~	~~36%~~
~~2002~~	~~29%~~
~~2001 and older~~	~~25%~~
2011	92%
2010	85%
2009	77%
2008	72%
2007	64%
2006	56%
2005	46%
2004	36%
2003	29%
2002 and older	25%

(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.

YEAR NEW/ACQUIRED	TRENDED % GOOD
~~2011~~	~~80%~~
~~2010~~	~~58%~~
~~2009~~	~~52%~~
~~2008~~	~~43%~~
~~2007~~	~~41%~~
~~2006~~	~~34%~~
~~2005~~	~~31%~~
~~2004~~	~~30%~~
~~2003~~	~~30%~~
~~2002~~	~~26%~~
~~2001~~	~~25%~~
~~2000~~	~~22%~~
~~1999~~	~~18%~~
~~1998~~	~~20%~~
~~1997~~	~~19%~~
~~1996~~	~~19%~~
~~1995~~	~~15%~~
~~1994~~	~~16%~~
~~1993~~	~~17%~~
~~1992 and older~~	~~16%~~
2011	80%
2010	65%
2009	58%
2008	51%
2007	45%
2006	42%
2005	35%
2004	31%
2003	30%
2002	30%
2001	26%
2000	23%
1999	19%
1998	20%
1997	19%
1996	20%
1995	15%
1994	16%

1993 and older	16%

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

YEAR NEW/ACQUIRED	TRENDED % GOOD
~~2010~~	~~25%~~
~~2009~~	~~15%~~
~~2008 and older~~	~~10%~~
2011	25%
2010	15%
2009 and older	10%

(2) through (4) remain the same.

(5) This rule is effective for tax years beginning after December 31, ~~2010~~ 2011.

AUTH: 15-1-201, 15-23-108, MCA
IMP: 15-6-135, 15-6-138, 15-6-207, 15-6-219, ~~15-24-921, 15-24-922, 15-24-925,~~ MCA

REASONABLE NECESSITY: The department determines the market value of personal property by using the trended depreciation tables found in these rules. The department is proposing to amend ARM 42.21.113 to update these trended depreciation schedules.

The annual update to these trend tables provides the taxpayers with the current depreciation percentage for each of the personal property classifications for the upcoming year. These updates also clearly identify for the taxpayer how the department values and depreciates property over time.

Additionally, the department is proposing to delete three implementing statutes from this rule because they are specific to the livestock per capita fees, not personal property and, therefore, should not be cited here.

42.21.123 FARM MACHINERY AND EQUIPMENT (1) through (7) remain the same.

(8) The trended depreciation schedule referred to in (2) through (6) is listed below and shall be used for tax year ~~2011~~ 2012. The schedule is derived by using the guidebook listed in (2) as the data base. The values derived through use of the trended depreciation schedule will approximate average wholesale value.

YEAR NEW/ACQUIRED	TRENDED % GOOD AVERAGE WHOLESALE
~~2011~~	~~80%~~
~~2010~~	~~75%~~

~~2009~~	~~67%~~
~~2008~~	~~67%~~
~~2007~~	~~64%~~
~~2006~~	~~59%~~
~~2005~~	~~53%~~
~~2004~~	~~50%~~
~~2003~~	~~44%~~
~~2002~~	~~40%~~
~~2001~~	~~36%~~
~~2000~~	~~35%~~
~~1999~~	~~32%~~
~~1998~~	~~31%~~
~~1997~~	~~29%~~
~~1996~~	~~27%~~
~~1995 and older~~	~~24%~~
2012	80%
2011	75%
2010	68%
2009	63%
2008	62%
2007	58%
2006	54%
2005	49%
2004	48%
2003	43%
2002	38%
2001	35%
2000	33%
1999	30%
1998	29%
1997	28%
1996 and older	23%

(9) remains the same.

(10) This rule is effective for tax years beginning after December 31, ~~2010~~ 2011.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-138, 15-6-207, 15-6-219, ~~15-24-921, 15-24-922, 15-24-925,~~ MCA

REASONABLE NECESSITY: The department determines the market value of personal property by using the trended depreciation tables found in these rules. The department is proposing to amend ARM 42.21.123 to update these trended depreciation schedules.

The annual update to these trend tables provides the taxpayers with the current depreciation percentage for each of the personal property classifications for the upcoming year. These updates also clearly identify for the taxpayer how the department values and depreciates property over time.

Additionally, the department is proposing to delete three implementing statutes from this rule because they are specific to the livestock per capita fees, not personal property and, therefore, should not be cited here.

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 ~~2011~~ 2012. 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

YEAR NEW/ACQUIRED	TRENDED % GOOD WHOLESALE
~~2011~~	~~80%~~
~~2010~~	~~58%~~
~~2009~~	~~52%~~
~~2008~~	~~43%~~
~~2007~~	~~41%~~
~~2006~~	~~34%~~
~~2005~~	~~31%~~
~~2004~~	~~30%~~
~~2003~~	~~30%~~
~~2002~~	~~26%~~
~~2001~~	~~25%~~
~~2000~~	~~22%~~
~~1999~~	~~18%~~
~~1998~~	~~20%~~
~~1997~~	~~19%~~
~~1996~~	~~19%~~
~~1995~~	~~15%~~
~~1994~~	~~16%~~

~~1993~~	~~17%~~
~~1992~~	~~16%~~
2012	80%
2011	65%
2010	58%
2009	51%
2008	45%
2007	42%
2006	35%
2005	31%
2004	30%
2003	30%
2002	26%
2001	23%
2000	19%
1999	20%
1998	19%
1997	20%
1996	15%
1995	16%
1994	16%
1993 and older	16%

(6) This rule is effective for tax years beginning after December 31, ~~2010~~ 2011 and applies to all heavy equipment.

AUTH: 15-1-201, 15-23-108, MCA
IMP: 15-6-135, 15-6-138, 15-6-207, 15-6-219, ~~15-24-921, 15-24-922, 15-24-925,~~ MCA

REASONABLE NECESSITY: The department determines the market value of personal property by using the trended depreciation tables found in these rules. The department is proposing to amend ARM 42.21.131 to update these trended depreciation schedules.

The annual update to these trend tables provides the taxpayers with the current depreciation percentage for each of the personal property classifications for the upcoming year. These updates also clearly identify for the taxpayer how the department values and depreciates property over time.

Additionally, the department is proposing to delete three implementing

statutes from this rule because they are specific to the livestock per capita fees, not personal property and, therefore, should not be cited here.

42.21.137 SEISMOGRAPH UNITS AND ALLIED EQUIPMENT (1) remains the same.

(2) The department shall prepare a five-year trended depreciation schedule for seismograph units and a five-year trended depreciation schedule for all other allied seismograph equipment. Trend factors and depreciation factors published by "Marshall and Swift Publication Company" will be used to develop the trended depreciation schedules. The trend factors shall be the most recent available from the "Chemical Industry Cost Indexes" listed in the above publication. The "% good" for seismograph units and other allied seismograph equipment less than one year old shall be 100 percent and the "% good" for equipment ~~more than five years old~~ shall be 5 percent if acquired in 2005 and prior.

(3) remains the same.

(4) The trended depreciation schedules referred to in (1) through (3) are listed below and shall be used for tax year ~~2011~~ 2012.

SEISMOGRAPH UNIT

YEAR NEW/ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD	WHOLESALE FACTOR	WHOLESALE % GOOD
~~2011~~	~~100%~~	~~1.000~~	~~100%~~	~~80%~~	~~80%~~
~~2010~~	~~85%~~	~~1.000~~	~~85%~~	~~80%~~	~~68%~~
~~2009~~	~~69%~~	~~0.983~~	~~68%~~	~~80%~~	~~54%~~
~~2008~~	~~52%~~	~~1.017~~	~~53%~~	~~80%~~	~~42%~~
~~2007~~	~~34%~~	~~1.064~~	~~36%~~	~~80%~~	~~29%~~
~~2006~~	~~20%~~	~~1.126~~	~~23%~~	~~80%~~	~~18%~~
~~2005 and older~~	~~5%~~	~~1.183~~	~~6%~~	~~80%~~	~~5%~~
2012	100%	1.000	100%	80%	80%
2011	85%	1.000	85%	80%	68%
2010	69%	1.021	70%	80%	56%
2009	52%	1.006	52%	80%	42%
2008	34%	1.042	35%	80%	28%
2007	23%	1.089	25%	80%	20%
2006	20%	1.53	23%	80%	18%
2005 and older	5%				5%

SEISMOGRAPH ALLIED EQUIPMENT

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
~~2011~~	~~100%~~	~~1.000~~	~~100%~~
~~2010~~	~~85%~~	~~1.000~~	~~85%~~
~~2009~~	~~69%~~	~~0.983~~	~~68%~~
~~2008~~	~~52%~~	~~1.017~~	~~53%~~
~~2007~~	~~34%~~	~~1.064~~	~~36%~~
~~2006~~	~~20%~~	~~1.126~~	~~23%~~
~~2005 and older~~	~~5%~~	~~1.183~~	~~6%~~
2012	100%	1.000	100%
2011	85%	1.000	85%
2010	69%	1.021	70%
2009	52%	1.006	52%
2008	34%	1.042	35%
2007	23%	1.089	25%
2006	20%	1.153	23%
2005 and older	5%		5%

(5) This rule is effective for tax years beginning after December 31, ~~2010~~ 2011.

AUTH: 15-1-201, MCA
IMP: 15-6-135, 15-6-138, 15-6-207, 15-6-219, ~~15-24-921, 15-24-922, 15-24-925,~~ MCA

REASONABLE NECESSITY: The department determines the market value of personal property by using the trended depreciation tables found in these rules. The department is proposing to amend ARM 42.21.137 to update these trended depreciation schedules. The annual update to these trend tables provides the taxpayers with the current depreciation percentage for each of the personal property classifications for the upcoming year. These updates also clearly identify for the taxpayer how the department values and depreciates property over time.

The language in ARM 42.21.137(2) is being amended to bring this rule into conformity with the other rules governing personal property valuation. The department discovered that historically we have listed our final category for equipment more than five years old at a "% good" of 5%. This category is not based upon the Marshall and Swift publication guides. The department deems this category an unsustainable practice under the equalization standards described in 15-9-101(1), MCA.

The department is proposing to correct this depreciation formula error prospectively, not retroactively. This approach is proposed both to comply with 15-

9-101(1), MCA, and to recognize that existing taxpayers owning property acquired in 2005 or earlier have relied upon the prior mistaken depreciation formula for the "% good of 5%" category. The "% good of 5%" category, which previously would have been updated to cover an additional year, is proposed to be retained only for property already attaining this level, namely property acquired in 2005 or earlier years. For example, in the past, the department would have been proposing in this notice that the "% good of 5%" category would have been updated to 2006 or earlier. It is proposed that from this point forward, the "% good" category for seismographic equipment will decline to the lowest level provided in the Marshall and Swift tables for whatever year that lowest level is specified through such property acquired in 2006. Thus, next year, assuming the lowest Marshall and Swift % good level for seismographic equipment is still 20 percent, that level will apply to property acquired in 2006 and 2007. In the following year, that lowest Marshall and Swift level would apply to property acquired in 2006 through 2008 and so forth for subsequent years. In that manner, equalization with the values specified in the Marshall and Swift publication guides is accomplished for 2006 forward.

The tax impact of this prospective change is judged to be minimal. For example, there are seven pieces of seismographic equipment acquired in 2006 that would otherwise have been placed in the "% good of 5%" category were it not for the department discovering this problem. The corrective proposed action of the department would result in a tax effect for the equipment acquired in 2006 of approximately $300 per piece of equipment, or about $2,100 for all seven items statewide.

Additionally, the department is proposing to delete three implementing statutes from this rule because they are specific to the livestock per capita fees, not personal property and, therefore, should not be cited here.

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 ~~2011~~ 2012.

OIL AND GAS FIELD PRODUCTION
EQUIPMENT TRENDED DEPRECIATION SCHEDULE

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
~~2011~~	~~100%~~	~~1.000~~	~~100%~~
~~2010~~	~~95%~~	~~1.000~~	~~95%~~
~~2009~~	~~90%~~	~~0.983~~	~~88%~~
~~2008~~	~~85%~~	~~1.017~~	~~86%~~
~~2007~~	~~79%~~	~~1.064~~	~~84%~~
~~2006~~	~~73%~~	~~1.126~~	~~82%~~
~~2005~~	~~68%~~	~~1.183~~	~~80%~~
~~2004~~	~~62%~~	~~1.284~~	~~80%~~

~~2003~~	~~55%~~	~~1.328~~	~~73%~~
~~2002~~	~~49%~~	~~1.355~~	~~66%~~
~~2001~~	~~43%~~	~~1.363~~	~~59%~~
~~2000~~	~~37%~~	~~1.376~~	~~51%~~
~~1999~~	~~31%~~	~~1.398~~	~~43%~~
~~1998~~	~~26%~~	~~1.405~~	~~37%~~
~~1997~~	~~23%~~	~~1.419~~	~~33%~~
~~1996 or older~~	~~20%~~	~~1.437~~	~~29%~~
2012	100%	1.000	100%
2011	95%	1.000	95%
2010	90%	1.021	92%
2009	85%	1.006	86%
2008	79%	1.042	82%
2007	73%	1.089	79%
2006	68%	1.153	78%
2005	62%	1.211	75%
2004	55%	1.314	72%
2003	49%	1.360	67%
2002	43%	1.387	60%
2001	37%	1.395	52%
2000	31%	1.408	44%
1999	26%	1.431	37%
1998	23%	1.438	33%
1997 and older	20%	1.453	29%

(4) and (5) remain the same.

(6) This rule is effective for tax years beginning after December 31, ~~2010~~ 2011.

AUTH: 15-1-201, MCA
IMP: 15-6-135, 15-6-138, 15-6-207, 15-6-213, 15-6-219, ~~15-24-921, 15-24-922, 15-24-925,~~ MCA

REASONABLE NECESSITY: The department determines the market value of personal property by using the trended depreciation tables found in these rules. The department is proposing to amend ARM 42.21.138 to update these trended depreciation schedules.

The annual update to these trend tables provides the taxpayers with the current depreciation percentage for each of the personal property classifications for

the upcoming year. These updates also clearly identify for the taxpayer how the department values and depreciates property over time.

Additionally, the department is proposing to delete three implementing statutes from this rule because they are specific to the livestock per capita fees, not personal property and, therefore, should not be cited here.

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 ~~2011~~ 2012.

SERVICE AND WORKOVER RIG TRENDED DEPRECIATION SCHEDULE

YEAR/NEW ACQUIRED	% GOOD	TREND FACTOR	WHOLESALE FACTOR	TRENDED WHOLESALE % GOOD
~~2011~~	~~100%~~	~~1.000~~	~~80%~~	~~80%~~
~~2010~~	~~92%~~	~~1.000~~	~~80%~~	~~74%~~
~~2009~~	~~84%~~	~~0.983~~	~~80%~~	~~66%~~
~~2008~~	~~76%~~	~~1.017~~	~~80%~~	~~62%~~
~~2007~~	~~67%~~	~~1.064~~	~~80%~~	~~57%~~
~~2006~~	~~58%~~	~~1.126~~	~~80%~~	~~52%~~
~~2005~~	~~49%~~	~~1.183~~	~~80%~~	~~46%~~
~~2004~~	~~39%~~	~~1.284~~	~~80%~~	~~40%~~
~~2003~~	~~30%~~	~~1.328~~	~~80%~~	~~32%~~
~~2002~~	~~24%~~	~~1.355~~	~~80%~~	~~26%~~
~~2001 and older~~	~~20%~~	~~1.363~~	~~80%~~	~~22%~~
2012	100%	1.000	80%	80%
2011	92%	1.000	80%	74%
2010	84%	1.021	80%	69%
2009	76%	1.006	80%	61%
2008	67%	1.042	80%	56%
2007	58%	1.089	80%	51%
2006	49%	1.153	80%	45%
2005	39%	1.211	80%	38%
2004	30%	1.314	80%	32%
2003	24%	1.360	80%	26%
2002 and older	20%	1.387	80%	22%

(6) This rule is effective for tax years beginning after December 31, ~~2010~~ 2011.

AUTH: 15-1-201, MCA
IMP: 15-6-135, 15-6-138, 15-6-219, ~~15-24-921, 15-24-922, 15-24-925,~~ MCA

REASONABLE NECESSITY: The department determines the market value of personal property by using the trended depreciation tables found in these rules. The department is proposing to amend ARM 42.21.139 to update these trended depreciation schedules.

The annual update to these trend tables provides the taxpayers with the current depreciation percentage for each of the personal property classifications for the upcoming year. These updates also clearly identify for the taxpayer how the department values and depreciates property over time.

Additionally, the department is proposing to delete three implementing statutes from this rule because they are specific to the livestock per capita fees, not personal property, and, therefore, should not be cited here.

42.21.140 OIL DRILLING RIGS (1) remains the same.

(2) The department shall prepare a ten-year trended depreciation schedule for oil drilling rigs. The trended depreciation schedule shall be derived from depreciation factors published by Marshall and Swift Publication Company. The "% good" for all drill rigs less than one year old shall be 100 percent. The trended depreciation schedule for tax year ~~2011~~ 2012 is listed below.

DRILL RIG TRENDED DEPRECIATION SCHEDULE

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
~~2011~~	~~100%~~	~~1.000~~	~~100%~~
~~2010~~	~~92%~~	~~1.000~~	~~92%~~
~~2009~~	~~84%~~	~~0.983~~	~~83%~~
~~2008~~	~~76%~~	~~1.017~~	~~77%~~
~~2007~~	~~67%~~	~~1.064~~	~~71%~~
~~2006~~	~~58%~~	~~1.126~~	~~65%~~
~~2005~~	~~49%~~	~~1.183~~	~~58%~~
~~2004~~	~~39%~~	~~1.284~~	~~50%~~
~~2003~~	~~30%~~	~~1.328~~	~~40%~~
~~2002~~	~~24%~~	~~1.355~~	~~33%~~
~~2001 and older~~	~~20%~~	~~1.363~~	~~27%~~
2012	100%	1.000	100%
2011	92%	1.000	92%

2010	84%	1.021	86%
2009	76%	1.006	76%
2008	67%	1.042	70%
2007	58%	1.089	63%
2006	49%	1.153	57%
2005	39%	1.211	47%
2004	30%	1.314	39%
2003	24%	1.360	33%
2002 and older	20%	1.387	28%

(3) remains the same.

(4) This rule is effective for tax years beginning after December 31, ~~2010~~ 2011.

AUTH: 15-1-201, MCA
IMP: 15-6-135, 15-6-138, 15-6-207, 15-6-219, ~~15-24-921, 15-24-922, 15-24-925,~~ MCA

REASONABLE NECESSITY: The department determines the market value of personal property by using the trended depreciation tables found in these rules. The department is proposing to amend ARM 42.21.140 to update these trended depreciation schedules.

The annual update to these trend tables provides the taxpayers with the current depreciation percentage for each of the personal property classifications for the upcoming year. These updates also clearly identify for the taxpayer how the department values and depreciates property over time.

Additionally, the department is proposing to delete three implementing statutes from this rule because they are specific to the livestock per capita fees, not personal property and, therefore, should not be cited here.

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 ~~2011~~ 2012.

TABLE 1: FIVE-YEAR "DISHES"

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
~~2010~~	~~85%~~	~~1.000~~	~~85%~~
~~2009~~	~~69%~~	~~0.989~~	~~68%~~
~~2008~~	~~52%~~	~~1.017~~	~~53%~~
~~2007~~	~~34%~~	~~1.057~~	~~36%~~
~~2006 and older~~	~~20%~~	~~1.115~~	~~22%~~

2011	85%	1.000	85%
2010	69%	1.025	71%
2009	52%	1.017	53%
2008	34%	1.046	36%
2007 and older	20%	1.087	22%

TABLE 2: TEN-YEAR "TOWERS"

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
~~2010~~	~~92%~~	~~1.000~~	~~92%~~
~~2009~~	~~84%~~	~~0.989~~	~~83%~~
~~2008~~	~~76%~~	~~1.017~~	~~77%~~
~~2007~~	~~67%~~	~~1.057~~	~~71%~~
~~2006~~	~~58%~~	~~1.115~~	~~65%~~
~~2005~~	~~49%~~	~~1.167~~	~~57%~~
~~2004~~	~~39%~~	~~1.255~~	~~49%~~
~~2003~~	~~30%~~	~~1.298~~	~~39%~~
~~2002~~	~~24%~~	~~1.320~~	~~32%~~
~~2001 and older~~	~~20%~~	~~1.328~~	~~27%~~
2011	92%	1.000	92%
2010	84%	1.025	86%
2009	76%	1.017	77%
2008	67%	1.046	70%
2007	58%	1.087	63%
2006	49%	1.147	56%
2005	39%	1.200	47%
2004	30%	1.290	39%
2003	24%	1.335	32%
2002 and older	20%	1.357	27%

(5) This rule is effective for tax years beginning after December 31, ~~2010~~ 2011.

AUTH: 15-1-201, MCA
IMP: 15-6-135, 15-6-138, 15-6-207, 15-6-219, ~~15-24-921, 15-24-922, 15-24-925,~~ MCA

REASONABLE NECESSITY: The department determines the market value of personal property by using the trended depreciation tables found in these rules. The department is proposing to amend ARM 42.21.151 to update these trended depreciation schedules.

The annual update to these trend tables provides the taxpayers with the current depreciation percentage for each of the personal property classifications for the upcoming year. These updates also clearly identify for the taxpayer how the

department values and depreciates property over time.

Additionally, the department is proposing to delete three implementing statutes from this rule because they are specific to the livestock per capita fees, not personal property and, therefore, should not be cited here.

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

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
~~2010~~	~~92%~~	~~1.000~~	~~92%~~
~~2009~~	~~84%~~	~~0.989~~	~~83%~~
~~2008~~	~~76%~~	~~1.017~~	~~77%~~
~~2007~~	~~67%~~	~~1.057~~	~~71%~~
~~2006~~	~~58%~~	~~1.115~~	~~65%~~
~~2005~~	~~49%~~	~~1.167~~	~~57%~~
~~2004~~	~~39%~~	~~1.255~~	~~49%~~
~~2003~~	~~30%~~	~~1.298~~	~~39%~~
~~2002~~	~~24%~~	~~1.320~~	~~32%~~
~~2001 and older~~	~~20%~~	~~1.328~~	~~27%~~
2011	92%	1.000	92%
2010	84%	1.025	86%
2009	76%	1.017	77%
2008	67%	1.046	70%
2007	58%	1.087	63%
2006	49%	1.147	56%
2005	39%	1.200	47%
2004	30%	1.290	39%
2003	24%	1.335	32%
2002 and older	20%	1.357	27%

(a) The taxpayer must initially list with the department:

(i) all equipment by year of installation; and

(ii) installed costs of that equipment.

(b) Each year thereafter, the taxpayer must list with the department:

(i) all additions or deletions from the previous year's list, with installed cost.

(4) This methodology is effective for tax years beginning after December 31, ~~2010~~ 2011.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-138, 15-6-207, 15-6-219, ~~15-24-921, 15-24-922, 15-24-925,~~ MCA

REASONABLE NECESSITY: The department determines the market value of personal property by using the trended depreciation tables found in these rules. The department is proposing to amend ARM 42.21.153 to update these trended depreciation schedules.

The annual update to these trend tables provides the taxpayers with the current depreciation percentage for each of the personal property classifications for the upcoming year. These updates also clearly identify for the taxpayer how the department values and depreciates property over time.

Additionally, the department is proposing to delete three implementing statutes from this rule because they are specific to the livestock per capita fees, not personal property and, therefore, should not be cited here.

42.21.155 DEPRECIATION SCHEDULES (1) remains the same.

(2) The trended depreciation schedules for tax year ~~2011~~ 2012 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

YEAR NEW/ ACQUIRED	%GOOD	TREND FACTOR	TRENDED % GOOD
~~2010~~	~~70%~~	~~1.000~~	~~70%~~
~~2009~~	~~45%~~	~~0.963~~	~~43%~~
~~2008~~	~~20%~~	~~0.897~~	~~18%~~
~~2007 and older~~	~~10%~~	~~0.763~~	~~8%~~
2011	70%	1.000	70%
2010	45%	0.917	41%
2009	20%	0.884	18%
2008 and older	10%	0.824	8%

CATEGORY 2

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
~~2010~~	~~85%~~	~~1.000~~	~~85%~~
~~2009~~	~~69%~~	~~0.957~~	~~66%~~
~~2008~~	~~52%~~	~~1.035~~	~~54%~~
~~2007~~	~~34%~~	~~1.058~~	~~36%~~
~~2006 and older~~	~~20%~~	~~1.052~~	~~21%~~
2011	85%	1.000	85%
2010	69%	1.004	69%

2009	52%	0.961	50%
2008	34%	1.039	35%
2007 and older	20%	1.062	21%

CATEGORY 3

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
~~2010~~	~~85%~~	~~1.000~~	~~85%~~
~~2009~~	~~69%~~	~~0.982~~	~~68%~~
~~2008~~	~~52%~~	~~0.949~~	~~49%~~
~~2007~~	~~34%~~	~~0.857~~	~~29%~~
~~2006 and older~~	~~20%~~	~~0.860~~	~~17%~~
2011	85%	1.000	85%
2010	69%	0.964	67%
2009	52%	0.947	49%
2008	34%	0.915	31%
2007 and older	20%	0.826	17%

CATEGORY 4

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
~~2010~~	~~85%~~	~~1.000~~	~~85%~~
~~2009~~	~~69%~~	~~0.990~~	~~68%~~
~~2008~~	~~52%~~	~~0.977~~	~~51%~~
~~2007~~	~~34%~~	~~0.956~~	~~33%~~
~~2006 and older~~	~~20%~~	~~0.945~~	~~19%~~
2011	85%	1.000	85%
2010	69%	0.988	68%
2009	52%	0.978	51%
2008	34%	0.965	33%
2007 and older	20%	0.945	19%

CATEGORY 5

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD

~~2010~~	~~85%~~	~~1.000~~	~~85%~~
~~2009~~	~~69%~~	~~1.006~~	~~69%~~
~~2008~~	~~52%~~	~~1.049~~	~~55%~~
~~2007~~	~~34%~~	~~1.064~~	~~36%~~
~~2006 and older~~	~~20%~~	~~1.084~~	~~22%~~
2011	85%	1.000	85%
2010	69%	1.009	70%
2009	52%	1.014	53%
2008	34%	1.058	36%
2007 and older	20%	1.073	21%

CATEGORY 6

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
~~2010~~	~~85%~~	~~1.000~~	~~85%~~
~~2009~~	~~69%~~	~~1.013~~	~~70%~~
~~2008~~	~~52%~~	~~1.017~~	~~53%~~
~~2007~~	~~34%~~	~~1.048~~	~~36%~~
~~2006 and older~~	~~20%~~	~~1.072~~	~~21%~~
2011	85%	1.000	85%
2010	69%	1.025	71%
2009	52%	1.044	54%
2008	34%	1.049	36%
2007 and older	20%	1.080	22%

CATEGORY 7

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
~~2010~~	~~92%~~	~~1.000~~	~~92%~~
~~2009~~	~~84%~~	~~0.995~~	~~84%~~
~~2008~~	~~76%~~	~~1.026~~	~~78%~~
~~2007~~	~~67%~~	~~1.045~~	~~70%~~
~~2006~~	~~58%~~	~~1.067~~	~~62%~~
~~2005~~	~~49%~~	~~1.100~~	~~54%~~
~~2004~~	~~39%~~	~~1.129~~	~~44%~~
~~2003~~	~~30%~~	~~1.133~~	~~34%~~

~~2002~~	~~24%~~	~~1.132~~	~~27%~~
~~2001 and older~~	~~20%~~	~~1.132~~	~~23%~~
2011	92%	1.000	92%
2010	84%	1.016	85%
2009	76%	1.010	77%
2008	67%	1.042	70%
2007	58%	1.061	62%
2006	49%	1.084	53%
2005	39%	1.117	44%
2004	30%	1.146	34%
2003	24%	1.151	28%
2002 and older	20%	1.150	23%

CATEGORY 8

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
~~2010~~	~~92%~~	~~1.000~~	~~92%~~
~~2009~~	~~84%~~	~~1.005~~	~~84%~~
~~2008~~	~~76%~~	~~1.069~~	~~81%~~
~~2007~~	~~67%~~	~~1.092~~	~~73%~~
~~2006~~	~~58%~~	~~1.123~~	~~65%~~
~~2005~~	~~49%~~	~~1.159~~	~~57%~~
~~2004~~	~~39%~~	~~1.203~~	~~47%~~
~~2003~~	~~30%~~	~~1.213~~	~~36%~~
~~2002~~	~~24%~~	~~1.224~~	~~29%~~
~~2001~~	~~20%~~	~~1.232~~	~~25%~~
2011	92%	1.000	92%
2010	84%	1.011	85%
2009	76%	1.016	77%
2008	67%	1.080	72%
2007	58%	1.103	64%
2006	49%	1.135	56%
2005	39%	1.171	46%
2004	30%	1.216	36%
2003	24%	1.226	29%

2002 and older	20%	1.237	25%

(3) This rule is effective for tax years beginning after December 31, ~~2010~~ 2011.

AUTH: 15-1-201, MCA
IMP: 15-6-135, 15-6-138, 15-6-207, 15-6-219, ~~15-24-921, 15-24-922, 15-24-925,~~ MCA

REASONABLE NECESSITY: The department determines the market value of personal property by using the trended depreciation tables found in these rules. The department is proposing to amend ARM 42.21.155 to update these trended depreciation schedules.

The annual update to these trend tables provides the taxpayers with the current depreciation percentage for each of the personal property classifications for the upcoming year. These updates also clearly identify for the taxpayer how the department values and depreciates property over time.

Additionally, the department is proposing to delete three implementing statutes from this rule because they are specific to the livestock per capita fees, not personal property and, therefore, should not be cited here.

42.22.1311 INDUSTRIAL MACHINERY AND EQUIPMENT TREND FACTORS (1) and (2) remain the same.

(3) Tables 1 through 32 represent the yearly trend factors for each of the categories.

YEAR	TABLE 1 Airplane Mfg.	TABLE 2 Baking	TABLE 3 Bottling	TABLE 4 Brew/Dis.	TABLE 5 Candy Confect.
~~2010~~	~~1.000~~	~~1.000~~	~~1.000~~	~~1.000~~	~~1.000~~
~~2009~~	~~.980~~	~~0.988~~	~~0.987~~	~~0.990~~	~~0.990~~
~~2008~~	~~1.008~~	~~1.013~~	~~1.012~~	~~1.019~~	~~1.014~~
~~2007~~	~~1.049~~	~~1.054~~	~~1.057~~	~~1.064~~	~~1.055~~
~~2006~~	~~1.107~~	~~1.128~~	~~1.120~~	~~1.127~~	~~1.133~~
~~2005~~	~~1.165~~	~~1.180~~	~~1.178~~	~~1.185~~	~~1.184~~
~~2004~~	~~1.261~~	~~1.269~~	~~1.277~~	~~1.281~~	~~1.273~~
~~2003~~	~~1.309~~	~~1.317~~	~~1.324~~	~~1.325~~	~~1.319~~
~~2002~~	~~1.333~~	~~1.339~~	~~1.348~~	~~1.348~~	~~1.341~~
~~2001~~	~~1.338~~	~~1.348~~	~~1.354~~	~~1.357~~	~~1.349~~
~~2000~~	~~1.347~~	~~1.363~~	~~1.366~~	~~1.372~~	~~1.365~~
~~1999~~	~~1.372~~	~~1.390~~	~~1.393~~	~~1.397~~	~~1.392~~
~~1998~~	~~1.373~~	~~1.395~~	~~1.395~~	~~1.405~~	~~1.397~~
~~1997~~	~~1.384~~	~~1.409~~	~~1.406~~	~~1.419~~	~~1.412~~
~~1996~~	~~1.401~~	~~1.434~~	~~1.427~~	~~1.442~~	~~1.438~~
~~1995~~	~~1.420~~	~~1.455~~	~~1.449~~	~~1.469~~	~~1.460~~
~~1994~~	~~1.477~~	~~1.515~~	~~1.506~~	~~1.524~~	~~1.521~~
~~1993~~	~~1.515~~	~~1.561~~	~~1.547~~	~~1.560~~	~~1.567~~

~~1992~~	~~1.539~~	~~1.591~~	~~1.572~~	~~1.585~~	~~1.596~~
~~1991~~	~~1.549~~	~~1.612~~	~~1.588~~	~~1.602~~	~~1.618~~
2011	1.000	1.000	1.000	1.000	1.000
2010	1.029	1.026	1.026	1.022	1.025
2009	1.012	1.018	1.016	1.015	1.019
2008	1.041	1.043	1.042	1.044	1.044
2007	1.084	1.085	1.088	1.091	1.086
2006	1.144	1.162	1.153	1.156	1.166
2005	1.203	1.215	1.213	1.215	1.219
2004	1.303	1.307	1.315	1.313	1.310
2003	1.352	1.356	1.363	1.358	1.358
2002	1.377	1.379	1.388	1.382	1.381
2001	1.382	1.388	1.394	1.391	1.389
2000	1.392	1.404	1.407	1.406	1.406
1999	1.417	1.432	1.434	1.432	1.433
1998	1.419	1.437	1.437	1.440	1.438
1997	1.430	1.451	1.447	1.454	1.454
1996	1.447	1.476	1.470	1.478	1.480
1995	1.467	1.498	1.492	1.506	1.503
1994	1.525	1.560	1.551	1.562	1.565
1993	1.565	1.608	1.592	1.599	1.613
1992	1.589	1.638	1.618	1.624	1.643

YEAR	TABLE 6 Cement Mfg.	TABLE 7 Chemical Mfg.	TABLE 8 Clay Mfg.	TABLE 9 Contractor Eq.	TABLE 10 Creamery/Dairy
~~2010~~	~~1.000~~	~~1.000~~	~~1.000~~	~~1.000~~	~~1.000~~
~~2009~~	~~.984~~	~~.983~~	~~.989~~	~~.994~~	~~.992~~
~~2008~~	~~1.029~~	~~1.017~~	~~1.035~~	~~1.023~~	~~1.014~~
~~2007~~	~~1.074~~	~~1.064~~	~~1.079~~	~~1.056~~	~~1.057~~
~~2006~~	~~1.131~~	~~1.126~~	~~1.137~~	~~1.093~~	~~1.132~~
~~2005~~	~~1.186~~	~~1.183~~	~~1.191~~	~~1.142~~	~~1.188~~
~~2004~~	~~1.289~~	~~1.284~~	~~1.286~~	~~1.220~~	~~1.278~~
~~2003~~	~~1.341~~	~~1.328~~	~~1.332~~	~~1.255~~	~~1.322~~
~~2002~~	~~1.368~~	~~1.355~~	~~1.358~~	~~1.275~~	~~1.344~~
~~2001~~	~~1.377~~	~~1.363~~	~~1.368~~	~~1.285~~	~~1.353~~
~~2000~~	~~1.390~~	~~1.376~~	~~1.383~~	~~1.293~~	~~1.368~~
~~1999~~	~~1.413~~	~~1.398~~	~~1.406~~	~~1.315~~	~~1.396~~
~~1998~~	~~1.419~~	~~1.405~~	~~1.411~~	~~1.326~~	~~1.402~~
~~1997~~	~~1.434~~	~~1.419~~	~~1.426~~	~~1.341~~	~~1.416~~
~~1996~~	~~1.452~~	~~1.437~~	~~1.448~~	~~1.367~~	~~1.440~~
~~1995~~	~~1.479~~	~~1.466~~	~~1.475~~	~~1.390~~	~~1.465~~
~~1994~~	~~1.531~~	~~1.520~~	~~1.526~~	~~1.428~~	~~1.526~~
~~1993~~	~~1.565~~	~~1.551~~	~~1.562~~	~~1.463~~	~~1.568~~
~~1992~~	~~1.590~~	~~1.571~~	~~1.590~~	~~1.503~~	~~1.594~~

~~1991~~	~~1.603~~	~~1.582~~	~~1.606~~	~~1.531~~	~~1.613~~
2011	1.000	1.000	1.000	1.000	1.000
2010	1.021	1.021	1.023	1.022	1.025
2009	1.008	1.006	1.015	1.018	1.021
2008	1.054	1.042	1.062	1.049	1.044
2007	1.101	1.089	1.107	1.082	1.088
2006	1.158	1.153	1.167	1.120	1.164
2005	1.215	1.211	1.222	1.171	1.222
2004	1.321	1.314	1.320	1.251	1.315
2003	1.374	1.360	1.367	1.287	1.361
2002	1.402	1.387	1.394	1.307	1.383
2001	1.411	1.395	1.404	1.317	1.393
2000	1.424	1.408	1.419	1.325	1.408
1999	1.448	1.431	1.443	1.348	1.437
1998	1.454	1.438	1.448	1.359	1.443
1997	1.470	1.453	1.463	1.374	1.457
1996	1.488	1.472	1.486	1.401	1.482
1995	1.515	1.500	1.514	1.424	1.508
1994	1.569	1.556	1.566	1.463	1.571
1993	1.604	1.588	1.603	1.500	1.614
1992	1.629	1.608	1.632	1.541	1.640

YEAR	TABLE 11 Elec. Pwr. Eq.	TABLE 12 Elec. Eq. Mfg.	TABLE 13 Cannery/Fish	TABLE 14 Flour, Cer. Feed	TABLE 15 Cannery/Fruit
~~2010~~	~~1.000~~	~~1.000~~	~~1.000~~	~~1.000~~	~~1.000~~
~~2009~~	~~.988~~	~~.982~~	~~.987~~	~~.988~~	~~.992~~
~~2008~~	~~.991~~	~~.998~~	~~1.013~~	~~1.014~~	~~1.011~~
~~2007~~	~~1.046~~	~~1.047~~	~~1.054~~	~~1.058~~	~~1.050~~
~~2006~~	~~1.132~~	~~1.120~~	~~1.129~~	~~1.127~~	~~1.118~~
~~2005~~	~~1.215~~	~~1.189~~	~~1.180~~	~~1.184~~	~~1.167~~
~~2004~~	~~1.329~~	~~1.296~~	~~1.272~~	~~1.278~~	~~1.251~~
~~2003~~	~~1.390~~	~~1.351~~	~~1.321~~	~~1.325~~	~~1.297~~
~~2002~~	~~1.413~~	~~1.374~~	~~1.344~~	~~1.347~~	~~1.318~~
~~2001~~	~~1.408~~	~~1.372~~	~~1.353~~	~~1.355~~	~~1.328~~
~~2000~~	~~1.418~~	~~1.382~~	~~1.368~~	~~1.369~~	~~1.341~~
~~1999~~	~~1.446~~	~~1.407~~	~~1.395~~	~~1.397~~	~~1.369~~
~~1998~~	~~1.439~~	~~1.402~~	~~1.399~~	~~1.402~~	~~1.374~~
~~1997~~	~~1.442~~	~~1.409~~	~~1.414~~	~~1.416~~	~~1.386~~
~~1996~~	~~1.449~~	~~1.422~~	~~1.439~~	~~1.438~~	~~1.415~~
~~1995~~	~~1.461~~	~~1.438~~	~~1.461~~	~~1.460~~	~~1.433~~
~~1994~~	~~1.539~~	~~1.507~~	~~1.521~~	~~1.519~~	~~1.488~~
~~1993~~	~~1.570~~	~~1.543~~	~~1.570~~	~~1.560~~	~~1.539~~
~~1992~~	~~1.581~~	~~1.560~~	~~1.600~~	~~1.585~~	~~1.575~~
~~1991~~	~~1.575~~	~~1.561~~	~~1.624~~	~~1.599~~	~~1.604~~

2011	1.000	1.000	1.000	1.000	1.000
2010	1.046	1.039	1.026	1.026	1.026
2009	1.037	1.025	1.016	1.017	1.021
2008	1.041	1.042	1.043	1.044	1.042
2007	1.099	1.093	1.085	1.089	1.081
2006	1.189	1.169	1.163	1.160	1.151
2005	1.276	1.241	1.215	1.219	1.202
2004	1.396	1.353	1.310	1.316	1.288
2003	1.460	1.410	1.360	1.364	1.336
2002	1.484	1.434	1.384	1.387	1.358
2001	1.478	1.433	1.394	1.395	1.367
2000	1.489	1.443	1.408	1.410	1.381
1999	1.519	1.469	1.436	1.438	1.410
1998	1.511	1.464	1.441	1.444	1.415
1997	1.514	1.471	1.456	1.458	1.428
1996	1.522	1.484	1.482	1.480	1.457
1995	1.535	1.501	1.504	1.504	1.476
1994	1.616	1.573	1.566	1.564	1.532
1993	1.649	1.611	1.616	1.606	1.585
1992	1.660	1.628	1.648	1.632	1.622

YEAR	TABLE 16 Packing/ Fruit	TABLE 17 Laundry/ Clean	TABLE 18 Logging Eq.	TABLE 19 Packing/ Meat	TABLE 20 Metal Work
~~2010~~	~~1.000~~	~~1.000~~	~~1.000~~	~~1.000~~	~~1.000~~
~~2009~~	~~.995~~	~~.987~~	~~.984~~	~~.991~~	~~.977~~
~~2008~~	~~1.015~~	~~1.020~~	~~1.016~~	~~1.023~~	~~1.014~~
~~2007~~	~~1.050~~	~~1.063~~	~~1.052~~	~~1.063~~	~~1.053~~
~~2006~~	~~1.099~~	~~1.120~~	~~1.096~~	~~1.133~~	~~1.112~~
~~2005~~	~~1.145~~	~~1.171~~	~~1.145~~	~~1.182~~	~~1.161~~
~~2004~~	~~1.222~~	~~1.263~~	~~1.230~~	~~1.266~~	~~1.253~~
~~2003~~	~~1.264~~	~~1.308~~	~~1.274~~	~~1.309~~	~~1.292~~
~~2002~~	~~1.283~~	~~1.333~~	~~1.294~~	~~1.331~~	~~1.314~~
~~2001~~	~~1.295~~	~~1.340~~	~~1.302~~	~~1.342~~	~~1.316~~
~~2000~~	~~1.305~~	~~1.351~~	~~1.310~~	~~1.356~~	~~1.325~~
~~1999~~	~~1.333~~	~~1.377~~	~~1.333~~	~~1.382~~	~~1.343~~
~~1998~~	~~1.339~~	~~1.379~~	~~1.338~~	~~1.388~~	~~1.343~~
~~1997~~	~~1.350~~	~~1.390~~	~~1.349~~	~~1.404~~	~~1.356~~
~~1996~~	~~1.382~~	~~1.412~~	~~1.371~~	~~1.429~~	~~1.373~~
~~1995~~	~~1.399~~	~~1.434~~	~~1.390~~	~~1.454~~	~~1.397~~
~~1994~~	~~1.442~~	~~1.486~~	~~1.434~~	~~1.509~~	~~1.451~~
~~1993~~	~~1.495~~	~~1.526~~	~~1.475~~	~~1.553~~	~~1.488~~
~~1992~~	~~1.540~~	~~1.555~~	~~1.507~~	~~1.583~~	~~1.510~~
~~1991~~	~~1.573~~	~~1.571~~	~~1.531~~	~~1.606~~	~~1.523~~

2011	1.000	1.000	1.000	1.000	1.000
2010	1.024	1.025	1.022	1.023	1.026
2009	1.023	1.016	1.008	1.018	1.006
2008	1.043	1.050	1.042	1.051	1.044
2007	1.079	1.093	1.079	1.092	1.084
2006	1.130	1.153	1.124	1.163	1.144
2005	1.177	1.204	1.174	1.214	1.195
2004	1.256	1.299	1.262	1.300	1.290
2003	1.300	1.346	1.306	1.344	1.330
2002	1.319	1.371	1.327	1.367	1.352
2001	1.331	1.379	1.335	1.378	1.355
2000	1.342	1.390	1.343	1.392	1.364
1999	1.370	1.416	1.367	1.419	1.383
1998	1.377	1.419	1.372	1.426	1.383
1997	1.388	1.430	1.384	1.442	1.396
1996	1.420	1.453	1.405	1.467	1.414
1995	1.438	1.475	1.425	1.493	1.438
1994	1.483	1.529	1.471	1.549	1.494
1993	1.537	1.570	1.512	1.595	1.532
1992	1.583	1.600	1.546	1.626	1.554

YEAR	TABLE 21 Mine Mill	TABLE 22 Paint Mfg.	TABLE 23 Petroleum	TABLE 24 Printing	TABLE 25 Paper Mfg.
~~2010~~	~~1.000~~	~~1.000~~	~~1.000~~	~~1.000~~	~~1.000~~
~~2009~~	~~.996~~	~~.985~~	~~.981~~	~~.987~~	~~.985~~
~~2008~~	~~1.041~~	~~1.019~~	~~1.022~~	~~1.009~~	~~1.017~~
~~2007~~	~~1.085~~	~~1.064~~	~~1.072~~	~~1.044~~	~~1.058~~
~~2006~~	~~1.133~~	~~1.126~~	~~1.141~~	~~1.102~~	~~1.111~~
~~2005~~	~~1.188~~	~~1.182~~	~~1.208~~	~~1.146~~	~~1.161~~
~~2004~~	~~1.288~~	~~1.282~~	~~1.312~~	~~1.222~~	~~1.259~~
~~2003~~	~~1.337~~	~~1.330~~	~~1.359~~	~~1.258~~	~~1.308~~
~~2002~~	~~1.363~~	~~1.358~~	~~1.386~~	~~1.278~~	~~1.333~~
~~2001~~	~~1.379~~	~~1.366~~	~~1.400~~	~~1.279~~	~~1.344~~
~~2000~~	~~1.389~~	~~1.378~~	~~1.417~~	~~1.290~~	~~1.352~~
~~1999~~	~~1.412~~	~~1.404~~	~~1.437~~	~~1.308~~	~~1.379~~
~~1998~~	~~1.419~~	~~1.408~~	~~1.445~~	~~1.309~~	~~1.383~~
~~1997~~	~~1.434~~	~~1.422~~	~~1.464~~	~~1.317~~	~~1.395~~
~~1996~~	~~1.457~~	~~1.443~~	~~1.488~~	~~1.338~~	~~1.423~~
~~1995~~	~~1.480~~	~~1.469~~	~~1.519~~	~~1.358~~	~~1.442~~
~~1994~~	~~1.526~~	~~1.525~~	~~1.574~~	~~1.408~~	~~1.491~~
~~1993~~	~~1.568~~	~~1.563~~	~~1.606~~	~~1.443~~	~~1.536~~
~~1992~~	~~1.602~~	~~1.589~~	~~1.622~~	~~1.465~~	~~1.571~~
~~1991~~	~~1.629~~	~~1.603~~	~~1.635~~	~~1.470~~	~~1.592~~

2011	1.000	1.000	1.000	1.000	1.000
2010	1.025	.996	1.019	1.023	1.025
2009	1.024	.985	1.003	1.013	1.014
2008	1.071	1.019	1.044	1.036	1.047
2007	1.116	1.064	1.096	1.072	1.089
2006	1.165	1.126	1.166	1.131	1.144
2005	1.222	1.182	1.234	1.176	1.196
2004	1.325	1.282	1.341	1.254	1.296
2003	1.375	1.330	1.388	1.291	1.346
2002	1.402	1.358	1.416	1.312	1.372
2001	1.418	1.366	1.430	1.313	1.383
2000	1.428	1.378	1.448	1.324	1.392
1999	1.452	1.404	1.469	1.343	1.420
1998	1.459	1.408	1.476	1.344	1.423
1997	1.475	1.422	1.496	1.351	1.436
1996	1.499	1.443	1.521	1.373	1.464
1995	1.523	1.469	1.552	1.393	1.484
1994	1.570	1.525	1.609	1.445	1.534
1993	1.613	1.563	1.641	1.481	1.581
1992	1.647	1.589	1.657	1.503	1.617

YEAR	TABLE 26	TABLE 27	TABLE 28	TABLE 29	TABLE 30
	Refrigeration	Rubber	Steam Power	Textile	Warehousing
~~2010~~	~~1.000~~	~~1.000~~	~~1.000~~	~~1.000~~	~~1.000~~
~~2009~~	~~.989~~	~~.982~~	~~.986~~	~~.983~~	~~.991~~
~~2008~~	~~1.023~~	~~1.018~~	~~1.020~~	~~1.014~~	~~1.022~~
~~2007~~	~~1.067~~	~~1.058~~	~~1.069~~	~~1.049~~	~~1.058~~
~~2006~~	~~1.129~~	~~1.115~~	~~1.141~~	~~1.094~~	~~1.097~~
~~2005~~	~~1.184~~	~~1.161~~	~~1.202~~	~~1.135~~	~~1.135~~
~~2004~~	~~1.277~~	~~1.245~~	~~1.310~~	~~1.215~~	~~1.214~~
~~2003~~	~~1.323~~	~~1.289~~	~~1.358~~	~~1.250~~	~~1.257~~
~~2002~~	~~1.349~~	~~1.315~~	~~1.385~~	~~1.269~~	~~1.272~~
~~2001~~	~~1.360~~	~~1.319~~	~~1.390~~	~~1.274~~	~~1.276~~
~~2000~~	~~1.373~~	~~1.330~~	~~1.402~~	~~1.284~~	~~1.284~~
~~1999~~	~~1.400~~	~~1.350~~	~~1.423~~	~~1.303~~	~~1.307~~
~~1998~~	~~1.406~~	~~1.355~~	~~1.425~~	~~1.305~~	~~1.309~~
~~1997~~	~~1.420~~	~~1.370~~	~~1.435~~	~~1.316~~	~~1.313~~
~~1996~~	~~1.443~~	~~1.389~~	~~1.450~~	~~1.339~~	~~1.335~~
~~1995~~	~~1.468~~	~~1.415~~	~~1.474~~	~~1.357~~	~~1.347~~
~~1994~~	~~1.523~~	~~1.465~~	~~1.532~~	~~1.398~~	~~1.385~~
~~1993~~	~~1.564~~	~~1.500~~	~~1.565~~	~~1.434~~	~~1.431~~
~~1992~~	~~1.594~~	~~1.529~~	~~1.583~~	~~1.462~~	~~1.464~~
~~1991~~	~~1.613~~	~~1.545~~	~~1.590~~	~~1.480~~	~~1.485~~

2011	1.000	1.000	1.000	1.000	1.000
2010	1.027	1.022	1.028	1.018	1.023
2009	1.020	1.007	1.018	1.005	1.017
2008	1.055	1.044	1.053	1.035	1.049
2007	1.100	1.085	1.103	1.071	1.086
2006	1.164	1.143	1.177	1.117	1.126
2005	1.221	1.190	1.240	1.159	1.165
2004	1.316	1.277	1.352	1.241	1.246
2003	1.364	1.322	1.402	1.277	1.290
2002	1.391	1.349	1.430	1.296	1.305
2001	1.403	1.353	1.435	1.302	1.310
2000	1.416	1.364	1.446	1.312	1.317
1999	1.443	1.384	1.469	1.331	1.342
1998	1.449	1.390	1.470	1.333	1.343
1997	1.464	1.405	1.481	1.344	1.348
1996	1.487	1.425	1.496	1.367	1.370
1995	1.514	1.452	1.521	1.386	1.382
1994	1.571	1.503	1.581	1.428	1.422
1993	1.613	1.538	1.615	1.465	1.469
1992	1.644	1.568	1.633	1.494	1.503

YEAR	TABLE 31 Woodworking	TABLE 32 Glass Mfg.
~~2010~~	~~1.000~~	~~1.000~~
~~2009~~	~~.988~~	~~.986~~
~~2008~~	~~1.011~~	~~1.018~~
~~2007~~	~~1.044~~	~~1.065~~
~~2006~~	~~1.086~~	~~1.128~~
~~2005~~	~~1.127~~	~~1.190~~
~~2004~~	~~1.203~~	~~1.294~~
~~2003~~	~~1.240~~	~~1.346~~
~~2002~~	~~1.259~~	~~1.372~~
~~2001~~	~~1.270~~	~~1.379~~
~~2000~~	~~1.271~~	~~1.392~~
~~1999~~	~~1.293~~	~~1.419~~
~~1998~~	~~1.295~~	~~1.422~~
~~1997~~	~~1.301~~	~~1.434~~
~~1996~~	~~1.333~~	~~1.453~~
~~1995~~	~~1.346~~	~~1.477~~
~~1994~~	~~1.385~~	~~1.537~~
~~1993~~	~~1.432~~	~~1.572~~
~~1992~~	~~1.481~~	~~1.595~~
~~1991~~	~~1.511~~	~~1.604~~
2011	1.000	1.000

2010	1.024	1.027
2009	1.016	1.016
2008	1.040	1.049
2007	1.074	1.098
2006	1.117	1.163
2005	1.159	1.226
2004	1.238	1.334
2003	1.276	1.387
2002	1.295	1.414
2001	1.307	1.421
2000	1.308	1.435
1999	1.330	1.462
1998	1.332	1.466
1997	1.338	1.478
1996	1.371	1.497
1995	1.385	1.522
1994	1.425	1.585
1993	1.473	1.621
1992	1.524	1.644

AUTH: 15-1-201, MCA
IMP: 15-6-138, 15-8-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.22.1311 to demonstrate through the trend tables how the department arrives at market value as required by 15-8-111, MCA.

Annually, the department updates these schedules to inform taxpayers of the current percentages used by the department when valuing and taxing their property. To determine the market value of industrial property, the department historically uses and adopts the concept of trending and depreciation. The method by which trended depreciation schedules are derived is described in the existing rule, and that method is being changed.

As stated in the reasonable necessity to ARM 42.21.113, the department is proposing to amend ARM 42.22.1311 to also comply with the First Judicial District Court order in 1986, which required the department to publish these trend tables annually.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov and must be received no later than February 10, 2012.

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 is available on the department's web site

at www.revenue.mt.gov. Locate "Legal Resources" in the left hand column, select the "Rules" link and view the options under the "Notice of Proposed Rulemaking" heading. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-4375, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson	/s/ Dan R. Bucks
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State on January 3, 2012

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I, and the amendment of ARM 42.20.102 relating to property tax exemptions	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On February 6, 2012, at 2:00 p.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, Helena, Montana, to consider the adoption and amendment of the above-stated rules.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., January 27, 2012, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov.

3. The proposed new rule does not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rule provides as follows:

NEW RULE I TRIBAL GOVERNMENT'S APPLICATION FOR A TEMPORARY PROPERTY TAX EXEMPTION (1) A federally recognized tribe in Montana is eligible for a temporary property tax exemption of tribal fee land on January 1, under the following conditions:

(a) the United States Department of Interior, Bureau of Indian Affairs, submits a written response to the tribe, or certification to the director of the department, that the tribe's initial application for the acquisition of trust title to the tribal fee land was complete as of a specific date; and

(b) the tribe makes timely application to the local department office in the year in which the exemption is sought.

(2) The tribe must file for a property tax exemption on a form available from the local department office in the county in which the tribal fee land is located on or before March 1 of the year for which the exemption is sought or within 30 days after receiving an assessment notice, whichever is later, or in the case of newly acquired land, within 30 days of receiving the initial assessment notice. A tribe with tribal fee lands located in more than one county must file an application for a property tax exemption in each county. Applications postmarked after March 1, will be

considered for the following tax year. For tax year 2012 only, the filing deadline is June 1. All applications postmarked after that date will be considered for the following year.

(3) The following documents must accompany the tribe's application to the department:

(a) a United States Department of the Interior, Bureau of Indian Affairs' letter stating that the tribe's initial application is deemed complete, or certification to the director of the department, that the tribe's application for acquisition of trust title to the tribal fee land was complete as of a specific date; and

(b) a tribal resolution identifying the fee land, by legal description, for which the tribe has applied for federal trust title.

(4) The temporary exemption will:

(a) apply only during the timeframe in which the tribe's application is pending with the United States Department of Interior, Bureau of Indian Affairs;

(b) not exceed five years; and

(c) be removed on December 31 of the year in which the United States Department of Interior, Bureau of Indian Affairs, denies the tribe's application for the acquisition of trust title. The department will:

(i) assess taxes on January 1 of the year after the tribe's application is denied; and

(ii) no longer make available all property associated with a denied application.

(5) The tribe shall annually certify to the director of the department, by March 1, that their trust application is still under consideration by the United States Department of Interior, Bureau of Indian Affairs.

(6) The department will approve or deny the application based on whether the property qualified for the exemption as of January 1 of the year for which the exemption is sought. The department will notify the tribe and the local department office, in writing, of its decision.

(7) The department will remove trust property from the tax rolls, as required by federal law, when the director of the department receives notice that the property has been acquired by the federal government in trust status for a tribe. The department will remove the property from the tax rolls on the date that the deed approving trust status is filed in the county in which the property is located.

(8) When a tribe has administrative or contractual responsibilities, related to their own federal trust application process, the Secretary of Interior, or the person delegated authority by the Secretary of Interior, must certify to the director of the department that the property has been properly accepted into trust by, and is now subject to, the management of the United States, and the specific date that each property was taken into trust. Upon receipt of the certification, the department will direct the local office to contact the county treasurer and remove the parcel(s) from the tax rolls.

AUTH: 15-1-201, 15-6-230, MCA
IMP: 15-6-230, MCA

REASONABLE NECESSITY: The department is proposing to adopt New

Rule I, following the passage of Ch. 288, L. 2011 (15-6-230, MCA), by the Legislature, which allows for federally recognized tribes to receive a temporary exemption of property taxes on tribal fee land when the tribe has a trust application for the land pending with the United States Department of Interior, Bureau of Indian Affairs.

Section (1) defines the eligibility requirements. Section (2) states the March 1 application deadline. The March 1 deadline is necessary to allow the department sufficient time to review the applications and make the necessary adjustments in the property tax system before the department sends its certification of values to the county treasurers for tax billing. This section also extends the 2012 application deadline for tribal governments to June 1, 2012, because 2012 is the first tax year in which this exemption will be in effect; and to allow sufficient time for the administrative rules process. Section (3) identifies the documentation that must accompany the tribe's application. Section (4) specifies timeframes of the exemption that include when the exemption will be applied, when it will be removed, and the maximum time allowed for the exemption. Section (5) requires the tribe to annually certify to the department that the tribe's application with the federal government is still pending.

Sections (6), (7), and (8) follow the current practice of the department. Section (6) states that the department will inform the tribe and local revenue office of the decision to grant or deny an application. Section (7) cites the date that the department will remove property from the tax rolls. Section (8) informs tribes with contracting or compacting agreements with the federal government that the Secretary of Interior is responsible for certifying to the department the specific date in which the property was taken into trust.

Portions of this new rule closely mirror the language of the statute, for example, "the United States Department of Interior, Bureau of Indian Affairs, has determined that the initial trust application submitted by the tribe is complete." Restating the language in the rule helps elucidate the process and improves efficiency, but does not change the statute.

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

42.20.102 APPLICATIONS FOR PROPERTY TAX EXEMPTIONS (1) The property owner of record, ~~or~~ the property owner's agent, or a federally recognized tribe, must ~~make application through the department in order to obtain a property tax exemption. An application must be filed~~ file an application for a property tax exemption on a form available from the local department office before March 1, except as provided in [NEW RULE I] for 2012, of the year for which the exemption is sought or within 30 days after receiving an assessment notice, whichever is later. Applications postmarked after March 1 or more than 30 days of receiving the assessment notice, whichever is later, will be considered for the following tax year only, unless the department determines any of the following conditions are met:

(a) the taxpayer ~~is notified after March 1 by~~ receives notice by way of an AB-34 (Removal of Property Tax Exemption ~~Letter~~) that the property will be placed on the tax roll. The taxpayer shall have 30 days after receipt of the notice to submit an

application for exemption; or

(b) ~~the local department office refuses to accept an application a taxpayer or organization is attempting to submit before March 1;~~

~~(c) the local department office gives the applicant incorrect application information; or~~

~~(d)~~ the applicant was unable to apply for the current year due to hospitalization, physical illness, infirmity, or mental illness. ~~These impediments must be demonstrated to have existed at significant levels from January 1 of the current year to the time of application. Extensions will be granted through July 1, or up to 30 days after the last general mailing of real property assessment notices has occurred in that county, for the current year for those impediments.~~

(2) The following documents must accompany ~~the~~ all applications:

(a) if the applicant is incorporated, a copy of the applicant's articles of incorporation ~~(if incorporated)~~;

(b) if the applicant is not incorporated, a copy of the applicant's constitution or by-laws;

~~(b)~~(c) if the applicant has been granted tax-exempt status by the Internal Revenue Service (IRS), a copy of the applicant's tax-exempt status letter~~, if they have one~~ (501 determination ~~letter~~);

~~(c) deed or security agreement which is evidence of ownership (for real property only);~~

(d) ~~title of motor vehicle or mobile home or letter of explanation if title is not applicable which is evidence of ownership (for personal property only);~~ a letter:

(i) identifying the parcel by geocode, assessor code, legal description, or physical address; and

(ii) explaining how the organization, or society, believes it qualifies for property tax exemption and the specific use of the real or personal property.

~~(e) letter explaining how the organization or society qualifies for property tax exemption and the specific use of the property; and~~

~~(f) photograph of the property, if available.~~

(3) For an exemption application of a federally recognized tribe, the following documents must accompany all applications:

(a) a tribal resolution identifying the fee land, by legal description;

(b) language stating the type of exemption the tribe is requesting;

(c) language stating how the property qualifies for that type of exemption; and

(d) a statement regarding the specific and exclusive use of the real or personal property.

(4) For personal property exemption applications, the following documents must accompany all applications:

(a) a copy of the title of motor vehicle or mobile home or letter of explanation if title is not applicable, a letter identifying ownership; and

(b) photograph of the property.

(5) For real property exemption applications, the following documents must accompany the applications:

(a) a copy of a fully executed deed, contract for deed, or notice of purchaser's interest or security agreement identifying ownership.

(6) For real property exemption applications where the applicant is requesting exemption of property used for religious purposes, the following documents must accompany the application:

(a) if the application seeks exemption for parsonage, proof that the resident of the building identified as a parsonage is a member of the clergy; or

(b) if the applicant is a federally recognized tribe, a copy of the tribal resolution identifying the fee land as sacred land to be used exclusively for religious purposes, by legal description, language stating the type of exemption the tribe is requesting, and language stating how the property qualifies for this type of exemption, not to exceed 15 acres.

(7) For real property exemption applications where the applicant is requesting exemption of property used for educational purposes, the following documents must accompany the application:

(a) documentation verifying the entity is not operated for gain or profit;

(b) a copy of the applicant's attendance policy;

(c) a copy of the applicant's curriculum which identifies the applicant's systematic course of instruction;

(d) for property, of any acreage, owned by a tribal corporation created for the sole purpose of establishing schools, colleges, and universities (a) through (c) must accompany the tribe's application; and

(e) if the applicant is a federally recognized tribe, a copy of the tribal resolution identifying the fee land to be used exclusively for educational purposes, by legal description, language stating the type of exemption the tribe is requesting, and language stating how the property qualifies for this type of exemption.

(8) For real property exemption applications where the applicant is requesting exemption of property used for nonprofit healthcare facilities, the following documents must accompany the application:

(a) a copy of the health care facility's license from the Department of Public Health and Human Services; or

(b) if the applicant is a federally recognized tribe, a copy of the tribal resolution identifying the fee land to be used exclusively for health care services, by legal description, language stating the type of exemption the tribe is requesting, and language stating how the property qualifies for this type of exemption.

(9) For real property exemption applications where the applicant is requesting exemption of property used solely in connection with a cemetery or cemeteries, the following documents must accompany the application:

(a) proof of a permanent care and improvement fund;

(b) verification that the entity is not operated for gain or profit; and

(c) if the applicant is a federally recognized tribe, a copy of the tribal resolution identifying the fee land to be used exclusively as a cemetery or cemeteries, by legal description, language stating the type of exemption the tribe is requesting, and language stating how the property qualifies for this type of exemption.

(10) For real property exemption applications submitting use for parks and recreational facilities, the following documents must accompany the applications:

(a) documentation verifying the park and/or recreational facility is open to the general public; or

(b) if a federally recognized tribe, a tribal resolution identifying the fee land to be used exclusively for parks and recreational facilities, by legal description, language stating the type of exemption the tribe is requesting, and language stating how the property qualifies for this type of exemption, not to exceed 15 acres.

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

~~(4)~~(12) If the property is owned by a governmental entity (such as city, county, or state), the federal government (unless Congress has passed legislation allowing the state to tax property owned by a federal entity), tribal government, nonprofit irrigation districts organized under Montana law, municipal corporations, public libraries, or rural fire districts and other entities providing fire protection under Title 7, chapter 33, MCA, the department will employ the following exemption criteria for real property when considering exemption claims based upon 15-6-201, MCA:

(a) the properties will be tax-exempt as of the purchase date that is reflected on the deed or security agreement;

(b) if a property is tax-exempt as of January 1 of the current tax year and is sold to a nonqualifying purchaser after January 1 of the current tax year, it becomes taxable upon the transfer of the property. The tax is prorated according to 15-16-203, MCA; and

(c) if a property is tax-exempt, as stated in ~~(4)~~(12)(b), and is sold as tax-deed property to a nonqualifying purchaser after January 1 of the current tax year, it becomes taxable on January 1 following the execution of such contract or deed as provided in 7-8-2307, MCA.

~~(5)~~(13) The department will employ the following exemption criteria for real properties when considering exemption claims based upon 15-6-201, 15-6-203, ~~and~~ 15-6-209, 15-6-211, 15-6-216, 15-6-221, and 15-6-230, MCA.

(a) Real property purchased by a qualifying exemption applicant after January 1 of the current tax year will become exempt on the date of acquisition as evidenced by the deed and realty transfer certificate, if an application (if one is required for the exemption) is filed by the application deadline for that tax year and the property meets statutory requirements.

AUTH: 15-1-201, 15-6-230, MCA
IMP: 7-8-2307, 15-6-201, 15-6-203, 15-6-209, 15-6-211, 15-6-216, 15-6-221, 15-6-230, 15-7-102, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.102 following the passage of Ch. 278, L. 2011 (15-6-201, MCA) by the Legislature, which allows federally recognized tribes to receive certain property exemptions for property located within the exterior boundaries of the reservation for the purposes of essential government services, education facilities, religious and sacred land, cemeteries, and parks and recreational facilities.

Section (1) is proposed to be amended to allow tribes a one-time extension for tax year 2012 to submit the exemption application and to define the deadline in the instance of a property taxpayer receiving notice that the property is being removed from tax-exempt status. Sections (2) through (10) are proposed to be amended to define the documentation required for each type of exemption for applicants. These proposed sections also include specific language related to tribal

governments. Section (13) is proposed to be amended to update statutory citations. These proposed amendments to the rule ensure mutual accountability between the department and the exemption applicants by specifying the property exemption process in greater detail. They also provide specific guidelines for tribal governments to follow when making determinations about applications for property exemptions within the exterior boundaries of the reservation.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov and must be received no later than February 10, 2012.

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 is available on the department's web site at www.revenue.mt.gov. Locate "Legal Resources" in the left hand column, select the "Rules" link and view the options under the "Notice of Proposed Rulemaking" heading. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the person in 5 above, or faxed to the office at (406) 444-4375, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor of SB 412, L. 2011, Senator Shannon Augare, and the primary bill sponsor of HB 618, L. 2011, Representative Carolyn Pease-Lopez, were notified by regular mail on November 14, 2011, and again on December 19, 2011, by electronic and regular mail.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State January 3, 2012

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.21.158 relating to personal property reporting requirements	) NOTICE OF PROPOSED) AMENDMENT)) NO PUBLIC HEARING) CONTEMPLATED

TO: All Concerned Persons

1. On February 24, 2012, the department proposes to amend the above-stated rule.

2. The Department of Revenue 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 Revenue no later than 5:00 p.m. on January 20, 2012, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5825; fax (406) 444-4375; e-mail canderson@mt.gov.

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

42.21.158 PROPERTY REPORTING REQUIREMENTS (1) through (7) remain the same.

(8) For purposes of applying ~~(6)~~(7):

(a) stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust is considered as being owned proportionately by or for its shareholders, partners, or beneficiaries; and

(b) an individual is considered as owning the stock owned, directly or indirectly, by the individual's spouse or minor child.

(9) remains the same.

(10) For any tax year after 2012, the exemption from tax provided in (2) may be denied for the property of any person that does not either:

(a) affirm on their personal property and business equipment reporting form that they have no affiliated entities; or

(b) identify their affiliated entities on their personal property and business equipment reporting form as provided in ~~(8)~~(9).

AUTH: 15-1-201, 15-9-101, MCA
IMP: 15-1-121, 15-1-303, 15-6-138, 15-8-104, 15-8-301, 15-8-303, 15-8-309, 15-9-101, 15-24-902, 15-24-903, 15-24-904, 15-24-905, MCA

RESONABLE NECESSITY: The department proposes to amend ARM 42.21.158 to correct references that were inadvertently not revised when sections within the rule were amended in MAR Notice Number 42-2-867, at page 2675, of the 2011 Montana Administrative Register, Issue No. 23, which became effective on 12/9/2011.

4. Concerned persons may submit their data, views, or arguments in writing. Written data, views, or arguments may be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov and must be received no later than 5:00 p.m., February 10, 2012.

5. If persons who are directly affected by the proposed action wish to express their data, views, and arguments orally or in writing they must make written request for a hearing and submit this request along with any written comments they have to Cleo Anderson at the above address no later than 5:00 p.m., February 10, 2012.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee; from a governmental subdivision or agency; or from an association having no 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 1,702 based on approximately 17,029 class eight personal property taxpayers in Montana, as of tax year 2010.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the person in number 4 above or faxed to the office at (406) 444-4375, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. An electronic copy of this notice is available on the department's web site at www.revenue.mt.gov. Locate "Legal Resources" in the left hand column, select the "Rules" link and view the options under the "Notice of Proposed Rulemaking" heading. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered.

In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

/s/ Cleo Anderson	/s/ Dan. R. Bucks
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State January 3, 2012

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.3.101, 44.3.1701, 44.3.1703, 44.3.1714, 44.3.1720, 44.3.2010, 44.3.2015, 44.3.2103, 44.3.2110, 44.3.2111, 44.3.2113, 44.3.2402, 44.3.2403, 44.3.2501, 44.3.2505, 44.9.201 through 44.9.203, 44.9.303, 44.9.306, 44.9.307, 44.9.310 through 44.9.312, and 44.9.401 through 44.9.404, the amendment and transfer of 44.9.312, the repeal of 44.3.103, 44.3.2305, 44.3.2401, 44.9.101 through 44.9.103, 44.9.301, 44.9.302, 44.9.304, 44.9.305, 44.9.309, 44.9.314, 44.9.315, and 44.9.405, and the transfer of ARM 44.9.201 through 44.9.204, 44.9.303, 44.9.306, 44.9.307, 44.9.310, 44.9.311, and 44.9.401 through 44.9.404 pertaining to elections	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, AMENDMENT AND TRANSFER, REPEAL, AND TRANSFER

TO: All Concerned Persons

1. On February 2, 2012, a public hearing will be held at 9:30 a.m. in the Secretary of State's Office Conference Room, Room 260, State Capitol Building, Helena, Montana, to consider the proposed amendment, amendment and transfer, repeal, and transfer of the above-stated rules.

2. The Secretary of State 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 Secretary of State no later than 5:00 p.m. on January 26, 2012, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 461-5173; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

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

<u>44.3.101 INTRODUCTION, SCOPE, AND INTENT</u> (1) The purpose of these rules is to establish minimum guidelines to be used in determining whether facilities used for voting in certain elections are accessible to electors with disabilities and elderly electors pursuant to the Americans With Disabilities Act, 42 U.S.C.

12132, and the Voting Accessibility for the Elderly and Handicapped Act, ~~Public Law 98-435, passed by the 98th Congress~~ 42 U.S.C. 1973ee, et seq.

(2) remains the same.

(3) For the purpose of clarity and throughout these rules, ~~Pub. L. 98-435~~ the Voting Accessibility for the Elderly and Handicapped Act shall be referred to as the Voting Accessibility Act. The Americans With Disabilities Act will be referred to as the ADA.

(4) These rules shall only apply to federal elections conducted under 13-1-104~~(1)~~ and 13-1-107, MCA.

AUTH: 13-1-202, 13-3-205, MCA
IMP: 13-1-202, 13-3-205, MCA

REASON: The amendment to (1) substituting the U.S.C. citation for the Public Law citation is reasonably necessary because the Act was not codified at the time the rule was originally written. The amendment to (2) is made for consistency. The amendments to (4) are to clarify that the rules only apply to federal primary and federal general elections and to conform to Secretary of State guidelines advising agencies to avoid using citation earmarks in rule text.

44.3.1701 EXAMINATION OF VOTING MACHINES AND DEVICES

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

~~(c) "Ballot card" means a ballot which is used for voting by the process of punching.~~

(~~d) "Ballot labels" means the cards, papers, booklets, pages or other material containing the names of offices and candidates and statements of ballot issues to be voted on.~~

~~(e)~~(c) "Ballot" includes ~~ballot cards, ballot labels and~~ paper ballots.

~~(f)~~(d) "Device" means an apparatus used for voting by the process of ~~punching, piercing or otherwise~~ marking of a ballot. Ballots are counted using automatic tabulating equipment.

(g) remains the same, but is renumbered (e).

~~(h)~~(f) "Examiners" means any or all persons having authority to conduct the examination under ARM 44.3.1701~~(3)~~.

(i) remains the same, but is renumbered (g).

~~(j)~~(h) "Marking device" means ~~either an apparatus in which ballots or ballot cards are inserted and used in connection with a punch apparatus for the piercing of ballots by the elector or~~ any approved device for marking a paper ballot with ink or other substance which will enable the ballot to be tabulated by means of automatic tabulating equipment.

~~(k) "Mechanical voting machine" means an apparatus used for voting that is self-contained using levers and providing a tabulating system within the machine.~~

(l) and (m) remain the same, but are renumbered (i) and (j).

(3) through (7) remain the same.

AUTH: 13-1-202, 13-17-103, 13-17-107, MCA
IMP: 13-1-202, 13-17-101, 13-17-103, MCA

REASON: The elimination of (2)(c), (d), and (k) and the amendments to the new (2)(c), (d), and (h) are to clarify that since punch card ballots are prohibited by 13-17-108, MCA, the reference in the rules to piercing and punching ballots should be removed. The amendment to (2)(f) is to conform to Secretary of State guidelines advising agencies to avoid using citation earmarks in rule text.

44.3.1703 CRITERIA OF CONSTRUCTION (1) through (6) remain the same.

(7) Where applicable no device shall be approved if the act of voting by an elector does not produce a visible effect upon the ballot~~, either by piercing thereof or~~ by application of a visible substance to the ballot.

AUTH: 13-17-107~~(1)~~, MCA
IMP: 13-17-103, MCA

REASON: This amendment is reasonably necessary to clarify that since punch card ballots are prohibited by 13-17-108, MCA, no devices for piercing a ballot are used. The authority and implementation citations were reviewed and modified to conform to Secretary of State guidelines advising against using citation earmarks.

44.3.1714 HANDLING VOTING ~~SYSTEM~~ MACHINE ERROR DURING COUNT (1) During a count of paper ballots in which votes are being automatically tabulated by a voting ~~system~~ machine, if the election administrator or counting board has reason to believe that the voting ~~system~~ machine is not operating correctly, the count must be halted and the ~~system~~ machine must be tested, as applicable, in accordance with the procedures specified in the instruction manuals, user guides, and technical manuals provided by the manufacturer of the voting system, as well as the election judge handbook provided by the office of the secretary of state, except in cases in which those materials conflict with state laws or rules, in which case the laws or rules shall apply.

(2) If the test does not show any errors, the count must proceed using the voting ~~system~~ machine.

(3) If the test shows errors and the errors cannot be corrected or ~~if~~ a majority of the counting board agrees that the ~~system~~ machine may not be functioning correctly~~,~~:

(a) if no other tested voting machine is available, votes cast on paper ballots must be counted manually in accordance with 13-15-206~~(2)~~, MCA~~.~~: and

(b) the vote-counting machine involved in the discrepancy in that county may not be used in another election until it has been examined and tested by a computer software expert in consultation with a voting machine vendor and approved by the secretary of state.

AUTH: 13-15-206, ~~13-15-209,~~ 13-17-211, MCA
IMP: 13-15-209, MCA

REASON: The amendments to the rule title, (1), (2), and (3) substituting the words "voting machine" for "voting system" are reasonably necessary because although these terms are generally used interchangeably, the term "voting machine" is more precise than "voting system." The amendment eliminating the citation earmark in (3)(a) is to conform to Secretary of State guidelines advising agencies to avoid using citation earmarks in rule text. The proposed changes to (3)(a) and (b) are to specify that if there is a voting machine that is not operating correctly, that machine should be set aside, but if another tested voting machine is available, that machine should be able to be used instead. Otherwise, determining election results in large counties could take as long as a week or more. The machine in question should not be used in another election until it has been examined and tested. The authority and implementation statutes were reviewed and corrected.

44.3.1720 REPORTING PROCESS FOR RANDOM-SAMPLE AUDIT

(1) remains the same.

(2) The secretary of state shall post the results of the state board of canvassers' random-sample audit selections on its web site.

AUTH: 13-1-202, 13-17-503, MCA
IMP: 13-17-505, 13-17-506, 13-17-507, MCA

REASON: The amendment to (2) is reasonably necessary to clarify in rule that the Secretary of State is responsible for making a list of the State Board of Canvassers' random-sample audit selections available electronically consistent with 13-17-505, MCA. The authority and implementation statutes were reviewed and updated.

44.3.2010 APPLICANTS INELIGIBLE DUE TO AGE OR RESIDENCE REQUIREMENTS (1) An applicant for voter registration who is ~~not~~ ineligible to register because of residence or age requirements, but who will be eligible on or before election day, may apply for voter registration pursuant to 13-2-110, MCA. ~~An election official shall register the applicant as an active elector.~~

(2) For any applicants who are ineligible to register because of age requirements, an election official shall register them with a vote-eligible date that matches the individual's 18th birthday.

(3) For any applicants who are ineligible to register because of residency requirements, an election official shall register them with a vote-eligible date that matches the date the applicant will meet residency requirements.

(4) The statewide voter registration database shall not include in the register the name of any individual who will not be at least 18 years of age or who will not have been a resident of Montana for at least 30 days on or before election day.

AUTH: 13-2-109, MCA
IMP: 13-2-110, 13-2-205, MCA

REASON: These amendments are reasonably necessary to clarify that individuals who are not 18 at the time of registration are given a vote-eligible date to match their 18th birthday and that individuals who do not meet the residency requirements at the

time of registration are given a vote-eligible date matching the date the applicant will meet the residency requirements.

44.3.2015 LATE REGISTRATION PROCEDURES (1) remains the same.

(a) Any elector wishing to register after noon on the day before election day may submit a voter registration application at the county election administrator's office, but the elector must appear at the county election office by 8 p.m. on election day in order to complete the late registration process and receive an absentee ballot.

(2) through (7) remain the same.

AUTH: 13-2-108, MCA
IMP: 13-2-304, 13-2-514, MCA

REASON: The amendment to (1)(a) is reasonably necessary to clarify that an elector desiring to complete the late registration process and receive an absentee ballot must appear at the county election office by the close of polls, that is 8 p.m. on election day.

44.3.2103 PRINTING OF IDENTIFICATION AND PROVISIONAL VOTING MATERIALS (1) through (1)(c) remain the same.

(d) verified and unverified provisional ballot ~~containers~~ labels;

(e) remains the same.

(f) polling place elector identification forms as defined in ARM 44.3.2102~~(8)~~; and

(g) and (2) remain the same.

AUTH: 13-13-603, MCA
IMP: 13-13-112, 13-13-603, MCA

REASON: The amendment to (1)(d) is reasonably necessary to specify that provisional ballot "labels" rather than "containers" are printed. In (1)(f), the ARM citation earmark (8) is eliminated to conform to Secretary of State guidelines advising agencies to avoid using citation earmarks in rule text.

44.3.2110 PROCEDURES AT THE POLLING PLACE FOR DETERMINING THE SUFFICIENCY OF IDENTIFICATION - PRIOR TO CASTING A BALLOT

(1) Consistent with 13-13-114, MCA, before an elector is permitted to receive a ballot or vote, the elector shall present to an election judge one of the forms of required identification defined in ARM 44.3.2102~~(6)~~.

(2) and (a) remain the same.

(b) complete a polling place elector identification form, as defined in ARM 44.3.2102~~(8)~~.

(3) through (3)(b) remain the same.

(c) consistent with 13-13-114~~(1)(c) and (d)~~, MCA, if the identification provided differs from information in the precinct register, but an election judge determines that the information provided is sufficient to verify the voter's identity to vote pursuant to 13-2-512, MCA, the elector may sign the precinct register, complete a transfer form

or new registration form to correct the elector's voter registration information, and vote. An election judge shall write "transfer form" or "registration form" in the register beside the name of any elector submitting a form.

(4) Consistent with 13-13-114~~(3) and (4),~~ and 13-1-116, MCA, if the elector is not able to sign the elector's name to the precinct register, a fingerprint or other identifying mark may be used, or the elector may have an election administrator or election judge, or another person who has been designated by the elector as the elector's agent, provide a signature or identifying mark. If the elector fails or refuses to sign the elector's name or, if unable to write, fails to provide a fingerprint or other identifying mark, the elector may cast a provisional ballot as provided in 13-13-601, MCA, and these rules.

AUTH: 13-13-603, MCA
IMP: 13-1-116, 13-13-114, MCA

REASON: The amendments to (1), (2)(b), (3)(c), and (4) are reasonably necessary to conform to Secretary of State guidelines advising agencies to avoid using citation earmarks in rule text.

44.3.2111 PROCEDURES AT THE POLLING PLACE FOR DETERMINING ELIGIBILITY TO VOTE - PRIOR TO CASTING A BALLOT (1) An individual who provides sufficient identification specified in ARM 44.3.2192~~(6)~~, but whose name does not appear on the precinct register, shall be permitted to:

(a) through (a)(iii) remain the same.

~~(iv)~~(b) if the election official is unable to verify the individual's eligibility while the individual is at the polling place, sign the precinct register and cast a provisional ballot.

(2) Consistent with 13-13-114~~(1)(c) and (d)~~, MCA, if the information provided by the elector differs from information in the precinct register, but an election judge determines that the information provided is sufficient to verify the voter's eligibility to vote pursuant to 13-2-512, MCA, the elector may sign the precinct register, complete a transfer form or new registration form to correct the elector's voter registration information, and vote. An election judge shall write "transfer form" or "registration form" beside the name of any elector submitting a form.

(3) Consistent with 13-13-114~~(3) and (4),~~ and 13-1-116, MCA, if the elector is not able to sign the elector's name to the precinct register, a fingerprint or other identifying mark may be used, or the elector may have an election administrator or election judge, or another person who has been designated by the elector as the elector's agent, provide a signature or identifying mark. If the elector fails or refuses to sign the elector's name or, if unable to write, fails to provide a fingerprint or other identifying mark, the elector may cast a provisional ballot as provided in 13-13-601, MCA, and these rules.

AUTH: 13-13-603, MCA
IMP: 13-13-114, MCA

REASON: The amendments to (1), (2), and (3) are reasonably necessary to conform to Secretary of State guidelines advising agencies to avoid using citation earmarks in rule text.

44.3.2113 PROVISIONAL VOTING PROCEDURES AT THE POLLING PLACE AND AT THE ELECTION ADMINISTRATOR'S OFFICE - CASTING A BALLOT (1) through (6) remain the same.

AUTH: 13-13-603, MCA
IMP: 13-13-114, 13-13-601, 13-15-107, MCA

REASON: It is reasonably necessary to amend the rule title to clarify that provisional voting procedures are available at either the polling place or at the election administrator's office. This amendment is particularly necessary due to the increased use of late registration.

44.3.2402 DETERMINING A VALID VOTE IN MANUALLY COUNTING AND RECOUNTING PAPER ~~AND OPTI-SCAN~~ BALLOTS (1) Before being counted, each questionable vote on a paper ballot set aside under 13-15-206~~(2)(a) or (3)(b)~~, MCA, must be reviewed by the ~~counting~~ designated board. The ~~counting~~ board shall evaluate each questionable vote according to the rules below:

(a) and (b) remain the same.

(2) The following general rules shall apply in a count or recount of paper ~~and opti-scan~~ ballots:

(a) ~~two (or more)~~ more than one designated voting area~~s have~~ has been marked and at least one ~~(or more)~~ mark has been erased, but residue is or is not left. The election officials shall ~~clarify the ballot and~~ cause a vote to be counted for the designated voting area that has been marked;

(b) one designated voting area is marked and ~~a second~~ at least one other designated voting area is marked with a heavy mark and no erasure has been attempted. The election officials shall cause this to be ~~counted~~ designated as an overvote;

(c) the designated voting area has been marked for one ~~response~~ candidate or ballot issue choice and a partially completed mark is made in ~~a~~ at least one other designated voting area. The mark may or may not have some erasure, although for the purpose of this rule erasure is not required. If an erasure is present and it is not sufficient to make the intent of the elector clear, ~~T~~the election officials shall cause this to be ~~counted~~ designated as an overvote~~;~~. If no erasure attempt is made, the election officials shall cause this to be designated as an overvote;

(d) the designated voting area has been marked for one ~~response~~ candidate or ballot issue choice and a hesitation mark is present within at least one other designated voting area. The election officials shall ~~clarify the ballot and~~ cause a vote to be counted for the designated voting area that has been marked;

(e) the designated voting area has not been marked according to instructions, but the ~~response~~ designated voting area, candidate, or ballot issue choice is circled, underlined, checked, or otherwise clearly marked. The election officials shall ~~clarify the ballot by marking the designated voting area beside the~~

~~circled vote if the marking of the designated voting area is consistent throughout the individual's ballot, and~~ cause a vote to be counted for the marked ~~designated voting area~~ choice;

(f) the designated voting area has not been marked according to instructions, but there is a connective line or arrow between the ~~response~~ candidate or ballot issue choice and the designated voting area to indicate the vote. The election officials shall ~~clarify the ballot if the connective line or arrow beside the designated voting area is consistent throughout the individual's ballot, and~~ cause a vote to be counted for the marked designated voting area;

(g) more than one designated voting area has been marked, but no clear mark is used to indicate the ~~correct vote~~ intended candidate or ballot issue choice. This includes, but is not necessarily limited to, instances in which more than the allowable choices are marked, and an "X" has been marked in either or both of the designated voting areas. The election officials shall cause this to be ~~counted~~ designated as an overvote;

(h) more than one designated voting area has been marked, but a clear word, mark, or statement is used to indicate the ~~correct~~ intended vote. The election officials shall ~~clarify the ballot and~~ cause a vote to be counted for the designated voting area indicated as the ~~correct~~ intended vote;

(i) a word or statement has been used to indicate the ~~correct~~ intended vote instead of marking the designated voting area according to instructions. The election officials shall ~~clarify the ballot and~~ cause a vote to be counted for the designated voting area indicated as the ~~correct~~ intended vote;

(j) all of the designated voting areas are crossed out. The election officials shall ~~clarify the ballot and~~ cause this to be ~~counted~~ designated as an undervote~~.~~;

(k) a mark is made outside the designated voting area but close enough to the designated voting area to determine voter intent, and the designated voting area is not marked. The election officials shall cause a vote to be counted for the designated voting area determined as the intended vote;

(l) a ballot is marked with different colors or types of marking instruments. The election officials shall cause votes to be counted as marked by the voter unless it is determined that the ballot is otherwise not valid.

AUTH: 13-15-206, MCA
IMP: 13-15-206, MCA

REASON: The amendment to (1) is reasonably necessary to conform to Secretary of State guidelines advising agencies to avoid using citation earmarks in rule text. The amendments changing the words "election official" to "election officials" are reasonably necessary to clarify that more than one election official is involved in each determination. The amendments to replace language referring to election officials clarifying ballots with language stating that the election officials shall cause votes to be counted or designated as overvotes or undervotes are reasonably necessary to cover a variety of circumstances in which election officials may clarify, duplicate, and/or reject votes. The remaining amendments are reasonably necessary to clarify the intent of current rules and to specify additional rules governing the determinations of valid and invalid votes. Subsections (k) and (l) were

added to cover situations which have arisen or are likely to arise since the past adoption and amendment of the rules, and provide sufficient guarantee that all votes are treated equally among jurisdictions using similar ballot types and voting systems and to further clarify what is a valid vote based on research of other states' valid vote laws and rules based on scenarios that have occurred or may occur, and after consultation with and input from Montana election administrators. Subsection (k) clarifies that if the voter's intent can be discerned, even if the mark is made outside the designated voting area, if no other designated voting area is marked, the vote should be counted for the designated voting area. Subsection (l) clarifies that even though ballot instruction indicates the type of instrument that can be used for marking ballots, ballots marked with other types or colors are still valid.

44.3.2403 DETERMINING A VALID WRITE-IN VOTE IN MANUALLY COUNTING AND RECOUNTING PAPER ~~AND OPTI-SCAN~~ BALLOTS (1) Before being counted, each questionable write-in vote on a paper ballot set aside under 13-15-206~~(2)(a) or (3)(b)~~, MCA, must be reviewed by the ~~counting~~ designated board. The ~~counting~~ board shall evaluate each questionable vote according to the rules below:

(a) and (b) remain the same.

(2) Except as provided in (3), only votes for declared write-in candidates shall be counted. Except as provided in ARM 44.3.2405, a write-in vote may be counted only if the write-in vote identifies an individual by any of the designations filed pursuant to 13-10-211~~(1)(a)~~, MCA, and the oval, box, or other designated voting area on the ballot is marked. The following rules shall apply to determining a valid write-in vote in a count or recount of paper ~~and opti-scan~~ ballots, and must be read in conjunction with ARM 44.3.2402:

(a) a name is written in, but the designated write-in voting area is not marked, and no other candidate is selected. The election officials shall cause this to be designated as an undervote;

~~(a)~~(b) no candidate name or office is written in, but the designated write-in voting area is marked and no other candidate is selected. The election officials shall ~~count this~~ cause this to be designated as an undervote;

~~(b)~~(c) a printed candidate is selected by marking of the designated voting area, and no name is written in, but the designated write-in voting area is marked. The election officials shall ~~count this as a vote~~ cause a vote to be counted for the printed candidate;

~~(c)~~(d) a printed candidate is selected by marking of the designated voting area, any individual's name is written in, and the designated write-in voting area is marked. If the name written in is different from the name of the printed candidate selected, the election officials shall ~~count this~~ cause this to be designated as an overvote. If the name written in is the same as the name of the printed candidate selected, the election officials shall ~~count this as a vote~~ cause a vote to be counted for the printed candidate selected.

~~(d)~~(e) the designated voting area for a printed candidate is marked and the same name is written in, but the designated write-in voting area is not marked. The election officials shall ~~count this~~ cause a vote to be counted for the marked designated voting area;

~~(e)~~(f) comments are written in which do not indicate a clear vote~~,~~ and no candidate is marked. The election officials shall ~~count this~~ cause this to be designated as an undervote;

~~(f)~~(g) the designated voting area for a printed candidate is marked, a comment is written in, and the corresponding designated write-in voting area is or is not marked. The election officials shall ~~count this~~ cause this to be counted as a vote for the printed candidate~~,~~ unless the comment creates uncertainty about who the choice is or directs the election official not to count the vote for the printed candidate selected. In the latter case, the election officials shall ~~count this~~ cause this to be designated as an undervote~~.~~;

(h) at least one printed candidate appears as a candidate for the office and the designated voting area is not marked for any printed candidates, but a name is written in that is not the name of a declared write-in candidate and the corresponding designated write-in voting area is or is not marked. The election officials shall cause this to be designated as an undervote.

(3) through (3)(d) remain the same.

AUTH: 13-15-206, MCA
IMP: 13-10-211, 13-15-206, MCA

REASON: The amendments to (1) and (2) eliminating citation earmarks are reasonably necessary to conform to Secretary of State guidelines advising agencies to avoid using citation earmarks in rule text. The amendments changing the words "election official" to "election officials" are reasonably necessary to clarify that more than one election official is involved in each determination. The amendments to replace language referring to election officials clarifying ballots with language stating that the election officials shall cause votes to be counted or designated as overvotes or undervotes are reasonably necessary to cover a variety of circumstances in which election officials may clarify, duplicate, and/or reject votes. The remaining amendments are reasonably necessary to clarify the intent of current rules and to specify additional rules governing the determinations of valid and invalid votes. The additional rules cover situations which have arisen or are likely to arise since the past adoption and amendment of the rules. Subsections (2)(a) and (2)(h) are added to further clarify what is a valid vote based on research of other states' valid vote laws and rules, based on scenarios that have occurred or may occur, and after consultation and input from Montana election administrators. Subsection (2)(a) clarifies that the designated voting area must be marked in order for a write-in vote to count consistent with 13-15-206(5)(b), MCA. Subsection (2)(h) is necessary to clarify that a write-in vote can only be counted if the name written in is the name of a declared write-in candidate, unless there are no write-in candidates and no candidate names appear on the ballot for that race, consistent with 13-15-206(5), MCA.

44.3.2501 UNITED STATES ELECTORS (1) through (1)(c) remain the same.

(d) in ~~even-year general~~ elections for which a voter information pamphlet is required, election administrators must notify United States electors that the voter information pamphlet is available online, which can be accomplished through either:

(i) and (ii) remain the same.

AUTH: 13-21-103, MCA
IMP: 13-13-205, 13-21-103, 13-21-201, MCA

REASON: The amendment is reasonably necessary to clarify that a voter information pamphlet may be printed for elections other than even-year general elections. The authority and implementation statutes were reviewed and updated.

44.3.2505 RECEIVING BALLOTS (1) The election administrator shall receive all facsimile ballots. As the ballots are printed out by the machine, they shall be checked by the election administrator to ensure that ~~they are~~:

(a) they are readable in that the transmission has not made it impossible for the election judges to determine the elector's intentions; and

(b) remains the same.

AUTH: 13-21-104, MCA
IMP: 13-21-207, MCA

REASON: The amendment is reasonably necessary to correct a typographical error in the rule text.

44.9.201 INITIATION OF USE IN MULTICOUNTY DISTRICT (1) remains the same.

(2) If the initiative is taken by the applicable governing body, it shall proceed as provided ~~in section 8 of the Act~~ by law, except that the requesting resolution shall be addressed to the election administrator in each affected county.

(3) through (5) remain the same.

(6) If the initiative for the use of the mail ballot option in a multicounty district is taken by the election administrators, then they shall proceed as provided ~~in section 9 of the Act~~ by law, except that some form of ~~written~~ concurrence to both the written plan and the designation of a chief election administrator shall be ~~signed~~ made by each election administrator involved and accompany the written plan.

AUTH: 13-19-105, MCA
IMP: 13-19-201, MCA

REASON: The amendments to (2) and (6) removing the reference to "the Act" and substituting "by law" are reasonably necessary as the mail ballot election statutes were not codified when the administrative rule was originally adopted. The amendment to (6) removing the words "written" and "signed" in reference to concurrences reflects the option for electronic concurrence that may not involve a writing or a signing.

44.9.202 ~~WRITTEN~~ PLAN SPECIFICATIONS (1) through (1)(g) remain the same.

(h) the total number of "places of deposit," other than the election office contemplated, if any, together with the address of each and a description ~~of its nature~~;

(i) through (l) remain the same.

(m) sample written instructions shall be consistent with 13-19-205~~(2)(b)~~, MCA.

AUTH: 13-19-105, MCA
IMP: 13-19-205, MCA

REASON: The word "WRITTEN" is eliminated in the rule title because it is repetitive and unnecessary. The amendment to (1)(h) that eliminates the election office as a place of deposit is reasonably necessary because the election office is always a place of deposit. Therefore, it is not necessary for the election administrator to list the election office on the plan as a place of deposit. Also, the words "of its nature" are deleted in (1)(h) because it is not clear what a place of deposit's "nature" would include. A description of a place of deposit is sufficient. The citation earmark in (1)(m) is eliminated to conform to Secretary of State guidelines advising agencies to avoid using citation earmarks in rule text.

44.9.203 ~~WRITTEN~~ TIMETABLE SPECIFICATIONS (1) The election administrator shall prepare a ~~written~~ timetable for the conduct of the mail ballot election. The timetable shall be in ~~check-off~~ date entry form. It may contain additional activities and may be arranged in a different chronological order but otherwise shall be in substantially the following form:

CALENDAR DATE	ACTIVITY
_____	Copy of ~~written~~ plan to governing body.
_____	Last day for governing body to opt out.
_____	Submission of ~~written~~ plan to secretary of state's office.
~~_____~~	~~Approval by secretary of state.~~
_____	Publish notice specifying close of registration as provided by 13-2-301, MCA.
_____	Close of registration as provided by 13-2-301, MCA.
_____	Ballots mailed.
_____	Election day.

AUTH: 13-19-105, MCA
IMP: 13-19-205, MCA

REASON: The word "WRITTEN" is eliminated in the rule title because it is repetitive and unnecessary. The amendment to substitute "date entry" for "check off" is reasonably necessary because the form requires entry of calendar dates and is in date entry form, not check off form. The removal of the "Approval by secretary of state" activity is reasonably necessary because the Secretary of State's date of

approval is based on the date when the Secretary of State receives the timetable and the counties do not necessarily know the date the Secretary of State receives the timetable.

44.9.303 VOTING BY NONREGISTERED ELIGIBLE ELECTORS

(1) through (3) remain the same.

(a) duly note the elector's nonregistered status on the ~~return/verification~~ signature envelope, either at the time of voting if in person, or prior to mailing; and

(b) remains the same.

AUTH: 13-19-105, MCA
IMP: 13-19-304, MCA

REASON: The amendment to (3)(a) is reasonably necessary due to the passage of House Bill 99 by the 2011 Montana Legislature. House Bill 99 generally revised the laws relating to absentee ballots and mail ballots. One of the revisions made was to change the name of the "return/verification envelope" to "signature envelope." Therefore, the amendment reflected above is necessary to ensure the administrative rule language conforms to the amended statutory language.

44.9.306 DISPOSITION OF BALLOTS RETURNED AS UNDELIVERABLE

(1) The election administrator follows the procedures in 13-19-313 and 13-13-245, MCA, for mail ~~B~~ballots returned by the post office as undeliverable ~~should be filed and shall be~~ and files and securely retain~~ed~~s said ballots.

(2) and (a) remain the same.

(b) if the elector's ballot is found there, then deliver it to the elector, either in person or~~,~~ by mail, after the elector updates the elector's address ~~verification,~~ by submitting a new voter registration card or other written update of the elector's address, either in person or by mail; and

~~(c) provide a Change of Address card if appropriate; and~~

(c) document the action taken in a log maintained for that purpose or in the statewide voter registration system.

~~(d) make the appropriate notation in the daily ballot return log.~~

(3) and (4) remain the same.

AUTH: 13-19-105, MCA
IMP: ~~13-19-206~~ 13-19-313, MCA

REASON: The amendments are reasonably necessary due to the passage of House Bill 99 by the 2011 Montana Legislature. House Bill 99 generally revised the laws relating to absentee ballots and mail ballots. The amendments to (1), (2)(b), and (2)(c) conform the administrative rule to statutory changes made in House Bill 99 to clarify that if a mail ballot is undeliverable, the elector must update their address in writing in order to be provided with their ballot or with a replacement ballot. The authority and implementation statutes were reviewed and updated.

44.9.307 PLACES OF DEPOSIT - ELECTION OFFICIAL DUTIES ~~(1) The Act provides that the election administrator may designate one or more places within the political subdivision in which the election is conducted as places of deposit where ballots may be returned by the elector or the elector's agent or designee.~~

~~(2) Whenever a place of deposit is designated, the election administrator shall also designate at least two election officials who are selected in the same manner as provided for the selection of election judges in 13-4-102, MCA, to be responsible for all mail ballot election procedures at that place of deposit. Such designated election officials shall:~~

(1) Election officials, as designated in 13-19-307, MCA, shall:

(a) be duly appointed ~~and deputized~~ as provided by ~~law~~ 13-19-307, MCA;

(b) through (d) remain the same.

(e) be personally available at such place of deposit as specified in 13-19-307~~(2)~~, MCA;

(f) remains the same.

(g) personally ensure that all ballots and other official materials in ~~his~~ their possession are and remain secure at all times.

~~(3) The election administrator shall provide a transport box, secured as required, for the deposit of ballots returned to each place of deposit.~~

AUTH: 13-19-105, MCA
IMP: 13-19-307, MCA

REASON: The rule title is updated to clarify that the rule addresses election official duties at the places of deposit. Sections (1), (2), and (3) are deleted because the provisions are now addressed in 13-19-307, MCA. The amendment to (1)(e) is to conform to Secretary of State guidelines advising agencies to avoid using citation earmarks in rule text. The amendment to (1)(g) is to apply gender neutrality.

44.9.310 PROCEDURES TO SECURE BALLOTS (1) Ballots and related materials must be secure at all times, including during necessary transport times.

(2) The procedures to secure ballots and materials, including during necessary transport times, shall be substantially similar to procedures used to secure ballots in a regular election.

AUTH: 13-19-105, MCA
IMP: 13-19-105, 13-19-307, MCA

REASON: The rule amendments are reasonably necessary to include the provisions of ARM 44.9.309, which is being repealed. The authority and implementation statutes were reviewed and updated.

44.9.311 RECORDS OF BALLOTS RECEIVED (1) The election administrator shall record in a log or in the statewide voter registration system ~~he~~ maintain~~s~~ed for that purpose the number and source of all ballots received at the processing center including:

(a) through (d) remain the same.

AUTH: 13-19-105, MCA
IMP: 13-19-105, MCA

REASON: The amendment to (1) is reasonably necessary to apply gender neutrality. The amendment to add an alternative option, to record mail ballot receipt information in the statewide voter registration system instead of in a log is reasonably necessary in order to reflect the option of tracking absentee or mail ballots in the statewide voter registration system and to avoid duplication of effort.

44.9.312 SIGNATURE VERIFICATION PROCEDURES (1) and (a) remain the same.

(b) unopened ~~return/verification~~ signature envelopes shall be counted by the school district clerk (election administrator) placed in transport boxes and the number of ~~return/verification~~ signature envelopes recorded on the ballot transport logs which are to be sealed inside the transport boxes;

(c) the county election administrator shall break the seal on the transport boxes and verify signatures on the ~~return verification~~ signature envelopes;

(d) remains the same.

(e) the unvalidated ~~return/verification~~ signature envelopes shall be banded together, marked "to be voided and not counted" and placed in the transport boxes with the valid ~~return/verification~~ signature envelopes. The transport boxes shall be resealed and returned to the school district clerk (election administrator) for counting or disposition as provided by law;

(f) through (3) remain the same.

(4) The official shall check and initial each envelope if so required by administrative procedures, as the signature is verified.

AUTH: 13-19-105, MCA
IMP: ~~13-19-310~~ 13-19-304, 13-19-312, MCA

REASON: The amendments to (1) are reasonably necessary due to the passage of House Bill 99 by the 2011 Montana Legislature. House Bill 99 generally revised the laws relating to absentee ballots and mail ballots. One of the revisions made was to change the name of the "return/verification envelope" to "signature envelope." Therefore, the amendments reflected above are necessary to ensure the administrative rule language conforms to the amended statutory language. The amendment to (4) is reasonably necessary because initialing of each envelope is no longer necessary since the signatures are verified in the statewide voter registration database. However, this amendment will still allow the election administrator to initial the envelope at their discretion. The authority and implementation statutes were reviewed and updated.

44.9.401 TRANSMITTAL ENVELOPE (1) remains the same.

~~(2) The words "OFFICIAL BALLOT - DO NOT DELAY" and the full official return address of the election administrator conducting the election shall appear on~~

~~the face of the envelope. The flap side of the envelope may have "VOTE AND RETURN PROMPTLY" printed in large type.~~

~~(3) The transmittal envelope may be a window envelope so that the name and address on the enclosed return/verification envelope is visible.~~

~~(4) Addressing the transmittal envelope to the proper elector is not a substitute for also affixing the elector's name and address to the return verification envelope.~~

AUTH: 13-1-202, 13-19-105, MCA
IMP: 13-19-105, MCA

REASON: Section 13-19-105, MCA, gives the Secretary of State the authority to prescribe the form of materials to be used in the conduct of mail ballot elections with advice from the county election administrators. By deleting (2) through (4) in this administrative rule, the Secretary of State is eliminating specific form requirements that can and do change from time to time based on advice from the county election administrators thereby eliminating the need to amend the administrative rule each time a form requirement is changed.

44.9.402 ~~RETURN/VERIFICATION~~ SIGNATURE ENVELOPE (1) The ~~return/verification~~ signature envelope is used by the elector to mail or return the voted ballot to the proper election administrator and it shall be in substantially the same form as prescribed by the secretary of state.

~~(2) The face of the envelope should have the address of the election administrator both as return address and, in larger type, as mailing address. The words "OFFICIAL BALLOT - DO NOT DELAY" and wording that conforms to postal regulations to require the return, not forwarding of undelivered packets should also appear.~~

~~(3) In the upper-right hand corner should be the words "Place Sufficient Postage Here (1st Class)" enclosed in a box to indicate stamp placement.~~

~~(4) The flap side of the envelope should show by corner brackets where the elector's name and address is to be placed with the following words printed immediately below: "POSTAL CARRIER: DO NOT DELIVER TO THIS ADDRESS--(SEE OTHER SIDE)."~~

~~(5) Beside this space an affidavit shall be printed substantially in one of the following forms:~~

~~(a)~~

~~Voter's Affidavit~~

~~I, the undersigned, hereby swear/affirm that I am registered to vote in Montana or that I am entitled to vote in this election because of special provisions; that I have not voted another ballot; that I have completed this ballot in secret; and that the address listed on this envelope is my correct address (or if it is not, my correct mailing address is:~~

~~_____~~~~). I understand that attempting to vote more than once is a violation of Montana election laws. I further understand that failure to complete the information below will invalidate my ballot.~~

~~_____ _____~~
~~(Signature of Elector) (Today's Date)~~

~~or~~

~~(b)~~

~~Voter's Affidavit~~

~~I, the undersigned, hereby swear/affirm that I am registered to vote in Montana or that I am entitled to vote in this election because of special provisions; that I have not voted another ballot; that I have completed this ballot in secret; and that the address listed on this envelope is my correct address (or if the address is not correct, I have completed a change of address form which I have enclosed in this envelope). I understand that attempting to vote more than once is a violation of Montana election laws. I further understand that failure to complete the information below will invalidate my ballot.~~

~~_____ _____~~
~~(Signature of Elector) (Today's Date)~~

AUTH: 13-1-202, 13-19-105, MCA
IMP: 13-19-105, MCA

REASON: The amendment to (1) changing the name of the "return/verification envelope" to "signature envelope" is reasonably necessary due to the passage of House Bill 99 by the 2011 Montana Legislature. House Bill 99 generally revised the laws relating to absentee ballots and mail ballots. One of the revisions made was to change the name of the "return/verification envelope" to "signature envelope." Therefore, the amendment to (1) reflected above is necessary to ensure the administrative rule language conforms to the amended statutory language. Section 13-19-105, MCA, gives the Secretary of State the authority to prescribe the form of materials to be used in the conduct of mail ballot elections with advice from the county election administrators. By deleting (2) through (5) in this administrative rule, the Secretary of State is eliminating specific form requirements that can and do change from time to time based on advice from the county election administrators thereby eliminating the need to amend the administrative rule each time a form requirement is changed.

44.9.403 SECRECY ENVELOPE (1) The ballot secrecy envelope shall be of a size to fit within the ~~return/ verification~~ signature envelope and shall be in substantially the same form as prescribed by the secretary of state. The words "BALLOT SECRECY ENVELOPE" should be printed on the face.

(2) remains the same.

AUTH: 13-19-105, MCA
IMP: 13-19-105, MCA

REASON: The amendment to (1) changing the name of the "return/verification envelope" to "signature envelope" is reasonably necessary due to the passage of House Bill 99 by the 2011 Montana Legislature. House Bill 99 generally revised the laws relating to absentee ballots and mail ballots. One of the revisions made was to change the name of the "return/verification envelope" to "signature envelope." Therefore, the amendment to (1) reflected above is necessary to ensure the administrative rule language conforms to the amended statutory language.

44.9.404 INSTRUCTIONS TO ~~VOTERS~~ ELECTORS (1) Instructions, as approved by the Secretary of State pursuant to 13-19-205, MCA, shall be included with the ballot, the secrecy envelope, and the ~~return verification~~ signature envelope as part of the packet mailed to the ~~voter~~ elector. The instructions shall detail the mechanical process which must be followed in order to properly cast the ballot. The instructions shall also:

(a) advise the ~~voter~~ elector that the election is to be by mail ballot only, that ~~he~~ the elector must provide ~~his own~~ postage, if ~~such is the case~~ necessary, and that regular polling places will not open;

(b) list the location where the ~~voter~~ elector may obtain a replacement ballot if ~~his~~ the elector's ballot is not received, or is destroyed, spoiled, or lost;

(c) list the location(s) where the ~~voter~~ elector may deposit ~~his~~ the elector's ballot if ~~he~~ the elector chooses not to mail it; and

(d) advise the ~~voter~~ elector that in order for the ~~voter's~~ elector's ballot to be counted, it must be received in the election administrator's office no later than 8:00 p.m. on the day of the election, except as provided in 13-21-206 and 13-21-207, MCA; and

(e) include the information specified under ARM 44.9.202~~(1)(m)~~.

AUTH: 13-19-105, MCA
IMP: 13-19-105, 13-19-205, MCA

REASON: The amendments to the rule title and throughout the rule text to substitute the word "elector" for "voter" are reasonably necessary to conform to statutory language. The amendment to (1) to change the reference from "return verification envelope" to "signature envelope" is reasonably necessary due to the passage of House Bill 99 by the 2011 Montana Legislature. House Bill 99 generally revised the laws relating to absentee ballots and mail ballots. One of the revisions made was to change the name of the "return/verification envelope" to "signature envelope." Amendments to (1)(a) and (1)(c) are to ensure that the rule text is gender neutral. In (1)(d), an additional statutory reference is included to clarify that there are two instances whereby ballots may be accepted after 8 p.m. on election day. The amendment to (1)(e) is to eliminate the reference to the rule citation earmark to conform to Secretary of State guidelines advising agencies to avoid using citation earmarks in rule text.

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

44.9.312 (44.3.2716) SIGNATURE VERIFICATION PROCEDURES
(1) through (4) remain the same.

AUTH: 13-19-105, MCA
IMP: ~~13-19-310~~ 13-19-309, MCA

REASON: The rule implementation statute was reviewed and amended because 13-19-310, MCA, was repealed effective January 1, 2012. ARM 44.9.312 is being transferred to ARM Title 44, chapter 3, where all the other rules regarding elections reside because the placement of the elections rules in ARM Title 44, chapter 9, has proven confusing for the election administrators and the general public.

5. The Secretary of State proposes to repeal the following rules:

44.3.103 DEFINITIONS

AUTH: 13-3-202, MCA
IMP: 13-3-202, MCA

REASON: The definitions provided in this rule are outdated and/or unnecessary because the words are now either defined or clarified in statute.

44.3.2305 PROCEDURES FOR ABSENTEE AND MAIL BALLOT VOTING - PRINTING ERROR OR BALLOT DESTROYED - FAILURE TO RECEIVE BALLOT

AUTH: 13-13-603, MCA
IMP: 13-13-204, 13-13-603, 13-15-107, 13-19-313, MCA

REASON: Section 13-13-204, MCA, as amended by the 2011 Montana Legislature in House Bill 99, includes the information contained in this administrative rule thereby eliminating the necessity for this rule.

44.3.2401 BALLOT FORM AND UNIFORMITY

AUTH: 13-12-202, MCA
IMP: 13-12-202, 13-13-205, MCA

REASON: The information provided in this rule is now contained in 13-13-205, MCA, thus eliminating the need for the rule.

44.9.101 INTRODUCTION, SCOPE AND INTENT

AUTH: 13-1-202, 13-19-105, MCA
IMP: 13-19-101, MCA

REASON: The content of this rule is addressed in statute, thereby eliminating the need for the rule.

44.9.102 ROLE OF THE SECRETARY OF STATE

AUTH: 13-19-105
IMP: 13-19-105

REASON: The content of this rule is addressed in statute, thereby eliminating the need for the rule.

44.9.103 DEFINITIONS

AUTH: 13-19-105, MCA
IMP: 13-19-102, MCA

REASON: The definitions provided in this rule are outdated and/or unnecessary because the words are now either defined or clarified in statute.

44.9.301 PROCEDURES FOR VOTING IN PERSON

AUTH: 13-19-105, MCA
IMP: 13-19-303, 13-19-304, MCA

REASON: The provisions of this rule are now addressed in statute, thereby eliminating the need for the rule.

44.9.302 DISPOSITION OF BALLOTS VOTED IN PERSON

AUTH: 13-19-105, MCA
IMP: 13-19-308, MCA

REASON: The provisions of this rule are now addressed in statute, thereby eliminating the need for the rule.

44.9.304 DESIGNATION OF MAILING ADDRESS OR ALTERNATIVE ADDRESS

AUTH: 13-19-105, MCA
IMP: 13-19-308, MCA

REASON: The provisions of this rule are now addressed in statute, thereby eliminating the need for the rule.

44.9.305 REPLACEMENT BALLOTS

AUTH: 13-19-105, MCA
IMP: 13-19-305, MCA

REASON: Sections 13-13-204 and 13-19-305, MCA, as amended by the 2011 Montana Legislature in House Bill 99, ensure that replacement mail ballots and absentee ballots are treated the same. The information contained in ARM 44.9.305 regarding replacement ballots is outdated and has been updated and clarified in statute through the passage of House Bill 99 thereby eliminating the necessity for this rule.

44.9.309 PROCEDURES FOR TRANSPORTING BALLOTS

AUTH: 13-19-105, MCA
IMP: 13-19-105, MCA

REASON: The provisions of this rule have been incorporated into ARM 44.9.310 in this rule notice.

44.9.314 LATE AND LATE TRANSFER REGISTRATION APPLICANTS IN MAIL BALLOT ELECTIONS

AUTH: 13-19-105, MCA
IMP: 13-2-304, MCA

REASON: The provisions of this rule are now addressed in statute, thereby eliminating the need for the rule.

44.9.315 INACTIVE ELECTORS IN MAIL BALLOT ELECTIONS

AUTH: 13-19-105, MCA
IMP: 13-2-222, 13-19-207, MCA

REASON: The provisions of this rule are now addressed in statute, thereby eliminating the need for the rule.

44.9.405 REGISTER

AUTH: 13-19-105, MCA
IMP: 13-19-305, MCA

REASON: This rule is being repealed because it is outdated due to the use of the statewide voter registration database.

6. The Secretary of State proposes to transfer the following rules:

OLD	NEW	
ARM 44.9.201	ARM 44.3.2701	INITIATION OF USE IN MULTICOUNTY DISTRICT

AUTH: 13-19-105, MCA

IMP: 13-19-201, MCA

OLD	NEW	
ARM 44.9.202	ARM 44.3.2702	PLAN SPECIFICATIONS

AUTH: 13-19-105, MCA
IMP: 13-19-205, MCA

OLD	NEW	
ARM 44.9.203	ARM 44.3.2703	TIMETABLE SPECIFICATIONS

AUTH: 13-19-105, MCA
IMP: 13-19-205, MCA

OLD	NEW	
ARM 44.9.204	ARM 44.3.2704	PROPORTIONAL VOTING

AUTH: 13-19-105, MCA
IMP: 13-19-302, MCA

OLD	NEW	
ARM 44.9.303	ARM 44.3.2707	VOTING BY NONREGISTERED ELIGIBLE ELECTORS

AUTH: 13-19-105, MCA
IMP: 13-19-304, MCA

OLD	NEW	
ARM 44.9.306	ARM 44.3.2710	DISPOSITION OF BALLOTS RETURNED AS UNDELIVERABLE

AUTH: 13-19-105, MCA
IMP: 13-19-206, MCA

OLD	NEW	
ARM 44.9.307	ARM 44.3.2711	PLACES OF DEPOSIT – ELECTION OFFICIAL DUTIES

AUTH: 13-19-105, MCA
IMP: 13-19-307, MCA

OLD	NEW	
ARM 44.9.310	ARM 44.3.2714	PROCEDURES TO SECURE BALLOTS

AUTH: 13-19-105, MCA
IMP: 13-19-105, MCA

OLD	NEW	
ARM 44.9.311	ARM 44.3.2715	RECORDS OF BALLOTS RECEIVED

AUTH: 13-19-105, MCA
IMP: 13-19-105, MCA

OLD	NEW	
ARM 44.9.401	ARM 44.3.2720	TRANSMITTAL ENVELOPE

AUTH: 13-1-202, 13-19-105, MCA
IMP: 13-19-105, MCA

OLD	NEW	
ARM 44.9.402	ARM 44.3.2721	SIGNATURE ENVELOPE

AUTH: 13-1-202, 13-19-105, MCA
IMP: 13-19-105, MCA

OLD	NEW	
ARM 44.9.403	ARM 44.3.2722	SECRECY ENVELOPE

AUTH: 13-19-105, MCA
IMP: 13-19-105, MCA

OLD	NEW	
ARM 44.9.404	ARM 44.3.2723	INSTRUCTIONS TO ELECTORS

AUTH: 13-1-202, 13-19-105, MCA
IMP: 13-19-105, MCA

REASON: The Secretary of State finds it reasonably necessary to transfer the administrative rules concerning Mail Ballot Elections into ARM Title 44, chapter 3, where all the other rules regarding elections reside because the placement of the rules in ARM Title 44, chapter 9, has proven confusing for the election administrators and the general public.

7. 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: Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801; telephone (406) 461-5173; fax (406) 444-4240; or e-mail jquintana@mt.gov, and must be received no later than 5:00 p.m., February 9, 2012.

8. Jorge Quintana, Secretary of State's Office, has been designated to preside over and conduct this hearing.

9. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to

have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 7 above or may be made by completing a request form at any rules hearing held by the Secretary of State.

10. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sos.mt.gov/ARM/Register. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

/s/ JORGE QUINTANA	/s/ LINDA MCCULLOCH
Jorge Quintana	Linda McCulloch
Rule Reviewer	Secretary of State

Dated this 3rd day of January, 2012.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I through NEW RULE X and the amendment of ARM 10.13.307, 10.13.310 through 10.13.313 pertaining to traffic education	))))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On November 25, 2011, the Superintendent of Public Instruction published MAR Notice No. 10-13-122 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 2447 of the 2011 Montana Administrative Register, Issue Number 22.

2. The Superintendent has adopted the following rules as proposed.

NEW RULE I	ARM 10.13.401
NEW RULE II	ARM 10.13.402
NEW RULE III	ARM 10.13.403
NEW RULE IV	ARM 10.13.404
NEW RULE V	ARM 10.13.405
NEW RULE VI	ARM 10.13.406
NEW RULE VII	ARM 10.13.407
NEW RULE VIII	ARM 10.13.408
NEW RULE X	ARM 10.13.410

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

NEW RULE IX (ARM 10.13.409) TRAFFIC EDUCATION CONTENT STANDARD 8 AND BENCHMARKS - DRIVING EXPERIENCE (1) To satisfy the requirements of traffic education content standard ~~7~~ 8, a student must acquire behind-the-wheel driving experience under the direction of a Montana-approved driver education teacher. ~~Students shall be encouraged to obtain additional experience under the direction of a parent or guardian with a valid driver license in accordance with Title 61, chapter 5, part 1, MCA.~~ Under Montana Graduated Driver License regulations (61-5-132, MCA), students are required to obtain additional driving experience under the direction of a parent or guardian with a valid driver's license.

(2) remains as proposed.

4. The Superintendent of Public Instruction has amended ARM 10.13.310 through 10.13.313 as proposed.

5. The Superintendent has amended the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

10.13.307 PROGRAM REQUIREMENTS – DEFINITIONS (1) through (1)(h) remain as proposed.

(i) ~~twelve hours of simulation may be substituted for two hours of behind-the-wheel instruction or six hours of simulation may be substituted for one hour of behind-the-wheel instruction for those schools having traffic simulator equipment approved by the Office of Public Instruction; or~~

~~(ii)~~ up to 12 of the required 60 hours ~~required hereunder~~ may be satisfied by in-vehicle observation of an approved teacher instructing another novice driver; or

(ii) for those schools having traffic simulator equipment approved by the Office of Public Instruction, twelve hours of simulation may be substituted for two hours of behind-the-wheel instruction or six hours of simulation may be substituted for one hour of behind-the-wheel instruction;

(1)(i) through (3)(g) remain as proposed.

6. The Superintendent of Public Instruction has thoroughly considered the comments and testimony received. A summary of the comments received and the Superintendent's responses are as follows:

COMMENT #1: Bob Schalk, Deer Lodge School District, traffic education teacher testified that he had concerns about the following:

(a) the use of the term "novice" specifically questioning whether a novice driver could pass driver's education;

(b) the use of the term "consistently communicate" or "consistently demonstrate;"

(c) the use of the phrase "shall be encouraged" in NEW RULE IX(1), since this is a statutory requirement under Title 61; and

(d) whether or not students were required to have 12 hours of "in-vehicle" observation time.

RESPONSE #1: The Superintendent thanks Mr. Schalk for his comments and responds as follows:

(a) The performance levels are not criteria for passing a driver's education course. Minimum performance objectives for successful completion of a driver's education program are set by the local school district as delineated in ARM 10.13.307.

(b) The terms "consistently communicate" or "consistently demonstrate" are benchmarks with the school district setting the minimum performance objectives. See ARM 10.13.307.

(c) The Superintendent accepts Mr. Schalk's comment and has amended New Rule IX as set forth above.

(d) No, students are not required to have 12 hours of "in-vehicle" observation time. They are required to have six hours of driving time and no more than 12 of the

total 60 hour requirement as "in-vehicle" observation time as delineated in ARM 10.13.307(1)(h). For clarification, the rule has been amended as set forth above.

/s/ Ann Gilkey
Ann Gilkey
Rule Reviewer

/s/ Denise Juneau
Denise Juneau
Superintendent of Public Instruction

Certified to the Secretary of State January 3, 2012.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of NEW RULE I registration for out-of-state volunteer professionals	)))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On November 10, 2011, the Department of Labor and Industry (department) published MAR notice no. 24-101-259 regarding the public hearing on the proposed adoption of the above-stated rule, at page 2335 of the 2011 Montana Administrative Register, issue no. 21.

2. On December 1, 2011, a public hearing was held on the proposed adoption of the above-stated rule in Helena. No comments were received by the December 9, 2011 comment deadline.

3. The board has adopted NEW RULE I (24.101.417) exactly as proposed.

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

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

Certified to the Secretary of State January 3, 2012

BEFORE THE BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.183.404 fee schedule, 24.183.408 certificate of authorization, 24.183.502 and 24.183.503 application, 24.183.510 grant and issue licenses, and 24.183.1104 and 24.183.1107 uniform standards	)))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On August 11, 2011, the Board of Professional Engineers and Professional Land Surveyors (board) published MAR notice no. 24-183-38 regarding the public hearing on the proposed amendment of the above-stated rules, at page 1449 of the 2011 Montana Administrative Register, issue no. 15.

2. On September 1, 2011, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Several comments were received by the September 9, 2011, deadline.

3. The board has thoroughly considered the comments received. A summary of the comments and the board's response is as follows:

COMMENT 1: Several commenters opposed the proposed amendments to ARM 24.183.1104 and 24.183.1107.

RESPONSE 1: Following the review and consideration of these comments, and due to concerns raised by the comments and by the board itself, the board has decided not to amend these two rules at this time. The board anticipates conducting additional research and having subsequent discussions to address issues raised by the comments.

4. The board has amended ARM 24.183.404, 24.183.408, 24.183.502, 24.183.503, and 24.183.510 exactly as proposed.

5. The board did not amend ARM 24.183.1104 and 24.183.1107.

BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS
DAVID ELIAS, CHAIRMAN

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

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

Certified to the Secretary of State January 3, 2012

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

In the matter of the adoption of New Rules I through VI and the amendment of ARM 36.25.1011 pertaining to the establishment of lease rental rates, lease assignments, and sale procedures for state cabinsites	)))))))	NOTICE OF ADOPTION AND AMENDMENT

To: All Concerned Persons

1. On November 10, 2011, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-158 regarding a notice of public hearing on the proposed adoption and amendment of the above-stated rules at page 2347 of the 2011 Montana Administrative Register, Issue No. 21.

2. The department has adopted New Rules I (36.25.1016) through VI (36.25.1021), as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I (36.25.1016) COMPETITIVE BIDDING

(1) through (3) remain as proposed.

(4) The asking price for the improvements on the cabinsite lot will be established per ARM 36.25.1005.

(4) and (5) remain as proposed, but are renumbered (5) and (6).

(~~6~~7) Where a lessee requests that the lease be competitively bid, that request will result in a change of the lease fee calculation methodology to that specified in ARM 36.25.1018. The competitive bidding for an existing cabinsite lease will occur during the period from April 1 through September 30 of each year. The number of leases available for bid statewide is at the discretion of the board, but shall be consistent with 77-1-235 and 77-1-236, MCA. The department may use the following standards to determine how many lease lots are available for bid.

(a) In any given ~~neighborhood~~ geographic location a maximum of three lease lots or ten percent of the total number of lease lots in that ~~neighborhood~~ geographic location, whichever is greater, may be available for competitive bid when the lessee requests that the lease be competitively bid.

(i) If ten percent of the lease lots in a ~~neighborhood~~ geographic location is a fractional number, the number shall be rounded down to the nearest whole number. After applying these criteria, if the requests to put lease lots out for bid exceeds ten percent or three of the total number of lots in a ~~neighborhood~~ geographic location, whichever is greater, the bid requests will be selected by a random drawing.

(7) through (11) remain as proposed but are renumbered (8) through (12).

AUTH: 77-1-204, 77-1-208, 77-1-209, 77-1-235, 77-1-236, MCA

IMP: 77-1-235, 77-1-236, MCA

NEW RULE II (36.25.1017) ROLLING ~~NEIGHBORHOOD~~ GEOGRAPHIC LOCATION AVERAGE LEASE RATE (1) By October 31 of each year, the department will establish a rolling ~~neighborhood~~ geographic location average lease rate for each ~~neighborhood, or~~ geographic location, to be used for the next billing cycle that begins January 1 of the following year. For the purposes of ARM 36.25.1016 through ARM 36.25.1021, two types of ~~neighborhoods~~ geographic locations shall exist in the land area administered by each unit office of the department within the northwest, southwest, and central areas of the department, and the land area administered by each area office within the northeast, southern, and eastern areas of the department:

(a) one ~~neighborhood~~ geographic location for cabinsites which are adjacent to water such as lakes, rivers, and streams; and

(b) one ~~neighborhood~~ geographic location for cabinsites which lack access to water such as lakes, rivers, and streams.

(2) A minimum of three winning bids are necessary to establish a rolling ~~neighborhood~~ geographic location average lease rate. The rolling ~~neighborhood~~ geographic location average lease rates will be determined as follows:

(a) the department will document the bid amounts for every successful cabinsite that is competitively bid;

(b) the rolling ~~neighborhood~~ geographic location average lease rate for a given billing cycle will be calculated using the competitive bid amounts from cabinsites in that ~~neighborhood~~ geographic location for the most recent three calendar years, or as of January 1, 2012, if three years have not yet elapsed from the effective date of these rules; and

(c) the winning bid amount for every cabinsite that is successfully bid will be divided by the most recent appraised value from the DOR for that cabinsite. The resulting rates will then be averaged together by ~~neighborhood~~ geographic location to determine the ~~neighborhood~~ geographic location rolling average lease rate for the next billing cycle.

AUTH: 77-1-204, 77-1-208, 77-1-209, 77-1-235, 77-1-236, MCA
IMP: 77-1-235, 77-1-236, MCA

NEW RULE III (36.25.1018) LEASE FEE FOR BID CABINSITE LEASES UNDER ARM 36.25.1016 (1) remains as proposed.

(2) Where the lessee of a lease existing prior to May 12, 2011 ~~chooses to place the lease up for competitive bidding~~, has a cabinsite competitively bid under ARM 36.25.1016, the annual lease fee for the first year will equal the bid amount.

(a) However, in subsequent years, the annual lease fee for that lease will equal the most recent appraised value of the cabinsite as determined by the DOR multiplied by the rolling ~~neighborhood~~ geographic location average lease rate effective for that year, plus an annual adjustment equal to the previous year's lease fee multiplied by the annual percentage change in the consumer price index (CPI) as provided in ARM 36.25.1001(9).

~~(b) The department will not add a CPI adjustment to the annual lease fee for the first annual billing following release of a new appraised value.~~

(3) The lessee of any currently leased cabinsite will have the ability, prior to renewal of the existing lease in effect as of the date of the adoption of ARM 36.25.1016 through 36.25.1021, to participate in the bidding method by applying on a form prescribed by the department. Once the current lease is renewed, or once a new 15-year lease is issued as part of the bidding process, a lessee will no longer have the option to switch to the bidding method during the term of a lease.

(a) Such an application will include an application fee and the requirement to be within deadlines prescribed by the department.

(b) The application must be accompanied by a supplemental lease agreement, which will describe the terms of the competitive bid process including the change in the lease fee which will be effective in the year following the lessee's application for competitive bidding.

(c) This one-time initial participation in the bidding method will require the lease fee to be calculated according to the applicable geographic location rolling average lease rate, or a rate of three percent if no geographic location rolling average lease rate has been established.

(i) A lease fee may be calculated using the geographic location rolling average lease rate in the lease year after the geographic location rolling average lease rate is established.

(d) Where the lessee of a lease existing prior to May 12, 2011, has a cabinsite competitively bid under ARM 36.25.1016, the annual lease fee for the first year will equal the bid amount.

(i) However, in subsequent years, the annual lease fee for that lease will equal the most recent appraised value of the cabinsite as determined by the DOR, multiplied by the rolling geographic location average lease rate effective for that year, plus an annual adjustment equal to the previous year's lease fee multiplied by the annual percentage change in the consumer price index (CPI) as provided in ARM 36.25.1001(9).

(4) Any lease that is put out for bid will be bid at a minimum bid of 2% of the entire, most recent appraised value without phase-in.

AUTH: 77-1-204, 77-1-208, 77-1-209, 77-1-235, 77-1-236, MCA
IMP: 77-1-235, 77-1-236, MCA

NEW RULE IV (36.25.1019) SUBLEASING AND ABANDONMENT OF IMPROVEMENTS (1) This rule applies to all cabinsites.

(1) through (3) remain as proposed but are renumbered (2) through (4).

AUTH: 77-1-204, 77-1-208, 77-1-209, 77-1-235, 77-1-236, MCA
IMP: 77-1-235, 77-1-236, MCA

NEW RULE V (36.25.1020) SALE OF CABINSITE LANDS

(1) This rule applies to all cabinsites.

(1) through (5) remain as proposed but are renumbered (2) through (6).

AUTH: 77-1-204, 77-1-208, 77-1-209, 77-1-235, 77-1-236, MCA
IMP: 77-1-235, 77-1-236, MCA

NEW RULE VI (36.25.1021) APPLICABILITY OF CABINSITE RULES

(1) ~~Cabinsite~~ ARM 36.25.1001 through 36.25.1013 shall apply to all cabinsites, however cabinsite leases issued under ARM 36.25.1016 shall ~~be~~ not be subject to ARM 36.25.1003, 36.25.1009(8), and 36.25.1012.

AUTH: 77-1-204, 77-1-208, 77-1-209, 77-1-235, 77-1-236, MCA
IMP: 77-1-235, 77-1-236, MCA

3. The amendments to New Rules I (36.25.1016) through VI (36.25.1021) are reasonably necessary for the following reasons.

New Rule I (36.25.1016) Reasonable Necessity: Chapter 401 of the 2011 Montana Session Laws (codified in part as 77-1-235 and 77-1-236, MCA) requires the state Board of Land Commissioners to adopt rules to implement the provisions of this act. Section 77-1-235(3), MCA, directs that:

> "[b]y January 1, 2012, the board shall adopt rules to ensure that:
> (a) the open competitive bidding process authorized pursuant to this section is orderly and consistent with the board's constitutional fiduciary duties and that the number of leased cabin or home sites or city or town lots made available for competitive bid at any given time is consistent with the board's constitutional fiduciary duty of attaining full rental market value; and
> (b) the information used to determine the rental market percentage pursuant to this section is posted on the department's website and periodically updated."

Section 77-1-236(3), MCA, also directs that:

> (3) By January 1, 2012, the board shall adopt rules for the orderly transition for cabinsite lessees or licensees who have chosen the lease option pursuant to subsection (1) that is consistent with the board's constitutional fiduciary duty of attaining full rental market value."

New Rule I is reasonably necessary to effectuate the competitive bidding procedures directed by Chapter 401 of the 2011 Montana Session Laws, and is reasonably necessary to effectuate the purposes of that legislative act. The competitive bidding procedures were written to be as consistent as possible with existing cabinsite leasing rules and contract provisions, yet were written to allow for a transition to a different rental payment, as provided in Chapter 401 of the 2011 Montana Session Laws. The amendment to New Rule I recognizes that ARM 36.25.1005 provides the method for valuation of improvements.

New Rule II (36.25.1017) Reasonable Necessity: This rule implements the requirements found in Section two of Chapter 401 of the 2011 Montana Session Laws (codified at 77-1-236, MCA), which requires that current lessees be offered a

process for determining their state cabinsite lease rental rates according to rental market percentages in distinct geographic locations. Rule II is reasonably necessary to effectuate the purposes of Section two of Chapter 401 of the 2011 Montana Session Laws. The department chose to limit a "geographic location" under New Rule II to lands with water or without water under the jurisdiction of each unit office of the department in the western half of the state and in area offices of the eastern half of the state. The use of unit offices and area offices to determine the "rolling geographic location average" was utilized to provide administrative convenience and to provide sufficient numbers of leases to quickly implement the concept of the "rolling geographic location average." The amendment to the proposed rule substitutes the term "geographic location" for "neighborhood".

New Rule III (36.25.1018) Reasonable Necessity: This rule implements the transition requirements found in Sections two and four of Chapter 401 of the 2011 Montana Session Laws (codified at 77-1-236, MCA), which require that current lessees be offered a process for determining their state cabinsite lease rental rates according to rental market percentages in certain geographic locations. New Rule III is reasonably necessary to effectuate the purposes of Section two of Chapter 401 of the 2011 Montana Session Laws. Under the transition to competitive bidding, there may be some delay in placing all the leases up for competitive bidding. The amendment to New Rule III allows all lessees choosing to submit their leases to competitive bidding to utilize the rolling geographic location average, or 3% of the appraised value if no geographic location average has been established, until their lease is competitively bid.

New Rule IV (36.25.1019) Reasonable Necessity: This rule implements the assignment requirements found in Section three of Chapter 401 of the 2011 Montana Session Laws (codified at 77-1-236, MCA), which requires that current licensees and lessees be authorized to assign or rent their improvements. New Rule IV (36.25.1019) is reasonably necessary to effectuate the purposes of Section three of Chapter 401 of the 2011 Montana Session Laws. The department chose to require the removal or sale of personal property left upon the cabinsite lease premises after the end of the cabinsite lease because the abandonment or desertion of personal property interferes with the prompt assignment of a lease and the stream of lease revenue to the trust beneficiary.

New Rule V (36.25.1020) Reasonable Necessity: This rule implements the requirements found in Section four of Chapter 401 of the 2011 Montana Session Laws (codified at 77-1-318, MCA), which requires that current lessees be offered the opportunity, in the last year of their state cabinsite lease, to nominate the lands described in the lease premises for sale. Rule V (36.25.1020) is reasonably necessary to effectuate the purposes of Section four of Chapter 401 of the 2011 Montana Session Laws.

New Rule VI (36.25.1021) Reasonable Necessity: This rule implements the requirements found in Section one of Chapter 401 of the 2011 Montana Session Laws to allow a cabinsite lessee to elect to place its lease up for competitive bid or to retain the terms of its current lease, and the method described therein for determining the lease rental rate. Because some lessees will choose to place their leases up for competitive bid, while others will choose to retain their current lease terms and rental rate method, New Rule VI is reasonably necessary to effectuate the

purposes of Section four of Chapter 401 of the 2011 Montana Session Laws to describe what rules are not applicable to cabinsite leases competitively bid under New Rule I (36.25.1016).

4. The department has amended ARM 36.25.1011 as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

36.25.1011 RENEWAL OF CABINSITE LEASE AND PREFERENCE RIGHT

(1) and (2) remain as proposed.

(3) A cabinsite lease that is not subject to competitive bidding is not subject to bids upon renewal if the current lease is in good standing, and the new lease will continue to meet the terms and conditions described in ARM 36.25.1001 through 36.25.1013, including the rental provided in 36.25.1003.

AUTH: 77-1-204, 77-1-208, 77-1-209, 77-1-235, 77-1-236, MCA
IMP: 77-1-235, 77-1-236, MCA

5. The amendments to ARM 36.25.1011 are reasonably necessary to effectuate the purposes of Section three of Chapter 401 of the 2011 Montana Session Laws (codified at 77-1-208, MCA), which provides that a "current lessee may complete or renew the licensee's or lessee's current lease based on valuation methods provided in subsection (1)(a)…". The department is proposing to modify its proposed repeal of ARM 36.25.1011(2), which would have struck the requirement that all leases to be renewed without competitive bidding. Leases utilizing a bidding method to establish their value do not have a preference right in bidding. By contrast, those leases utilizing the valuation method under ARM 36.25.1003 retain a preference right. The language that was removed from ARM 36.25.1011(2) in the proposal notice has been integrated back into the rule as part of (3) and recognizes the distinctions between the two types of lease valuation. There is no preference right for competitively bid leases because a preference right would be inconsistent with competitive bidding and the concept of a rolling average of bids in a geographic location. Under this amendment, leases that are not competitively bid will continue to exercise a preference right to renew the lease without competitive bidding. Also, due to a typographical error in the original proposal notice, the reasonable necessity the department cited Section four of Chapter 401 instead of Section three (77-1-318 instead of 77-1-208, MCA). However, the correct authorizing statute of 77-1-208, MCA, was correctly cited in the authorization section of the original proposal notice.

6. A summary of the written comments and oral testimony from the two hearings held on December 6 and 7, 2011, appears below with the department's responses.

COMMENT 1:
The DNRC's rolling, three-year neighborhood average replaces the one-time geographic location average stipulated in the transition section of the law.

RESPONSE 1:
SB 409 does not specify that use of the geographic location average is limited to a transitional period only. An average of all winning bids in a geographic location is a reasonable method by which to set a market rate percentage for cabinsites within a geographic location for the transitional period and beyond. DNRC disagrees that a single bid accurately establishes a market rate percentage for a given lot in all instances. The occurrence of weak market response or a bidder who has over-estimated a cabinsite's rental price must be taken into account when valuing a market rate percentage. Individual cabinsites will not go out for bid more than once every 15 years on average. To overcome bidding anomalies the market rate percentage must include multiple bids. The rolling average also recognizes that the market rate percentage can change over time with changes in demand and land value among other things.

COMMENT 2:
Fees would not be based on the actual value of an individual or like property, but on large property groupings that include many dissimilar lots.

RESPONSE 2:
The lease fee charged to each lessee on the bidding method will be based on the appraised value for the lessee's lot multiplied by the applicable average rate percentage for each geographic location. Section 77-1-236(1)(b)(ii) states that the most recent appraised value be utilized when setting a rental rate. In order to interpret this valuation process in a constitutional manner, which requires the state to obtain the full market value of the cabinsite, the rules clarify that a rolling geographic location average and use of subsequent appraisals will be utilized to set rental values for competitively bid leases.

The use of geographic locations described in the rules is appropriate and the cabinsites within the geographic locations described by the rules are similar. The most critical difference between cabinsites in a geographic location, the criterion which has the greatest influence on the rental rate percentage, is whether a given site is physically adjacent to water. The rules reflect this. The presence of water frontage, as well as other amenities such as availability of certain utilities, proximity to an urban area, et cetera, are also accounted for in the appraised value of each individual lot as provided by the Department of Revenue (DOR). See also Response 1.

COMMENT 3:
Commenter stated that the rules not comply with SB 409 in two critical ways: 1) a proxy will be used rather than the actual market rental value of individual lots; and 2) the annual adjustment will not be CPI.

RESPONSE 3:
DNRC asserts that the rules comply with the directions of SB 409. DNRC considers the average rate percentage for each geographic location to be an appropriate measure of a market-based rate. As required by 77-1-208, MCA, DNRC must use

property value established by the DOR. Fees would be based on the actual appraised values. Rental market value is not currently provided by the DOR.

From one year to the next the lease fee will be adjusted by CPI.

COMMENT 4:
This approach will lead to wild fluctuation in fees from year to year and eliminate predictability for both lessees and beneficiaries. A change of half of one percent in the average will result in a fee increase of $1500 on a property appraised at $300,000. A decrease in the average will result in decreased revenues for schools.

RESPONSE 4:
The average lease rate percentage for each geographic location may fluctuate, up or down, from one year to the next due to variation in bidding results. That will indeed result in fluctuation in the lease fees and, in turn, revenues from one year to the next.

COMMENT 5:
Commenter stated that the annual fee increases would not be based on the amount someone bids but on an administratively set percentage of appraised value, which is not unlike the old system SB 409 was designed to correct.

RESPONSE 5:
The average lease rate percentage for each geographic location is not administratively set. The market will determine the winning amount for each cabinsite put out for bid. The results will in turn determine the average lease rate percentage. The concept of the average rate percentage for each geographic location is specified in Section 2 of SB 409 but the specific details on how the average rate percentage would be determined, and what a geographic location might be, were lacking. Therefore, it was necessary for DNRC to craft an implementable process. See also Response 1 and Response 29.

COMMENT 6:
Commented stated DNRC has eliminated the transition process and the only way into the system is for lessees to cancel their lease and go directly to bid. Only a small percentage (about four percent) will be allowed into the system each year. The cap is ten percent but renewals make up about six percent annually.

RESPONSE 6:
DNRC has not eliminated the transition process. SB 409 does not specify the length of time for the transition to the bidding method. DNRC has determined that, in order for the Land Board and department to meet their fiduciary responsibility to ensure full return from these cabinsites, the number of leased cabinsites made available each year in a given geographic location should be limited to ten percent, or three (whichever is higher), of those actively leased cabinsites. The board's fiduciary responsibility is enumerated in Article X of the Montana Constitution and in Title 77, Chapter 1, Part 2 of the Montana Code Annotated (MCA). SB 409, Section 1(3)(a)

clarifies that the board shall adopt rules implementing SB 409 that are "…consistent with the board's constitutional fiduciary duties and that the number of leased cabin or home sites or city or town lots made available for competitive bid at any given time is consistent with the board's constitutional fiduciary duty of attaining full rental market value...". DNRC and the board have determined that a ten percent per year limit is necessary to meet this fiduciary responsibility.

The ten percent limitation regulates the number of competitive bids annually and thereby limits the volatility that would be expected if a large percentage of lots were allowed to go out for bid in a given year. The idea of a regulated process such as the ten percent limitation provides stability and consistency to the bidding process and the resultant bids.

The final form of the rules allow all interested lessees to switch to the bidding method and geographic location average lease rate effective in 2013. Competitive bidding of leases would still be limited to ten percent per year during the transition period. See Response 50.

According to an analysis of potential lease payments under the bidding system (as described in the environmental review of the rulemaking process) DNRC believes approximately 75% of lessees will benefit by the bidding method to an extent great enough that they would consider switching to the new method. With a ten percent limit on the number of active leases available for bidding in a given year, all leases under the bidding method will go to bid within the six- to eight-year period beginning in 2012. This is the maximum expected transition period; in reality it could be of less duration.

The ten percent limit would not include vacant cabinsites or renewals. Ten percent of leased cabinsites would go to competitive bidding each year in addition to any vacant cabinsites already available for competitive bidding.

The nature of the bidding method warrants limiting the number of cabinsites on the market at a given time. Unlike a private homeowner unsatisfied with the offers received for his house, DNRC has limited discretion to withdraw a cabinsite once it is made available for bidding. The highest acceptable bid (equal to or above the minimum bid amount) will most likely be awarded the lease, even if the successful bid is below what the board may believe it to be worth.

Current market conditions also suggest limiting the number of cabinsites made available at one time. In Flathead County, where approximately 25% of the state's cabinsites are located, there are currently over 19 months of housing inventory on the market (Kelly Appraisal, Kalispell). In Missoula County, where 32% of cabinsites are located, there are approximately ten months of housing inventory (Missoula Organization of Realtors). This existing inventory can compete with cabinsites for potential buyers/lessees. The reverse is also true, that the inventory of cabinsites available will compete with residential sales for buyers. The concepts of supply and demand suggest that fewer bids will be received per lot as the number of cabinsites

available at one time increases. Fewer bids per lot will generally mean lower successful bid amounts. DNRC argues that these conditions would not result in leases rate percentages that are a true reflection of the highest price that the market would accept for a cabinsite. In light of these market conditions, DNRC believes a six- to eight-year transition timeframe is appropriate.

COMMENT 7:
Commenter stated that SB 409 establishes a transition process for existing lessees using a one-time location average applied to the appraised value. This transition was intended to prevent the market from being flooded while allowing all interested lessees to convert to the new system.

RESPONSE 7:
While the scenario described in this comment would indeed prevent the market from being flooded with bids, it does not meet the intent of 77-1-235(3)(a), MCA, which directs the board to adopt rules to ensure that, "…the open competitive bidding process authorized pursuant to this section is orderly and consistent with the board's constitutional fiduciary duties and that the number of leased cabin or home sites or city or town lots made available for competitive bid at any given time is consistent with the board's constitutional fiduciary duty of attaining full rental market value". Lessees who are not converting continue with their existing lease.

The scenario described by the commenter eliminates those cabinsites that do not participate in competitive bidding from being used to establish a market lease rate percentage for each geographic location. The department does not agree with this interpretation of SB 409, which relies solely on vacant cabinsites to establish a rate percentage. It is reasonable to assume that increased bidding results will ensure the market lease rate percentage will more accurately reflect a market rate for these cabinsites. See also Response 6.

COMMENT 8:
Commenters stated that DOR's appraisal values are incorrect since DOR is forced to value the properties as if the lessee owns it.

RESPONSE 8:
This comment is outside the scope of this rulemaking. However, to clarify DNRC's view on the issue: the state of Montana holds cabinsite state trust land in fee simple (absolute ownership) for the benefit of the state trust land beneficiaries. Unlike a typical private property owner that holds the property in fee, The Enabling Act, the Montana Constitution, and current state law require that the state as a trustee receive full market value for fee simple property interests/rights. It logically and legally follows that full market valuation of fee simple property would reflect the value of all the fee simple property interests/rights, including the value of leasing or renting the property.

COMMENT 9:

The rules will artificially suppress the new system in two critical ways: 1) lessees will be discouraged from converting as they would need to cancel their lease and put their improvements at risk; and 2) lessees will be shut out of the bid process due to a random drawing of interested parties each year - with such a low cap they may wait years or never be selected. Restricting access to the new system does not comply with SB 409.

RESPONSE 9:
DNRC agrees some lessees may choose not to switch to the bidding method due to the possible risk the lease may be lost to another bidder. All lessees that wish to switch to the bidding method will have the opportunity to do so. Those lessees that do switch to the bidding method will still be required to go to bid. See Response 50, Response 6, and Response 7.

COMMENT 10:
A rolling three-year average is not the same as a one-time final rental market percentage and is also out of compliance with SB 409.

RESPONSE 10:
DNRC disagrees with this interpretation of SB 409. SB 409 does not state that the average lease rate percentage for each geographic location is established during the transition period and remains static indefinitely. DNRC disagrees that an average lease rate percentage established in 2012 will reflect the market for an indefinite period. This is not a practical assumption and would most certainly mean rents over time would move away from a market-based amount. See also Response 1. See Response 6 for a discussion of the board's fiduciary responsibility.

COMMENT 11:
Commenter stated that SB 409 specifies and repeatedly uses the terminology "open competitive bidding process". Bill sponsors envisioned an ebay-style auction that would allow all bidders to gauge the market and bid in accordance with rules governing full fair market value.

The definition of "fair market value" is codified in ARM 36.25.102, which reads: "Fair market value: the most probable price in terms of money that a property will bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and the seller each acting prudently, knowledgeably, and assuming the price is not affected by undue stimulus".

RESPONSE 11:
The term "open bidding" is not defined in SB 409. DNRC believes the term "open" as utilized in SB 409 refers to a transaction process in which all eligible bidders are allowed to participate, with no preference right to the lessee. The inverse of such a process is the one that exists currently when a lease is renewed and the current lessee is allowed to exercise a preference right to retain the lease without any competition.

A sealed bid auction process is an established method for ensuring full competition and a fair return price. It requires bidders to submit their best bid. It is the process utilized to issue leases for most uses of trust land, including commercial, agriculture, grazing, and timber leases.

DNRC has explored for some time the options for electronic, web-based or "ebay" style bidding of residential leases. DNRC included language in its previous rulemaking to allow a bidding process, which is outlined in 36.25.1009(5). Such a bidding system is not precluded by the administrative rules implementing SB 409. DNRC could institute an "ebay" style system to handle the greatly increased number of competitively bid cabinsites expected under the bidding method.

As a point of clarification, ARM 36.25.102 defines "full market value" not "fair market value".

COMMENT 12:
Commenter stated a process is needed for determining the lease fee without the risk of losing the lease.

RESPONSE 12:
A competitive bidding method for determining lease fees, as envisioned in SB 409, will necessarily require an existing lessee to incur some risk. SB 409 specifies that there will be no preference right afforded an existing lessee whose lease is made available for bidding. Only if there is no competition for the lease can risk be eliminated. A no-risk option is provided by selecting the lease terms and conditions in ARM 36.25.1001 through 36.25.1013 (referred to colloquially as "Alternative 3B").

COMMENT 13:
Commenter stated the bid pool will be extremely limited which will not lead to an accurate bid process. The bid process needs to be open to all without limitation to get a true read on the market. Controlling how many leases are up for bid will lead to false readings and potentially higher bids due to lack of available leases which is very deceptive. If the market needs to be flooded with available leases, then it should be flooded.

RESPONSE 13:
If the board were to allow all interested lessees to have their leases made available for competitive bidding at one time it would not provide an accurate measure of the highest percentage of appraised value that the market rate would be willing to pay. The result instead would be a measure of the highest percentage of appraised value that the market rate would be willing to pay *in light of* an excess of properties available. The basic premise of the "supply and demand" model for price determination in a market is that the price for a particular good will vary the quantity of the good demanded and the quantity of the good supplied. If supply increases and demand remains unchanged, the price will decrease. This situation would not result in "the largest measure" of advantage to the state as is required of the board in Title 77 of the Montana Code Annotated.

COMMENT 14:
Sealed bidding will result in an undue stimulus for existing lessees forced to bid unreasonable amounts—beyond what a prudent, knowledgeable person would bid—in order to protect their improvements. Thus, this approach does not meet Montana's fair market value rule and does not comply with SB 409 open competitive bidding provisions.

RESPONSE 14:
No lessee is forced to switch to the bidding method and no one is required to make a bid, including the current lessee. If a lessee chooses to make the switch to the bidding method and thus be required to put the cabinsite out for competitive bidding at some point, DNRC expects the lessee to be aware of the risks associated with switching to the bidding method. DNRC expects the lessee and any other participating bidders to understand the limits of their personal finances, their willingness to pay, and to bid accordingly. If the current lessee is not the successful bidder, he or she will be compensated for the market value of the improvements on the cabinsite.

COMMENT 15:
SB 409 specifies that lessees voluntarily entering the bid process forfeit their preference right to meet the high bid and, thus, their automatic renewal. The law does not specify any change in that right for those not entering the bid process.

The DNRC is proposing to repeal the existing language in ARM 36.25.1011(2) which allows leases to be renewed without competitive bidding. Repealing this language will impact all lessees, regardless of the fee method inherent in their lease.

RESPONSE 15:
The intention of the rulemaking was not to repeal the preference right of lessees that wish to renew under the existing process (Alternative 3B). The repeal of ARM 36.25.1011(2) is intended to implement the provision of SB 409 which specifies that there is no preference right for lessees switching to the bidding method.

DNRC agrees that the proposed rules did not expressly retain the right of renewal for lessees that remain with the valuation process described in ARM 36.25.1001 through 36.25.1013. DNRC has added ARM 36.25.1011(3) to specify that a lessee's right of renewal is retained when the lease retains the valuation process described in ARM 36.25.1001 through 36.25.1013 including the rental provided therein.

COMMENT 16:
Commenter asked why DNRC was given authority to draft these rules since it opposed the law. Commenter said it appears that DNRC has attempted to rewrite the law through the rulemaking process to make it even less favorable, if not punitive to leaseholders. Commenter asked for a neutral third party or mediator to draft rules that have the potential to not be punitive to the leaseholders.

RESPONSE 16:
SB 409 directed the State Board of Land Commissioners to adopt rules. DNRC, as the administrative arm of the Land Board, is responsible for administrative rulemaking pertaining to trust lands.

COMMENT 17:
An outside appraiser should appraise improvements on each lease property prior to bid to determine value of these improvements and this amount should be published during bid process. This prevents need for mediation later and a more true bid process if bidders know exactly what they are "buying".

RESPONSE 17:
DNRC's intent is that the asking price for all cabinsite improvements be set according to ARM 36.25.1005(4). The proposed rules did not clearly specify that ARM 36.25.1005(4) applies to cabinsites that are made available for competitive bidding through the bidding method. The department has added New Rule I(4) (36.25.1016(4)) and New Rule VI(1) (36.25.1021(1)) to specify that the improvements valuation process in ARM 36.25.1005(4) shall apply to the leases under the bidding method.

COMMENT 18:
Commenter stated that if the rules are enacted, they will lead to significant additional vacancies among current lessees expecting relief from the new law, which will substantially lower revenues for Montana schools.

RESPONSE 18:
The effective lease rate percentage for the cabinsite program as a whole, and thus average lease fees, is expected to decrease following implementation and full transition to the bidding method. This will result in lower revenues for the trust beneficiaries as compared to the current program (Alternative 3B). It is not reasonable to expect vacancies will increase, however, as a result of lower average lease fees. See also Response 4.

COMMENT 19:
DNRC neighborhoods are based on DNRC's 16 offices and whether or not the property has water access. This will result in 32 neighborhoods (e.g. Rogers Lake is in the same neighborhood as Flathead Lake.) The DNRC neighborhoods will include vastly different properties with varying amenities.

RESPONSE 19:
Lease fees will vary between cabinsites at Rogers and the other lakes in the Flathead valley (using the example in the comment) as a result of differences in the appraised value assigned to each by DOR that reflect differences in amenities. Differences between lots on each lake are accommodated in the DOR value for each cabinsite.

When considering a lease rate percentage, cabinsites on Rogers Lake and on other lakes in the area are similar. The presence of water frontage is the single greatest variable accounting for differences in appraised values among cabinsites in a given geographic location. In consideration of the impact water has on the desirability of a cabinsite, DNRC has proposed creating two average lease rate percentages per geographic location: one for cabinsites with water frontage, and one for cabinsites without water frontage. See also Response 3.

COMMENT 20:
Commenter asked why lessees were not allowed to be directly involved in the writing of the rules.

RESPONSE 20:
This rulemaking process complies with DNRC procedural rules, ARM 36.2.101. As provided by ARM 2.5.104, the department director has the discretion to allow direct involvement of interested parties, through a negotiated rulemaking process. Negotiated rulemaking typically requires a lengthy time to conduct. Because SB 409 required implementing rules to be adopted by January 1, 2012, the director instructed DNRC to use the present rulemaking process.

COMMENT 21:
Fees would be based on the same neighborhood average regardless of the actual location of the lot. Thus, it does not comply with SB 409's intent to create a system based on the market for each individual property and, when that is not feasible, on comparable properties.

RESPONSE 21:
The Land Board, through DNRC, has been directed to adopt rules consistent with SB 409. Section 2(1)(b) of Senate Bill 409 states:

"(i) At least three winning bids made pursuant to [section 1] must be referenced against the most recent appraised value of the cabinsite property by the department of revenue in order to establish a rental market percentage. All rental market percentages that have been determined pursuant to [section 1] must be grouped together by geographic location and averaged together to determine a **final rental market percentage for each geographic location**. If there are not three winning bids in any one geographic location, then three bids from similar locations may be averaged to establish a rental market percentage.

(ii) The final rental market percentage determined for each geographic location pursuant to this subsection (1)(b) must be applied to the **department of revenue's most recent appraised value for each cabinsite property** in that location that did not go through the open competitive bidding process **to determine the initial lease amount** for each cabinsite property." [emphasis added]

Section 2(2) states: "The lease amount for the first year must be set as provided in subsection (1). The annual lease rental fee for each subsequent year must be

adjusted using the **average annual consumer price index** as published by the U.S. bureau of labor statistics.
The neighborhood average is a market-based rate, calculated from the results of three or more bids in the region from the previous three years." [emphasis added]

DNRC believes the method described in the rules for calculating rent in the first and subsequent years is consistent with SB 409.

COMMENT 22:
Commenter said DNRC should postpone forwarding the rules to the Land Board until it sits down to negotiations with these leaseholders and comes up with viable rules that will help make this process move forward, with all sides being able to point to its successes.

RESPONSE 22:
DNRC does not intend to delay adoption of the rules or to enter into a negotiated rulemaking process. DNRC believes the rules are viable as written.

COMMENT 23:
Nowhere in SB 409 is the term "neighborhood Average" used. CPI is the only term used. All references to "neighborhood Average" must be deleted from the rules.

RESPONSE 23:
The proposed administrative rules used the term "neighborhood average" in place of the phrase "final rental market percentage determined for each geographic location" as used in Section 2(1)(b)(i) and (ii) of SB 409. These two terms are interchangeable in this context. The term "geographic location" is used in SB 409 while the term "neighborhood" is not utilized. To be consistent with SB 409, references to "neighborhood" in the rules have been changed to "geographic location" where applicable.

COMMENT 24:
Commenter stated the purpose of rulemaking is to implement the statute as written, not to create new provisions in the rules that do not have basis in statute, which is the case with some of the proposed formulas and adjustments to the leases in these proposed rules. Commenter said DNRC was not granted the legal authority to rewrite the provisions of SB 409; it was given the authority to adopt rules to implement the statute as written. In this particular process DNRC has failed that most fundamental test and attempted to create adjustments to lease rates without any statutory basis.

RESPONSE 24:
The rules provide clarification to those components of SB 409 that were not adequately described. The rules fill gaps in the statute in a manner consistent with the board and DNRC's constitutional fiduciary responsibilities. See also Response 6 and Response 7.

COMMENT 25:
Commenter asked why DNRC waited until December 6 and 7 to hold public hearings, with the public comment period ending the next day (December 8). Past public hearings held on this subject had a lot of public discussion and debate that went on for weeks after these meetings. Commenter said something about the timing of these public hearings and the end date for public comment "just does not smell right". Commenter requested time to digest what is learned at these meetings in order to respond to the DNRC Rules Committee. Commenter asked to extend the comment period for an additional two weeks.

RESPONSE 25:
The Montana Administrative Procedures Act and DNRC rule requires DNRC to schedule public hearings no sooner that 20 days from the publication of the notice of proposed action (2-4-302(4), MCA, and ARM 1.3.307(4)(c)(ii)). The notice in the Administrative Register for the proposed rules was published November 10, 2011. The hearings could not be scheduled sooner than November 30, 2011 and still comply with the ARM previously mentioned.

DNRC's intent in scheduling the hearings toward the end of the public comment period was also to give the public has as much notice as possible before the hearings to 1) make arrangement to attend the scheduled hearings; and 2) to review the draft rules and environmental review in advance and be prepared to ask questions at the hearings. If the hearings had been scheduled near the beginning of the comment period, fewer people would have likely been able to attend and those who did would be less prepared to participate. The timing of the hearings does not preclude the public from reviewing the rules and commenting prior to the hearings.

COMMENT 26:
While competitive bidding seems like a good thing, the process set forth by the proposed rules does not afford the public opportunity to enter that process until 2025. Even then, there is no preferential treatment to existing leaseholders.

RESPONSE 26:
DNRC's proposed rules provide an opportunity for all lessees to switch to the bidding method upon submitting an application and signing a supplemental lease agreement SLA. Lessees that sign the SLA will be required to go to competitive bidding at or before their lease renews. See Response 50.

SB 409, Section 1(2), specifies that lessees that go to competitive bid will not have a preference right to meet the high bid. SB 409: "A lessee choosing to voluntarily place a cabinsite lease up for competitive bid *is not entitled to a preference right to meet the high bid*" [emphasis added].

COMMENT 27:
Commenter stated that New Rule III (ARM 36.25.1018) gives the lessee the option of going to the competitive bid or to choose to renew the lease with the standard rental rate as provided by ARM 36.25.1001 to 36.25.1013. However these rules

force every leaseholder into Alternative 3B, an option, that does not have any statutory underpinning. Rule III should be amended to clarify that leaseholders also have the option of continuing to renew their leases at the standard five percent lease rate if they are on that particular option at the time of lease renewal. Rule III should be amended to provide leaseholders the option to renew their leases at the existing five percent lease rate if that is the option that the leaseholder is on at the time of renewal.

RESPONSE 27:
The proposal notice for the Alternative 3B rules (MAR Notice 36-22-143) cites the statutory rulemaking authority DNRC has to make rules on each proposed amendment or adoption. Additionally, the Land Board has the statutory authority for management of school trust lands and directed DNRC to initiate the Alternative 3B rulemaking process. New Rule III(2) has been amended to allow leaseholders choosing to do so to maintain a rental rate at five percent of appraised value under ARM 36.25.1003.

COMMENT 28:
Under New Rule III (ARM 36.25.1018) DNRC plans to allow the bid rate for the first year only then raise the lease rate to DOR's appraisal value, multiplied by the neighborhood average, plus an annual adjustment (premium times the CPI increase). Commenter stated that unfairly raised lease rates.

RESPONSE 28:
DNRC asserts that the administrative rules are consistent with SB 409. See also Response 21.

COMMENT 29:
Commenter stated the DNRC mechanism to avoid flooding the market is apparent. However, this leads to a very long lead time for many leaseholders to opt into the open-bid process. In light of the fact that abandoned leases are listed for public consideration, and each lease is unique, and spread across a great part of the state, flooding the market is irrelevant. Commenter proposed a more liberal threshold for lessees to opt into the open bid process.

RESPONSE 29:
See Response 50.

COMMENT 30:
The rate of vacancies since 2009 must be taken into consideration. True to market principles, if the lease rates are perceived to be too high, DNRC will be faced with increasing vacancy, which erodes the benefit to state lands.

RESPONSE 30:
DNRC is well aware of the market performance of its cabinsites. In setting any lease rate the department is seeking to establish a "revenue maximizing" price that provides the constitutionally mandated maximum returns to the trust beneficiaries.

While allowing unrestricted bidding might result in zero or negligible vacancies, the department does not believe this will attain the maximum revenue possible.

COMMENT 31:
Commenter stated neither the board nor DNRC should set the lease fees. It should be the actual open bidding process that determines the fees, which is what SB 409 intended.

RESPONSE 31:
DNRC has written the rules to reflect the bidding method directed by SB 409. The bidding method implemented by the rules uses the results of competitive bidding to set average lease rate percentages for each geographic location that, when multiplied by the most recent appraised value for each cabinsite, determines the lease fee for each lease.

COMMENT 32:
Commenter stated a fee structure should be based on the amount bid for each individual lot.

RESPONSE 32:
This is counter to the language found at Section 2 of SB 409. See Response 21.

COMMENT 33:
SB 409 does not support using a "rolling neighborhood average" as a lease escalator. To remove the appearance of a double-increase in the lease rates, the preferred system would establish a firm initial rate, with a sensible escalator, based on CPI. This option seems not to be inherent in any of the proposed rules.

RESPONSE 33:
Annual adjustments will be based on CPI. The lease fee may also change from one year to the next as a result of adjustment (either up or down) in the average lease rate percentage for each geographic location. DNRC believes the average lease rate percentage will fluctuate around a value that may reasonably be assumed to provide a measure of the percentage of DOR appraised value that the market is willing to pay for a cabinsite lease. Again, the actual fee for each cabinsite will vary according to the appraised value of the lot. See also Response 3 and Response 4.

COMMENT 34:
Commenter stated the cabinsite program should be terminated and all of the lots sold, like the state of Idaho.

RESPONSE 34:
The board will consider the sale of cabinsites when it in the best interest of the applicable trust and only when full market value is secured to the state. New Rule V (36.25.1020) provides further guidance to the board and DNRC for the sale of cabinsites.

COMMENT 35:
Commenter stated that the transition process should be based on averaging comparable property bid amounts.

RESPONSE 35:
SB 409 specifies that bid results be used to establish an average lease rate percentage for each geographic location. It does not direct DNRC to average bid amounts. See Response 21.

COMMENT 36:
Bidders must agree to buy improvements before bidding.

RESPONSE 36:
A lease will not be issued to a bidder until the bidder has settled with the owner of the improvements for the value of the improvements and the ownership of the improvements is agreed to be transferred to the new lessee.

COMMENT 37:
SB 409 was supposed to provide stability. The lease fees should be stable and not change every year.

RESPONSE 37:
DNRC disagrees that the intent of SB 409 was to provide static lease fees. The key premise behind SB 409 was allowing the market to dynamically establish lease fees. See also Response 6 and Response 7.

COMMENT 38:
DNRC only uses a passive marketing campaign, not active. Commenter asked how the market sets prices if leases are not actively marketed.

RESPONSE 38:
DNRC began actively marketing its cabinsite program following adoption of the Alternative 3B rules in May 2010 (current rule set) then ceased active marketing in October of that year. Active marketing began again in May 2011 and ceased in October 2011. Marketing during these periods included classified ads in some of the major newspapers in the state, in a bimonthly statewide real estate publication, listing the available cabinsites on the DNRC web page, and placing an ad on Craigslist. The department is considering moving toward year-round active marketing of vacant cabinsites once the bidding method is initiated. The bidding method specifies active marketing of competitive bidding for currently leased cabinsites will occur April 1 to September 30.

COMMENT 39:
There should be a minimum bid on the improvements as well, instead of the improvements settlement coming afterward.

RESPONSE 39:

Settlement of the improvements price is between the improvements owner and the prospective buyer.

COMMENT 40:
The state is unfairly manipulating the market for leaseholder improvements by setting unrealistic annual fees. These escalating fees will inevitably lead to leaseholders being unable to sell their property and being forced to relinquish it to the state for no compensation.

RESPONSE 40:
For most lessees, the lease fee anticipated under the proposed rules is lower than that anticipated under the current (Alternative 3B) lease fee methodology under ARM 36.25.1003.

COMMENT 41:
The 1989 Legislature set the cabinsite lease rate at 3.5%. SB 424 in the 1993 Legislature authorized the Land Board to review the rate and the board maintained that rate. In 1999, MonTRUST sued the state over 14 laws that were believed to be unconstitutional. Cabinsite lease rates were part of that suit. The Montana Supreme Court found, in favor of MonTRUST, that the 3.5% lease rate "violates the trust's requirement that full market value be obtained". A negotiated rulemaking committee, authorized by the Land Board and facilitated by the DNRC, proposed a 5% lease rate that was approved by the Land Board and adopted in January of 2001. The 2011 Legislature then passed SB 409 requiring that a competitive bid process be used to establish the lease rate with the minimum bid to be set at 2%. This is one and one half percent lower than the rate that the Montana Supreme Court deemed to violate the Trust's full market value requirement. It is 3% lower than the rate established by the negotiated rulemaking committee in 1999. MonTRUST believes the starting minimum bid should be set at 5%.

RESPONSE 41:
DNRC has written the rules consistent with SB 409. A minimum bid is not a final lease rate. The legislatively directed procedure to start bidding at 2% does not restrain the constitutional discretion of the board to choose when to dispose of interests in school trust lands Article X, Section 4 of the Montana Constitution, and to obtain full market value for that interest as required by Article X, Section 11 of the Montana Constitution. Exactly what lease rates will be in each geographic location, as accepted by the department and the board, remains to be seen.

COMMENT 42:
MonTRUST agrees that competitive bidding is an appropriate way to attain full market value for cabinsite leases especially if the existing lessee has no preference right to meet the high bid. However this can only work if the bids are sealed bids. Otherwise the existing lessee only has to bid $1.00 higher than the high bid. This would discourage other parties to enter the process as they could quite possibly only create the second highest bid. Commenter asked why go to the trouble of bidding in the first place.

RESPONSE 42:
DNRC will conduct bidding consistent with ARM 36.25.1009(5), which states, "All bids shall be submitted at a specific place and time as specified by the department. Bids may be sealed bids, oral auction, or submitted electronically, whichever is indicated by the department at the time it advertises for bids".

COMMENT 43:
Pertaining to the averaging of neighborhood lease rates using DNRC Units Offices as a neighborhood is not acceptable. As an example lumping values of leases for "Dog Town" with those of Morrell Flats could easily reduce the value of Morrell Flats.

RESPONSE 43:
Lease fees between lots at Dogtown and Morrell Flats will differ for two reasons: 1) Morrell Flats lots are considered to have water frontage, the Dogtown lots are not. A separate lease rate will be provided in each region for lots with water and lots without water; and 2) lots in these two areas have different appraised values. The difference in appraised value will result in a difference in lease fees. These conditions will result in differences in lease fees between most if not all areas with cabinsites. See also Response 2 and Response 19.

COMMENT 44:
Under New Rule IV(2) it appears that if a cabinsite is abandoned for a period of three years the improvements can be sold by the department. However Section (2)(a) indicates that any value received will be transferred to the previous lessee. The "REASONABLE NECESSITY" explanation indicates the department wants to lease the site as quickly as possible to continue the stream of revenue to the Trust. However MonTRUST believes that three years is way too long to wait before the department can dispose of the improvements or any other items of value left on the site. One year would be a better target.

RESPONSE 44:
The three-year provision is described in existing rule (ARM 36.25.1006) and also provided in Section 3 of SB 409. DNRC is not proposing an amendment to this rule.

COMMENT 45:
Pertaining to the sale of cabinsites under New Rule V the program should not be placed within the Land Banking Program. Cabinsites are a land type that should be treated in a similar way but separately. The sale of several high value cabinsites in any one year could prevent the favorable sale or purchase of other Trust lands under the limits of the Land Banking Program. If cabinsites sales are included then they should have a separate total limit.

RESPONSE 45:
DNRC believes the commenter is referring to 77-2-363(1)(a), MCA, which states, "The board may not *cumulatively sell or dispose of more than 250,000 acres of state land*. Seventy-five percent of the acreage cumulatively sold must be isolated parcels

that do not have a legal right of access by the public. At any one time during the life of the land banking process, the board may not sell more than 20,000 acres of state land unless the board has acted to use the revenue from that land to make purchases pursuant to 77-2-364." [emphasis added].

The cumulative acreage of all cabinsites, both leased and vacant, is less than 4800 acres. The department does not believe the restrictions imposed on the Land Banking program will unduly limit the department ability to sell cabinsites at the rate at which they will likely be nominated and made available for public auction.

COMMENT 46:
Currently, SB 409 seeks to lower lease rates to 2%, costing Montana Tech hundreds of thousands of dollars every year. Rather than allowing lessees to renege on lease agreements without penalty or compromising the Montana Constitution by allowing lessees to pay less than full market value for trust lands, choose to continue leasing trust lands at full market value. Commenter stated that doing so aids college students.

RESPONSE 46:
The Land Board, through DNRC, is obligated to adopt rules to implement the procedural provisions of SB 409 as directed by the Legislature; but in a manner which complies with the board's constitutional and fiduciary responsibility to secure the full market value for the disposition of interests in school trust lands. DNRC believes the rules meet these two important duties.

COMMENT 47:
Sheila Stearns, Commissioner of Higher Education, submitted the following comments:

"This letter sets forth the university system's comments to the rules proposed to implement Senate Bill 409. Our comments are as follows.

SUMMARY OF COMMENTS:

A. A change to market-driven rates must be fair and not be implemented solely to reduce rates at any cost. The university system does not object to a market-driven rate-setting process, so long as it is fair to both lessees and beneficiaries. The Senate Bill 409 legislation *directs* DNRC to set up a constitutionally sound process and DNRC should do that. Accordingly, DNRC should not limit the marketing period in the rules, should not award 15year leases at very low rates in bad economic times without a re-opener provision, and should not allow lessees to renege on lease agreements without penalty.

B. A minimum 2% lease rate is too low. By *all* objective accounts, a 2% lease rate is too low and will not maximize trust revenue for the trusts, as DNRC is required to do.

EXPLANATION OF COMMENTS:

A. The university system has no objection to the setting of rates on a market basis, so long as the process is fair and open and provides for a good opportunity for competing bids.

The university system is a proponent of the setting of cabinsite rates on a market-driven basis. Given the history of lessee-involvement in the cabinsite rate-setting process, which has been extensive, it appears, perhaps understandably, that trust land lessees only desire market-driven rates in times of bad markets. In times of good markets, they favor administratively set rates which are set lower than a strong market warrants. This manipulation of rate-setting, coupled with statutory provisions allowing lessees to renege on their current lease agreements to opt for artificially low prices, is not fair or constitutional and it defeats the requirements of state law, the Montana Constitution and the U.S. Congress' conditions on the use of our trust lands. The S.B. 409 legislation acknowledges the constitutional requirements in the provisions of the statute and the new law must be read in conjunction with other provisions of state law, including § 77-1-202, MCA, which requires the land board to "secure the largest measure of legitimate and reasonable advantage to the state" in the disposition of state lands. DNRC must make good on these directives in the law and propose constitutionally proper rules.

A market-driven system is fair to both parties only if DNRC can ensure the process attracts a reasonable number of bidders to the process. No prudent trustee would sell property in its custody at what amounts to a "fire sale," without a sufficient marketing period. No prudent trustee would place all of its beneficiaries' property on the market at the same time, thus inviting rockbottom bids. No prudent trustee would set the minimum bid lower than a fair price. No prudent trustee would lease for 2% of value property worth at least twice as much and then lock-in that low rate for a term of 15 years. Finally, no prudent trustee would unilaterally renegotiate a significantly lower contract price on a deal mutually agreed upon years before. Yet that is what Montana lessees appear to expect. If rates can be adjusted downward in a bad market, they should be adjusted upward in a good market. The state in particular, with special fiduciary obligations to the beneficiaries, must act as a prudent trustee. Senate Bill 409 and other state laws require that.

This legislation is one-sided in that it purports to benefit the lessees at the expense of the beneficiaries. Furthermore, it does not distinguish between those who are struggling to pay for their lease sites and those (the majority) for whom the lease sites represent second homes. Allowing lessees to revert to a 2% lease rate ***and*** awarding 15-year terms at that rate is unfair on two counts. At the very least the state should have the option to reopen these contracts when good economic times return. As John Duffield wrote in his 2011 study of Montana cabinsites, "A return to comparatively normal economic times may result in a future situation where a 5% lease rate is below the long-term revenue maximizing level" (Duffield, p. 19). Lessees will also reap the benefits of low lease rates in better times by reaping windfalls on their property transfers. Even in these bad times, lessees are making more on their improvements than values warrant, indicating that the underlying lease

cost is too low. (Duffield, p. 18). These findings are valid. Two percent rates do not, under any data we have seen, constitute fair market value.

We would support a fair and free market-driven rate-setting process. Senator Tutvedt testified on March 21, 2011, that, "We're talking about the market, allowing the market process to determine this value ... and [SB 409] allows DNRC to write the rules of how that will be determined." DNRC must be allowed to write rules which provide for a free and fair market-driven process.

The lease agreements currently in existence are legally-binding contracts entered into by consenting parties. People who would never expect to renege on a mortgage, a trust indenture, or a commercial contract, even if they had agreed to a variable interest rate, seem to think they can renege on these public contracts. The state is not allowed to renege on its lease agreements and neither should lessees be. Furthermore, the legislature is precluded from enacting legislation which impairs existing contracts and is also precluded from enacting protective legislation which allows trust land contractors to renege wholesale on their trust land commitments. This exact scenario, involving trust lands and a legislative act to bail out trust land contractors, has been held unconstitutional in the state of Washington and cited with favor by the Montana Supreme Court. *County of Skamania v. State,* 102 Wn. 2d 127,(Wash. *1984), cited in MonTRUST v. Darkenwald,* 2005 MT 190.

B. The leasing of these trust land sites at 2% of appraised value for 15 years is illegal and inappropriate.

The Montana Supreme Court has already directed the Montana Legislature that a rate of 3.5% of currently appraised value is unconstitutionally low. *MonTRUST v. State of Montana,* 1999 MT 263. A review of recreational lots leased by state trusts, the federal government, corporations and utilities indicate that market lease rates are *generally above* 5%. (Duffield, p. 18). Duffield's analysis of cabinsite transfer data for the period 2003 through 2011 indicates that the full market rental rate is *above* the contract rental rate; from this, Duffield calculated the *implied full market lease rate from the transfer* to *be in the* 5-7% *range.* Duffield's 2011 review of the leases on parallel settings "argues against a minimum Montana lease rate below 4% of appraised land value." (Duffield, p. 14). Duffield concluded that, "SB 409, while likely reducing cabinsite vacancies, has the potential to *lower* both current trust revenues and the rate at which those revenues grow in the future." A 2% rate cannot be supported; DNRC should not enter into leases set so low and particularly should not enter into them for 15-year terms. Furthermore, Duffield found that "while there has been some drop off in the number of active leases, the total revenue has increased steadily." (Duffield, p. 7). DNRC still places the vacancy rate at below 10%, so dropping the lease rate to 2% to maintain full occupancy will *not* maximize trust land proceeds; it will decrease it.

CONCLUSION

Further reductions of cabinsite rates will detrimentally affect trust land revenue and cause hardship to Montana families and students struggling to pay for college. A decrease in vacancies, if such occurs, will not rectify that. The 2011 Duffield Study's conclusion is: "…the current Montana target policy of assessing a minimum 5% annual lease rate on the full appraised value of the cabinsites is appropriate for the goal of maximizing trust returns from this resource." The university system has no objection to the implementation of a market-driven rate-setting process so long as the implemented process is characterized by the following components:

• Existing lease agreements are honored. No lessee should be allowed to renege on a lease agreement until it expires. The lessees have already been allowed to renege on their current leases in order to opt for a reduced rate under Alternative 3B. Lessees who abandon their leases must suffer consequences or this program will become entirely one-sided, binding the state and the beneficiaries but not the lessees.

• Market-driven rates are determined by a completely fair bidding process, in which the sites are placed on the market for a sufficient period of time, reasonable minimum rates are set, the market is not flooded, very low rates are coupled with shorter terms or re-opener provisions, and no existing lessee has any preference whatsoever.

• DNRC maintains lease rates which comply with *MonTRUST* and which approximate those set by similar governmental agencies, utilities and corporations, for these reasons: It's the law. The current rates are not forcing mass vacancies, and lowering the rates for everyone will not necessarily prevent the same rate of vacancies (under 10%) or increase trust revenue. A lease rate of 2% of appraised value is too low from all objective data".

RESPONSE 47:
DNRC opposed the passage of SB 409 during the 2011 Legislative session, including the provisions for the 2% minimum bid rate and the six month bidding duration. Now that SB 409 is law, the board, through DNRC, is obligated to adopt rules to implement the provisions of SB 409 that meet the board's fiduciary responsibility to secure full market value for the disposition of trust land. The department believes the rules meet, in the most balanced way possible, these two important and somewhat conflicting duties.

DNRC agrees that annual revenues are expected to be lower with implementation of the bidding method, in comparison to the Alternative 3B or previous lease fee calculation methods, including a lease fee set at 5% of the most recent DOR appraised value.

COMMENT 48:
Maggie Peterson, Vice Chancellor of Administration and finance, Montana Tech of the University of Montana submitted the following comments:

"I write on behalf of Montana Tech of The University of Montana, a beneficiary of the trust lands on which there are cabinsite leases, to provide our comments to the administrative rules proposed to implement Senate Bill 409.

Five Montana University System campuses are beneficiaries of trust lands on which there are cabinsite leases. Along with Montana State University, Montana Tech is one of the two largest campus beneficiaries of these leases. The proceeds of these trust land leases are critically important to university funding. These funds are pledged to bonded campus auxiliary building projects and also used for maintenance and services for student housing and other auxiliary facilities. To a large extent, Montana families, non-state funding sources, and trust land revenue pay for Montana's higher education auxiliary buildings and facilities. We rely on these funds as Congress and the Montana Constitution intended.

The proceeds of trust land cabin leases save students and their parents from paying even more in building fees and higher rates for campus housing and food services. At a time when tuition is increasing, college costs are higher, student college debt is increasing, and times are hard for families, it is difficult to understand why the state would drop lease rates to 2%. That is $2,000 annually for use of a $100,000 piece of property, about $166 per month. Montana students pay approximately 3 times that to rent a tiny, double-occupancy dormitory room at Montana Tech. Montana Tech has determined that in order to cover the $680,000 shortfall estimated in the S.B. 409 fiscal note, it would need to either increase student building fees by an estimated $238 per year, or take funds away from the auxiliary deferred maintenance fund and redirect those funds towards the payment of bonds, or some combination of the two. We urge DNRC to adopt rules that reflect full market value, as required by the Montana Constitution, and the requirements of state law that require the land board to "secure the largest measure of legitimate and reasonable advantage to the state" and "provide for the long-term support of education".

RESPONSE 48:
See Response 46.

COMMENT 49:
Peter Scott, Shannon, Johnson and Waterman, PLLP, submitted the following comment:

"This firm is legal counsel for the Montana State Leaseholders Association (MSLA). Senate Bill (SB) 409 passed the Legislature in April, 2011. The bill creates an alternative method for setting cabin and home site lease rates for certain state owned trust lands. SB 409 became law in May, 2011, without Governor Schweitzer's signature. In his non-signing statement, the Governor said "I have informed members of the Land Board that they can expect to be back in court to relitigate *Montanan's for Responsible Use of the School Trust v. State of Montana (Montrust* 1), 296 Mont. 402, 989 P.2d 800 (1999)."

Among other things SB 409 tasks the department of Natural Resources and Conservation (DNRC) with the preparation and adoption of implementing rules on or before January 1, 2012. On May 17, 2011, Bureau Chief J. Holmgren sent a memo to DNRC Trust Land Area Managers notifying them that the rule drafting process had commenced. In her memo, Ms. Holmgren proposed a rulemaking schedule based on the assumption that SB 409 would not be litigated. The schedule called for the Land Board to approve rulemaking on July 18, 2011. It also called for environmental review-conducted pursuant to the Montana Environmental Policy Act (MEPA)-to begin on July 19, 2011 and to be completed by Oct 15, 2011. SB 409 was not challenged in court. However, notice of Land Board approval for draft rules was not published in the register until October 27, 2011. The MEPA process did not begin until November 10, 2011. See Exhibits 1 and 2. DNRC has given lease holders and other interested persons until December 8, 2011 to provide comments on the rules and the Environmental Assessment (EA).

Separation of Powers. Both state and federal law preclude one branch of government from exercising the powers of another branch. The power to create legislation resides exclusively with Legislature. The Executive's power to implement legislation under delegated authority does not include the power to create new legislation. The intent of SB 409 according to its sponsor was to use open bidding to create a market based rental rate for cabin and home sites so that leaseholders will have a fair, predictable and straight forward process. Exhibit 3 (Tutvedt comment letter, 11-25-11). The MSLA believe SB 409 sets forth specific provisions that meet the Legislature's intent. However, the proposed rules not only fail to implement-but in key respects actually conflict with-the express language and legislative intent of SB 409.

The Governor's non-signing statement expresses concern about the a likely challenge to SB 409. DNRC staff have openly expressed the need to consider constitutional constraints on the adoption of administrative rules to implement SB 409. The constitutionality of legislative enactments is presumed at law. Only the judiciary may determine if a law is unconstitutional. It is MSLA's position the remedies available to an executive branch concerned about the constitutionality of a bill include the Executive's power to veto a bill or to direct his administration to file a judicial challenge. The executive does not wield the power to rewrite legislation by adopting administrative rules that fail to implement-and in fact conflict with legislative enactments. The rules proposed in this case run afoul of the constitutional requirement for separation of powers.

Private Property Rights. Numerous state and federal laws protect citizens' right to own property. MSLA members own property in the form of improvements on land leased from the state. The requirement for lease holders to construct and maintain the improvements they own is contractual. The state is a party to those contracts and stands to obtain title in the event a leaseholder is unable to convey the improvements. The adoption of regulations by DNRC, which is a market participant and contracting party, that eliminates property value and the uncompensated

conveyance of ownership to the state, constitutes an unlawful taking and other violations of the leaseholders' civil rights.

Annual Lease Fee Adjustment. Section 1 of SB 409 establishes a method for determining rental market value by offering vacant properties for open competitive bidding. Section 2 requires the Land Board (i.e., DNRC) to offer all existing cabinsite leaseholders the option of a 15-year lease contract based on the market valuation process set forth in Section 1 of the act. SB 409, Section 2, (l)(a). In both instances, lease fees for cabinsite properties are to be adjusted each subsequent year of the lease term using the "average annual consumer price index [(CPI)] as published by the U.S. bureau of labor statistics." SB 409, Section l(b)(iv); Section 2(2).

In New Rule III(2)(a), DNRC establishes an annual lease fee adjustment based on a rolling neighborhood average *and* the annual CPI. The addition of the rolling neighborhood average directly conflicts with the plain language of the act. Moreover it conflicts with the intent of the bill to create fairness and predictability. For a parcel with an appraised value of $300,000, a change of one-half of a percent in the rolling neighborhood average would change the lease fee by $1,500. This change can go up or down which introduces unpredictability for the lease holders and the trust beneficiaries. Thus not only does DNRC lack authority to add terms the legislature has omitted, the introduction of a rolling neighborhood average is at odds with the Legislature's intent to create a method that is fair and predictable. The public perception is that the resulting unpredictability is an intentional effort to chill interest in the use of this valuation method.

Transition Process. SB 409 allows existing leaseholders the option of transitioning into a lease with fees established under the open competitive bidding process for vacant parcels. Specifically, section 2(1) of the act unequivocally states, "the board *shall* offer all existing cabinsite lessees or licensees the option of a 15-year lease contracts based on the rental market valuation process provided in [section 1]." No such option exists in the rules proposed for adoption. By omission, the rules proposed by DNRC conflict with SB 409. In adopting administrative rules, DNRC lacks authority to omit what is included in the law. The rules must be amended to implement the transition option mandated by the Legislature.

Designation of Neighborhoods. SB 409 specifies that a one time location average will be applied to the existing leases that chose to exercise the transition option. The location average is to be based on conveyance of properties at "similar locations" [Section 2(1)(b)(i)] or "comparable locations" using professional appraisal standards, Section 2(1)(c). Dividing the state by 16 established regions does not comply with the requirement to use professional appraisal standards. As the EA states most of the sites are concentrated in certain regions. Far more important are market variations within the regions that cabin and home sites are concentrated. The rules must be amended to recognize the significant market variation of properties.

Open Bidding. The law requires the board and DNRC (as its agent) to establish all "open" bidding process. As with the transition option, the proposed rules simply omit

this requirement in favor of a sealed bidding process. Not only does this omission conflict with clear legislative intent expressed in SB 409, it conflicts with existing definition of "fair market value," which is based on buyers and sellers acting prudently with knowledge. § 36.25.102, ARM. In a sealed bidding arrangement market participants are forced to guess on the value of a property. Use of sealed bids is particularly unfair to the holder of all existing lease that owns improvement and in the absence of qualified buyers may have a vested interest in continuing the lease in order to protect his or her investment.

Renewal for Leaseholders. Section 2(4)(a) and Section 3(2) of the act specifically reserves rights afforded to existing leaseholders under other methods of valuation. DNRC is proposing to repeal the automatic renewal provision in §36.25.1011(2), which would affect all leaseholders irrespective of their decision to participate in the competitive bidding process. This action is perceived as punitive and is also inconsistent with the plain language and clear intent of SB 409.

Reservation of Rights. By this reference, MSLA joins in and thereby reserves the right to initiate or participate in any judicial or contested case hearing based on issues identified in the public comments submitted in response to the proposed action or EA.

Conclusion

The public perception is that DNRC and the Land Board, fearing legal action by the trust beneficiaries or others acting on their behalf, took special pains to propose rules acceptable to those beneficiaries. The public process lends weight to that perception. First there is no time for public review and comment on any substantive amendments to the rules, suggesting that the rules are to be adopted as they have been drafted. Second the determination of significance under MEPA was made by DNRC as an interested party. Not only is that determination questionable in light DNRC's role, it is questionable because of the nature and scale of the effected environment. The consequence is an incomplete analysis of the social and economic impacts to the human environment. The proposed rules do not implement the act that the Legislature passed and the Governor allowed to become law. For the reasons stated above and those submitted by others, DNRC should substantially revise the proposed rules in order to implement the law as it is written".

RESPONSE 49:
In regard to the matter of separation powers and the rulemaking authority of the Land Board and department, see DNRC procedural rules, ARM 36.2.101.

In regard to the matter of private property rights, the department recognizes that cabinsite lessees own improvements. However, they do not possess a legal right to keep their improvements upon state trust lands without a lease. At the conclusion of a term of a lease, lessees have the right to remove their improvements, thus maintaining their ownership of their property.

In regards to the matter of annual lease fee adjustment, see Response 6, Response 7, and Response 10.

In regard to the matter of transition process, the proposed rules do not deny a 15-year lease to those lessees seeking to transition to the bidding method; rather, the rules clarify the manner of that transition only. See Response 1, Response 6, and Response 7.

In regard to the matter of designation of neighborhoods, the department asserts that the geographic locations and their proximity to water meaningfully account for valuation differences among cabinsites. See Response 2, Response 3, and Response 19.

In regard to the matter of open bidding, the department disagrees with the commenter's interpretation of ARM 36.25.102(11), described as "the most probable price in terms of money that a property will bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and the seller each acting prudently, knowledgeably, and assuming the price is not affected by undue stimulus". DNRC believes the term "open" in the definition of "full market value" refers to the buyer's and seller's knowledge of the condition and quality of a product, and thereby each party's view of the value of the product. It does not refer to knowledge of another bidder's offer at a given time. Through a sealed bidding arrangement, prospective bidders are not "forced to guess on the value of a property" as the commenter suggests, but rather they must guess what other bidders are willing to pay and, accordingly, submit their best bid. This is the nature of a sealed bid auction.

In regard to the matter of renewal for leaseholders, see Response 15.

COMMENT 50:
Senator Bruce Tutvedt, SB 409 bill sponsor, submitted the following comments:

"My legislative intent on SB 409 was to direct DNRC to develop a market based rental rate for the State owned cabinsite properties; Let the market, through an open auction, set the rental market rates. A competitive bidding process is to be the method through which fair market value will be determined. There is to be no current lease holder preference. The bill purposely gives DNRC broad latitude in writing the rules so as to meet the legislature and land board's constitutional mandate to deliver full market value to the beneficiaries. It was also my intent to treat the leaseholders in a fair, predictable, straight forward manner. DNRC is to use as many of their current operating procedures as possible in developing these new rules.

Limiting the number of leaseholders per year that are eligible to enter the new market bid process to 10% is problematic. I would propose we let as many as desire enter the new system and get the neighborhood average as their new rental rate. They would be eligible for the new system upon stating their intention but only 10% would go to the market that first year. The remaining leaseholders would enter a

blind draw to stagger the when their lease would go through the bid process and begin their 15 year lease if they were the high bidder.

The number of neighborhoods appears to be too small or not split appropriately. In Flathead County the difference between large and small lake rental percentage rates could be extensive. I would request that we further split the neighborhoods. Possible new neighborhoods could be split by lakes that allow speed boats and lakes that do not, or lots over $100,000 dollars and lots under $100,000 dollars.

The need to use the new appraisal every 6 years could cause unwanted consequences either to the upside or the downside if we are using the 3 year rolling average percent rental rate. I propose that in the first year of the new appraisal the dollar amount paid by a lease holder not adjust by more than 10%. To use a new appraisal system value every 6 years and have a onetime 15 year lease with a CPI percent increase would cause real structural problems that would make the new lease system unworkable.

The value of the improvements must be valued correctly, or the States rental rates will be skewed. Both the owner and the prospective bidders should have a process to protest the improvement values.

At the time of a new renter, the new and old renter must be protected. The improvement owners must get paid, and the new renter needs to be protected and assured that the improvements are left in clean and operable condition. At the time of change of possession DNRC may need to have a staff person available to be on site."

RESPONSE 50:
DNRC agrees to eliminate the restriction on lessees switching to the bidding method. Instead of limiting the switch to only those lessees that go through competitive bidding, the department will allow an unlimited number of lessees to move to the geographic location average lease rate after applying and signing a supplemental lease agreement (SLA). During the transition period, 10% of those lessees that signed the SLA would be selected at random from the pool of lessees on the bidding method. Those lessees selected would go to competitive bidding in that year. Lessees would remain in the selection pool until they either go to competitive bidding or their leases comes up for renewal (in which case they would go to competitive bidding anyway). With this change to the administrative rules as they were originally proposed, the bidding method will be more consistent with the language of SB 409, while remaining consistent with the department's interpretation that all leases that switch to the bidding method before renewal during the transition period must go competitive bidding.

In regard to geographic location size and configuration, see Response 2, Response 3, Response 4, and Response 19.

In regard to the phase-in of new DOR appraised values, the department does not believe this is provided for in SB 409 or other statute.

In regard to the valuation of improvements, see Response 17.

In regard to the protestation of an improvements value, a bidder has limited rights to protest the asking price other than through direct negotiation with the seller. Following completion of the competitive bidding, the successful bidder who is awarded the lease, if other than the lessee, has available to him or her an arbitration process. The lessee likewise may utilize this arbitration process. ARM 36.25.125(5) and ARM 36.25.125(7) describe the arbitration process:

ARM 36.25.125(5): "T*he value of the improvements will be* ***determined by arbitration*** *when the former lessee or licensee wishes to sell improvements and fixtures and the new lessee or licensee wishes to purchase such improvements and fixtures, but the parties cannot agree upon a reasonable value."* [emphasis added]

ARM 36.25.125(7): "*In case of arbitration:*
(a) the lessee or licensee, or purchaser and the former lessee or licensee, shall each appoint an arbitrator, with a third arbitrator appointed by the two arbitrators first appointed:
(i) no party may exert undue influence upon the arbitrators in an effort to affect the outcome of the arbitration decision; and
(ii) if any party refuses to appoint an arbitrator within 15 days of being requested to do so by the director, the director may appoint an arbitrator for that party;
(b) ***the value of the improvements and fixtures shall be fixed by the arbitrators in writing and submitted to the department. That determination shall be binding on both parties; however, either party may appeal the decision to the department within ten days of the receipt of the arbitration decision by the department…***" [emphasis added].

The time for change of ownership may take weeks or months – it would be administratively impractical to have department personnel on-site during this entire period. The buyer and seller are responsible for making arrangements for the transfer of improvements ownership. DNRC has little role in ensuring both parties act in good faith with each other and are made whole except as provided in ARM 36.25.125.

The improvements are the property of the existing lessee and any warrant to condition, if desired by the buyer, shall be provided by the seller. The department makes no representations and will offer no warranties of any kind, either express or implied, concerning the improvements, including: 1) the condition of the improvements; 2) their title or ownership; and 3) their habitability, merchantability, or fitness for a particular purpose.

DNRC suggests that a buyer and seller use a closing agent, such as a title company, to handle the transaction. An agent will provide protection to both parties

by handling the funds transfer, check that taxes are paid, and facilitate the closing and filing of ownership documents.

COMMENT 51:
Senator David E. Wanzenreid submitted the following comments:

"The rules proposed by the department of Natural Resources (DNRC) to implement Senate Bill 409 appear to be based on the authority of the Land Board derived from the state constitution. As a result, the rules are substantially different from those that were anticipated at the time the legislation was debated and enacted.

In fact, one may argue that the rules propose very little change in the existing system. As a result, the policy framework enacted by the Legislature in response to objections raised by current leaseholders (both prior to and during the 2011 Legislature) is not fully implemented by the rules.

The most obvious conclusion one must make is that, under DNRC's scheme, the Legislature has no authority to structure a fair, market-based system. The comments submitted by the Montana Leaseholders Association not only identify fundamental questions about the adequacy of the proposed rules to implement the law; they also raise significant constitutional questions about the functions of the executive and the legislature in defining and implementing policies governing state-leased cabin and home sites.

These concerns are compounded by the abbreviated timetable for the adoption of the final rules by the Land Board. There is simply not enough time for the DNRC staff to adequately review and seriously consider the input received at the hearings conducted by the DNRC during the week of December 5 2011, as well as written comments made since the rules were noticed on 24 October 2011. The response of the DNRC is that the timetable fits the schedule the DNRC must maintain to meet contracts that come due in 2012.

Regardless, the process must be slowed down. Please find a way to do so.

The proposed rules do not appear to faithfully implement the requirements of Senate Bill 409.

If the effect of DNRC's recommendation to the Land Board is that the Legislature has no authority to modify the existing system or to create the structure for a market-based system, it should recommend that the existing system be maintained with no changes. This would likely result in litigation seeking to clarify the authority of the various branches, a development all of us would prefer to avoid.

If, on the other hand, the DNRC believes there is a joint responsibility between the branches in the formation of a market-based system, it should step back and assess whether the draft rules actually implement the clear policy objectives spelled out in the provisions of Senate Bill 409. In their current form, the rules do not.

If implemented, the proposed rules will result in (1) even higher vacancy rates of state-leased cabin and home sites and (2) a further erosion of revenue stream to fund our public schools.

The type of review described above will require more time. It will ensure a more deliberative process involving a more complete review of the clear intent and requirements of Senate Bill 409 and a more complete exchange of information and viewpoints on the part of leaseholders and those charged with administrative responsibilities for state leased properties. It will also protect our public schools from an additional losses of revenue".

RESPONSE 51:
DNRC has done its best to implement the directives of SB 409 in a constitutional manner. The rules were drafted with specific attention to SB 409, Section 1(3)(a) instructed the board to adopt rules implementing SB 409 that are "consistent with the board's constitutional fiduciary duties and that the number of leased cabin or home sites or city or town lots made available for competitive bid at any given time is consistent with the board's constitutional fiduciary duty of attaining full rental market value...".

While the Legislature has the ability to formulate statutory procedures for determining lease rates and fees, the Land Board retains the constitutional discretion to determine whether it is obtaining the full market value for any interest in school trust lands and whether to dispose of interests in school trust lands.

In regard to the comment timeline, see Response 22 and Response 25.

DNRC has asserted it would take significant vacancies to reduce the income stream from cabinsite leases. While vacant cabinsite leases will result in a loss of lease income, it is the department's belief that the bidding will result in geographic location rolling average lease rates at or just above 2%. This anticipated reduction in revenue is expected to be more than double the loss of income expected from future vacancies if SB 409 were not implemented. See also Response 18.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton	/s/ Tommy Butler
MARY SEXTON	Tommy Butler
Director	Rule Reviewer

Certified to the Secretary of State January 3, 2012.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I regarding the Horse Creek Controlled Groundwater Area	)))	NOTICE OF ADOPTION

To: All Concerned Persons

1. On October 27, 2011, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-161 regarding a notice of public hearing on the proposed adoption of the above-stated rule at page 2218 of the 2011 Montana Administrative Register, Issue No. 20. Prior to filing and publication of the notice of public hearing on the proposed adoption, the department also held an open house for the public in Absarokee, Montana, on September 19, 2011.

2. Upon further review, the department has determined that the reference to "a Notice of Completion" in (2) should be clarified to make clear that only one Notice of Completion of Groundwater Development, Form 602, for each parent tract for any of the listed purposes will be allowed after the effective date of this rule. The department has replaced the term "a" with "one" and added a reference to "per parent tract" to confirm its original intent that the reference means specifically "one".

3. The department has adopted New Rule I (36.12.905) as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I HORSE CREEK CONTROLLED GROUNDWATER AREA

(1) remains as proposed.

(2) The department shall accept ~~a~~ one Notice of Completion of Groundwater Development, Form 602, per parent tract within the HCCGWA if all of the following are met, otherwise an Application for Beneficial Water Use Permit, Form 600 must be filed.

(a) through (8) remain as proposed.

4. A summary of the written and oral comments from the November 17, 2011, public hearing appears below with the department's responses.

GENERAL COMMENT:

The DNRC received some comments regarding whether the criteria for establishing a Controlled Groundwater Area (CGWA) have been met in this instance. Specifically, comments were received that the DNRC had not met the burden in 85-2-506(5), MCA, that impacts due to groundwater withdrawals will reduce surface water availability *and cannot be appropriately mitigated*.

GENERAL RESPONSE: By proposing the rule, DNRC had considered whether water right holders could reasonably exercise their water rights where flows from springs decreased or ceased and surface water flows decreased. In DNRC's view,

surface and spring water right holders could not reasonably exercise their water rights where dropping groundwater levels would require the water right holders to put in a groundwater development to access their water rights. No comments were received suggesting any form of possible mitigation, including whether groundwater developments or any other alternative would effectively mitigate reduced groundwater levels and impacts to surface and spring water rights. The DNRC is not aware of any alternatives for appropriate mitigation. The DNRC finds that 85-2-506(5)(b), which reads: "current or projected ground water withdrawals from the aquifer or aquifers in the proposed controlled ground water area have reduced or will reduce ground water levels or surface water availability necessary for water right holders to reasonably exercise their water rights…", has been proven by a preponderance of the evidence and cannot be appropriately mitigated. Therefore, the requirement in 85-2-506(5), MCA: "…any of the following criteria have been met and cannot be appropriately mitigated…", has been established by a preponderance of the evidence.

COMMENT 1:
The current or projected reductions in recharges to the aquifer or aquifers in the proposed CGWA will cause groundwater levels to decline to the extent that water right holders cannot reasonably exercise their water rights.

RESPONSE 1:
DNRC is without information or knowledge that reductions in recharge to the Horse Creek aquifer(s) are occurring or will occur in the future. No information/evidence regarding this issue was submitted in response to the proposed rule.

COMMENT 2:
Current or projected groundwater withdrawals from the aquifer(s) in the proposed CGWA have reduced, or will reduce groundwater levels or surface water availability necessary for water right holders to reasonably exercise their water rights.

RESPONSE 2:
DNRC agrees. Data shows that groundwater withdrawals have, or will reduce surface water flows. Dr. Willis Weight provided extensive testimony regarding the geohydrologic conditions in the proposed CGWA. DNRC is addressing this situation through the proposed rule.

COMMENT 3:
Current or projected groundwater withdrawals from the aquifer(s) in the proposed CGWA have, or will induce or alter contaminant migration exceeding relevant water quality standards.

RESPONSE 3:
DNRC is without information or knowledge regarding contaminants in the proposed Horse Creek aquifer(s), or the potential migration of contaminants in the aquifer(s). No information/evidence regarding this issue was submitted in response to the proposed rule.

COMMENT 4:
Current or projected groundwater withdrawals from the aquifer(s) in the proposed CGWA have, or will impair groundwater quality necessary for water right holders to reasonably exercise their water rights based on relevant water quality standards.

RESPONSE 4:
DNRC is without information or knowledge that relevant water quality standards will be degraded to the point that water right holders will not be able to reasonably exercise their water rights. No information/evidence regarding this issue was submitted in response to the proposed rule.

COMMENT 5:
Two commenters testified generally in support of the proposed CGWA.

RESPONSE 5:
DNRC thanks the commenters for their input in the rulemaking process.

COMMENT 6:
Commenter testified in opposition to the proposed CGWA based on the "Hydrologic/Hydrogeologic Assessment Proposed Horse Creek Controlled Ground Water Area" prepared by Nicklin Earth and Water 2008 (rev.001).

RESPONSE 6:
The report entitled "Hydrologic/Hydrogeologic Assessment Proposed Horse Creek Controlled Ground Water Area" was prepared by Nicklin Earth and Water for testimony at a DNRC hearing scheduled for December 18, 2007, that was subsequently vacated. Nicklin concludes that the source to wells in Crow Chief Meadows is the Tullock Aquifer and that recharge greatly exceeds consumptive use by prospective homes in the subdivision. Nicklin also concludes that future development in the proposed controlled groundwater area will likely be limited because the petitioner group owns most of the land and that there is no evidence that groundwater levels are declining. The findings in the Nicklin report are generally consistent with the findings in the April 2009 DNRC report, "Ground Water Conditions at the Horse Creek Temporary Controlled Ground Water Area" ("DNRC April 2009 report") with the exception of the assessment of the potential for significant impacts to springs resulting from prospective groundwater development. The water balance assessment in the DNRC report indicates that groundwater development, even limited to established lots, could reduce or eliminate discharge along faults to springs and Horse Creek.

COMMENT 7:
DNRC previously designated a temporary CGWA for Horse Creek which expired in 2006. Designation of a CGWA now, through the rulemaking process using data which is three to five years old and outdated, is not appropriate. The DNRC should, at most, designate another temporary CGWA to collect current data and then proceed as appropriate based on that data.

RESPONSE 7:
DNRC's proposed designation of the Horse Creek CGWA through rule is authorized by 85-2-506(1), MCA: "The DNRC may by rule designate or modify [a] permanent or temporary controlled ground water area[ ] as provided in this part". DNRC's current proposed designation is based primarily upon the DNRC April 2009 report. This report is based on the most current information regarding groundwater conditions in the Horse Creek area.

COMMENT 8:
The record does not show that the criteria for establishment of a CGWA has been met by a preponderance of the evidence. The DNRC April 2009 report only indicates that springs in the area "could" dry up and average annual flow in Horse Creek "could" be reduced by 25 percent. Those conclusions do not show that springs "will" dry up or that flows "will" be reduced. In any event, the data does not show that water right holders will not be able to reasonably exercise their water rights in the event that springs actually do dry up, or flows in Horse Creek are reduced. The record also does not show that any potential adverse effect cannot be adequately mitigated.

RESPONSE 8:
Preponderance of the evidence is "[e]vidence which is of greater weight or more convincing than the evidence which is offered in opposition to it," (Black's Law Dictionary, Fifth Edition). The DNRC April 2009 report, supported by the testimony of Dr. Willis Weight at the hearing on the proposed rule clearly demonstrates the potential for adverse effect due to withdrawals of groundwater. Factual findings in opponents' expert report by Nicklin Earth and Water, Inc. are generally consistent with the findings of both DNRC and Dr. Weights–only Dr. Nicklin's conclusions are different. DNRC is without information on potential mitigation measures which would allow springs to flow with continued unrestricted development. No information/evidence regarding this issue was submitted in response to the proposed rule.

COMMENT 9:
The Crow Chief Meadows Subdivision will never be fully built out because of the real estate market and the fact that some current owners in the subdivision have multiple lots that they have no intention of developing. Thus, the estimates of potential impact are overstated.

RESPONSE 9:
As platted, the Crow Chief Meadows Subdivision could, at some future time be fully developed despite the current real estate market and the current intentions of the existing lot holders.

COMMENT 10:
The proposed CGWA is nothing more than an attempt to prevent the development of the Crow Chief Meadows Subdivision.

RESPONSE 10:
DNRC is under an obligation to protect senior water right holders. Establishment of CGWAs is a tool that DNRC may use to fulfill that obligation.

COMMENT 11:
Two commenters testified that they wished their property to be excluded from the CGWA.

RESPONSE 11:
The boundary of the proposed Horse Creek CGWA is generally based on hydrogeologic conditions, not property ownership.

COMMENT 12:
Commenter provided testimony and exhibits, including water quality data, as to why his parcel should be excluded from the CGWA.

RESPONSE 12:
The water quality data provided is not conclusive as to whether this parcel is not hydrologically connected with the Horse Creek aquifers. The boundary of the proposed Horse Creek CGWA is generally based on hydrogeologic conditions.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton
MARY SEXTON
Director
Natural Resources and Conservation

/s/ Anne Yates
ANNE YATES
Rule Reviewer

Certified to the Secretary of January 3, 2012.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I (ARM 42.13.902), New Rule II (ARM 42.13.903), and New Rule III (ARM 42.13.904) and the amendment of ARM 42.13.101 and 42.13.111 relating to alcohol server training requirements	)))))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On September 22, 2011, the department published MAR Notice No. 42-2-870 regarding the proposed adoption and amendment of the above-stated rules at page 2005 of the 2011 Montana Administrative Register, issue no. 18.

2. A public hearing was held on October 24, 2011, to consider the proposed adoption and amendment. Ronna Alexander, of the Montana Convenience Store Association, John Blair, of TIPS, Trevor Estelle, of TIPS, Jeff Hainline, of the Montana Restaurant Association, Val Jeffries, of Holiday Companies, Neil Peterson, of the Gaming Industry Association, and Mark Staples, of the Montana Tavern Association, all appeared and testified at the hearing. In addition to the oral testimony at the hearing, the department received written comments from Jon Bennion, of the Montana Chamber of Commerce, Lorelle Demont, of the Montana Department of Transportation, Brad Griffin, of the Montana Restaurant Association, and Nicole M. Seymour, of TIPS. Oral and written comments received are summarized as follows, along with the responses of the department.

COMMENT NO. 1: Mr. Griffin asked, relative to New Rule I (ARM 42.13.902), why the department needs to develop a standard curriculum when Senate Bill 29 (SB 29), L. 2011, 16-4-1006, MCA, articulates the areas that each training program must cover.

Ms. Alexander commented that the department training the trainers might be a slight contradiction to SB 29. She further commented that they (Montana Convenience Store Association) don't have a problem with the concept of training the trainers, but explained there is confusion among some of their larger companies, who have certified people in their organizations to conduct training, and questions how this new program will affect them. Ms. Alexander stated that perhaps there is a better explanation about how the department is going to treat those people and how it will work with the train-the-trainer.

Ms. Jeffries commented that Holiday Companies has, for years, been very proactive in their training and that they do a lot of follow-up and internal checks. She asked the department to provide clarification on who trains the trainer, and what that will look like on their end.

RESPONSE NO. 1: The department appreciates these comments and

understands the concerns. To clear up any confusion and increase understanding about how the process will work, the department has further modified the language in New Rule I (ARM 42.13.902).

The department is proposing to adopt the new rules and amendments to reflect the statutory requirements made by the 2011 Legislature in 16-4-1006, MCA. The new statute places the implementation and enforcement of any mandatory server and sales training programs in Montana under the exclusive authority and jurisdiction of the department. The law provides for the department to implement training programs. In doing so, the department will continue to use the "Let's Control It" training program, and regard it as the standard curriculum.

The department will update the standard curriculum, conduct train-the-trainer sessions for the standard curriculum, or delegate such responsibility to another entity; and determine trainer specifications, training policies, and coordinate the trainer network for the standard curriculum. The department will continue to coordinate trainers for the standard curriculum, and implement trainer qualifications into the curriculum to ensure the training is delivered with reasonable consistency and in a manner that supports accurate and quality instruction.

COMMENT NO. 2: Mr. Bennion stated that the Chamber is unsure how the rules will impact one-time, annual, or seasonal events where alcohol is served, such as a community event, microbrew festival, wine tasting, or charitable event.

He further commented about a member who is only busy 100 days per year and closes for over half the year, and stated that any consideration the department can give smaller establishments would be appreciated.

RESPONSE NO. 2: The department appreciates Mr. Bennion's comments and understands his concerns. To help add clarity, the department has further modified the language in New Rule II (ARM 42.13.903) to specifically include that volunteers working under existing licenses are required to be trained within 60 days of hire, while those serving and selling under a special permit are exempt from the training requirements (whether they are an employee or a volunteer of a special permit holder) as is outlined in the law. While the legislative changes require licensees, employees, and volunteers to complete training within 60 days of hire, the law does not provide for an exception for businesses that operate under 100 days a year.

COMMENT NO. 3: Mr. Griffin also stated, relative to New Rule III (ARM 42.13.904), that requiring recertification of a curriculum every two years, and requiring different and random final tests, are unnecessary burdens.

RESPONSE NO. 3: The department appreciates Mr. Griffin's comments and interest in this rulemaking action. Training providers will be required to submit their curriculum to the department every two years for review and approval. The department believes a periodic recertification of the training curriculum is important and necessary to ensure it continues to meet the established criteria and remains current with any future legislative changes. Periodic renewal of training programs will also encourage improvements in training methods as experience is gained under

this new law and data accumulates as to which training methods yield the best results in reducing improper sales and service of alcohol.

COMMENT NO. 4: The department received several comments on New Rule III (ARM 42.13.904), relative to the language about encouraging the use of experts, and the use of interactive discussion, classroom, and online training formats.

Ms. Alexander stated that she has never seen statements in rules use words like "encourage," that the statement isn't something the department is going to be able to enforce, and that it doesn't have a place in formal rulemaking.

Mr. Griffin asked why the department is encouraging community based experts to be present at all classroom trainings, as it is unreasonable to expect four professionals to be present at each of the trainings.

Mr. Staples commented that because the training has been done throughout the years voluntarily, until now, he likes the "encourage" language, but added that perhaps it belongs instead in a statement of purpose rather than in the rule.

Mr. Estelle stated that the proposed language encouraging the use of an interactive discussion format for both classroom and online curriculums is somewhat of a contradiction. He further stated that when approving programs, the department should consider the training itself be started by experts in the field of alcohol training, hospitality, and psychology. Mr. Estelle commented that if experts in the field are training the trainers, the information will get out without "strongly encouraging" the community experts to be involved, and that by having classroom programs that are approved within the state, it creates a support network.

Mr. Estelle further explained that it is difficult to have an interactive discussion with online only training and further stated that while he can see an online program working well in some instances, such as for renewals after initial certification has expired, and for geographically hard to reach areas, he proposes the department approve providers that are providing only a classroom curriculum or both a classroom and online curriculum.

Mr. Staples also commented, relative to allowing online training, that most people are not going to go online to train, but it should be offered as an option for those in rural locations.

Ms. Seymour commented that they (TIPS) have been working diligently to create and maintain a quality online program and have succeeded as one of the first providers to accomplish this. She further stated that with the proposed rules, Montana is not requiring that an online training provider also conduct classroom training provided by certified instructors. Ms. Seymour stated that they are very concerned about the quality of "fly-by-night" information technology companies with few or no trained alcohol instructors, and strongly recommended that Montana only permit online alcohol server and seller training programs that provide classroom training as well. Ms. Seymour stated that they urge the department to reconsider the criteria for accepting online only training programs.

RESPONSE NO. 4: The department appreciates all of these comments about the training formats and the wording of the rule. To address any concerns, the department has further modified the language in New Rule III (ARM 42.13.904).

While the department believes interactive discussion methods and outside

community-based expert presenters to be important components of the training, it does recognize that there is no current body of Montana data that would support moving interactive discussions from a recommended to a required part of the training at this time. However, the department will continue to recommend and support the use of these valuable resources to enhance the effectiveness of training, and to enable future measurement of the effectiveness of training using these resources versus training that does not.

Due to the vast geographical size of Montana, including some difficult to reach locations, the department believes it necessary to allow for online training to ensure all licensees and employees have the tools necessary to meet the requirements of the law. Because all training programs, whether classroom or online, must be preapproved and meet all curriculum criteria, the department does not believe it necessary for a qualifying provider to offer both types of training to become approved for one or the other.

The overall intent of the rule is to improve public health and safety through the implementation of effective, affordable, and widely available training, conducted by approved training providers, to achieve the result of a well trained alcohol server work force. If any type of training is determined to be less successful than others, whether it is online or classroom, the department may require improvements or choose not to recertify the training.

COMMENT NO. 5: Mr. Estelle commented, relative to the training program, that there is a need to address the different types of environments in which alcohol is sold and served. He stated, for example, that a clerk or a cashier in an off-premise establishment shouldn't be going through an on-premise program.

RESPONSE NO. 5: The department appreciates Mr. Estelle's comments and concerns regarding the different environments in which alcohol is sold and served. The department agrees that different environments will present unique circumstances. The law, however, requires training providers to meet very certain and specific requirements, regardless of the type of program. If a training provider wishes to offer diverse training courses for different environments, the department will approve of this provided the curriculum(s) still meets the requirements as set forth in law and rule.

COMMENT NO. 6: Mr. Bennion, Mr. Estelle, Mr. Hainline, Mr. Peterson, and Mr. Staples all commented, relative to New Rule III (ARM 42.13.904), that the proposed minimum final test pass rate of 85 percent was too high. Included in their comments were suggestions that the department consider looking at national standards, and lower the rate to within the 70 to 75 percent range.

RESPONSE NO. 6: The department appreciates these comments. The department has further amended the language in New Rule III (ARM 42.13.904) to reduce the minimum passing rate to 80 percent.

To arrive at the revised rate, the department surveyed and researched other state programs and determined the standard for those surrounding Montana to be at 75 to 80 percent. In a continuous effort to increase public health and safety, and

with the neighboring states of Oregon and Washington also at an 80 percent pass rate, the department believes the reduction to be appropriate.

COMMENT NO. 7: Mr. Estelle commented on the proposed measurement of training, in New Rule III (ARM 42.13.904), stating that while it's a fine measurement of training, it needs to be better defined because, as trainers, they (TIPS) want to be sure they are doing everything that the state is asking them to do. He further commented that if one training provider or another is providing most of the training in the state, by sheer volume, this should be taken into consideration if there is a violation by one of their participants.

RESPONSE NO. 7: The department appreciates Mr. Estelle's comments and understands his concerns. The department agrees that the effectiveness of each program needs to be evaluated holistically by utilizing all factors and not just the number of violations. To help address these concerns, the department is further modifying the language in New Rule III (ARM 42.13.904) to include a factor in determining the effectiveness of a program that uses the future rate of violations as a measurement based on a percentage of the number of individual trained to the number of servers who have failed compliance checks. As stated in the department's response to comment number 8, a database will help determine these percentages based on the numbers trained by each provider.

COMMENT NO. 8: The department also received comments relative to the creation of a "database" and requiring the training provider to provide the last four digits of the participant's social security number (SSN) in New Rule III (ARM 42.13.904).

Mr. Estelle commented that while they don't have a problem with this rule per se, as they've seen other mandatory states do this, a lot of participants will have a real issue with providing the last four digits of their SSN on an exam. Mr. Estelle further stated there are security concerns with the transmission of that data if not through a proper means.

Ms. Alexander commented that they (the Convenience Store Association) oppose the entire section of (13)(b) in New Rule III (ARM 42.13.904), and question why the department would want SSNs or other numbers. She stated that there have been some issues brought up about liability, and questions about exactly what the department is going to use that information for and why it would be needed. Ms. Alexander further stated that the Legislature did not want the department to be creating a database. Mr. Staples also stated that if there is a database involved, that the Legislature will throw this whole thing out.

Mr. Griffin commented that requiring a participant's birth date and partial SSN is unnecessary and exposes providers of training to possible security breach problems and the potential for identity theft of those taking the classes. He further asked why the department would want to collect the certificates of each person who passes the test, and commented that SB 29 stipulates that the department can ask for a copy of the certificate from the establishment, but did not envision a database of all certificates being maintained by the state.

RESPONSE NO. 8: The department appreciates these comments and understands the concerns. To help address them, the department has further modified the language in New Rule III (ARM 42.13.904) to remove the requirement for the training provider to provide the last four digits of the participants' social security number.

The department notes that the maintenance of training records is not a change of practice. In fact, the department currently maintains a record of trained individuals, from the standard curriculum. The only proposed changes to the current process will be to include outside training providers' information.

The new state law does require licensees to maintain proof of training for each employee. The department believes maintaining a record of trained individuals benefits licensees and training providers alike and is the most direct and efficient method to administer the new law. Without records of who is trained or who is not trained, the law would be unadministrable. It provides a benefit to the licensees by providing them with the ability to verify the training status of present or potential employees. The record is also a useful tool for the department to use when evaluating the effectiveness of each training program.

The training provider who commented did not have a concern with providing the information to the department, and noted that it is standard in most other states. His concern was with the security of the information obtained. The department has a secure web site and, with the removal of the social security information, believes this will address any security concerns.

COMMENT NO. 9: The department received comments about how the insurance industry recognizes certain server training programs relative to insurance rates.

Mr. Estelle commented that it is important for training programs approved by the department to also be recognized by insurance companies who rate insurance in the state. He stated that if establishments have gone through recognized training programs, such as TIPS, in some cases they will receive up to a 15 to 20 percent premium discount.

Mr. Blair commented that he has been a TIPS trainer for the last 20 years, that it works, and that insurance companies recognize the training.

RESPONSE NO. 9: The department appreciates Mr. Estelle's and Mr. Blair's comments. The department does not have a way to ensure that all the insurance companies recognize the training. To the department's knowledge there is no formal or informal process for submitting server training programs to all the companies in Montana that provide liquor liability insurance. There is no method or provision in place that verifies acceptance of state approved programs industry wide by insurance companies.

COMMENT NO. 10: Ms. Demont proposed technical revisions to the rule language for improved flow and clarity.

RESPONSE NO. 10: The department appreciates Ms. Demont's suggestions and has incorporated a number of the recommended language revisions to further

enhance the new rules.

3. As a result of the comments received, and to change the training date requirement proposed in the rules from January 1, 2012, to the effective date of the rules, the department amends New Rule I (ARM 42.13.902), New Rule II (ARM 42.13.903), New Rule III (ARM 42.13.904), and ARM 42.13.101, as follows:

NEW RULE I (42.13.902) DEPARTMENT RESPONSIBILITIES REGARDING THE ENFORCEMENT OF MANDATORY SERVER AND SALES TRAINING PROGRAMS (1) The implementation and enforcement of the mandatory server and sales training programs within the Responsible Alcohol Sales and Service Act in Montana is under the exclusive authority and jurisdiction of the Department of Revenue. This is intended for state licenses and does not extend to tribal government and federal government issued licenses.

(2) The department's goal is to have effective and affordable training widely available through approved training providers in order to achieve public health and safety goals with a trained work force. Although the department cannot guarantee it will meet these goals continuously, the department will strive to accomplish them based on available resources.

~~(2)~~(3) To comply with and implement the Act, the department will:

(a) develop a standard curriculum to set the baseline for all training providers;

(b) update the standard curriculum on an annual basis;

(c) determine delivery standards based on an objective evaluation;

(d) determine testing standards based on an objective evaluation;

(e) conduct train-the-trainer sessions for the standard curriculum or delegate such responsibility to another entity; ~~and~~

(f) determine trainer specifications, training policies and coordinate the trainer network for the standard curriculum; and

~~(f)~~(g) determine specifications for training providers.

~~(3)~~(4) The department will:

(a) approve, regulate, and monitor training providers and their curriculums;

(b) review and approve or deny a responsible alcohol sales and service training ~~providers~~ curriculum within 45 days of a complete application submittal;

(c) issue an approval or denial letter to the training provider; and

(d) provide contact information on the department web site for all approved publicly offered training providers.

~~(4)~~(5) The department will develop an electronic tracking system for training providers to input participants' training information.

~~(5)~~(6) Other than through the train-the-trainer program, ~~The~~ the department will not provide responsible alcohol sales and service training programs directly to retail sales employees.

~~(6) The department's goal is to have effective and affordable training widely available through approved training providers in order to achieve public health and safety goals with a trained work force. Although the department cannot guarantee it will meet these goals continuously, the department will strive to accomplish them based on available resources and the economic environment.~~

AUTH: 16-4-1009, MCA
IMP: 16-4-1001, 16-4-1002, 16-4-1003, 16-4-1004, 16-4-1005, 16-4-1006, 16-4-1007, 16-4-1008, MCA

NEW RULE II (42.13.903) LICENSEE RESPONSIBILITIES REGARDING THE RESPONSIBLE ALCOHOL SALES AND SERVICE ACT (1) All licensees will be required, ~~as of January 1, 2012~~ within 30 days following the effective date of this rule, to ensure that all persons who serve or sell alcoholic beverages (whether for pay or as a volunteer), their immediate supervisors, and all licensees or owners of licensees who personally serve or sell alcoholic beverages on behalf of the licensee, have completed ~~a~~ an approved responsible alcohol sales and service training class. The training requirements do not apply to persons serving or selling alcoholic beverages under a special permit regardless if they are an employee or volunteer of a special permit holder.

(2) Individuals trained within the three-year time period prior to ~~January 1, 2012~~ the effective date of this rule, by any training provider, will be in compliance with the training requirement provided that the individual has valid proof of training within that period. Such individuals must be retrained within three years from their date of training.

(3) ~~On or after January 1, 2012~~ As of the effective date of this rule, employees who do not have current valid proof of training must obtain training from a training provider preapproved by the department. Any training received from a nonapproved training provider does not satisfy the server training requirements of Title 16, ch. 4, part 10, MCA, or ~~these rules~~ the rules in this subchapter.

(4) Employees must receive training within 60 days of hire and every three years thereafter. Licensees or owners of licenses must receive training within 60 days of department approval of their ownership interest if they personally serve alcoholic beverages, or within 60 days of when they begin personally serving alcoholic beverages, and every three years thereafter.

(5) Licensees shall maintain proof of training for each employee. If, as a result of a routine check for compliance with 16-3-301, 16-6-304, or 16-6-305, MCA, ~~and 16-4-1005, MCA,~~ the department believes the licensee may be out of compliance with 16-4-1005, MCA, the department may make an examination of the licensee's training and/or employee records. After reviewing the records, if the department has reasonable cause to believe the licensee is not in compliance with Title 16, Ch. 4, part 10, MCA, the department will impose a penalty as provided by law.

(6) remains as proposed.

AUTH: 16-4-1009, MCA
IMP: 16-3-301, 16-4-1001, 16-4-1002, 16-4-1003, 16-4-1004, 16-4-1005, 16-4-1006, 16-4-1007, 16-4-1008, 16-6-304, 16-6-305, MCA

NEW RULE III (42.13.904) TRAINING PROVIDER RESPONSIBILITIES REGARDING THE RESPONSIBLE ALCOHOL SALES AND SERVICE ACT (1) In order for a responsible alcohol sales and service training curriculum to be valid for

purposes of Title 16, Ch. 4, part 10, MCA, and ~~these rules~~ the rules in this subchapter, the training provider must submit its curriculum to the department for approval. All training providers shall meet the following submittal requirements for approval. In order to have their curriculum approved, a training provider must submit:

(a) a hard copy of the curriculum and student workbook;

(b) a hard copy of the trainers' workbook or guide;

(c) a hard copy of all participant handouts;

(d) a hard copy of the course exam along with the answer sheet;

(e) a hard copy of any training supplement ~~for~~ specific to the state of Montana ~~state information~~;

(f) a hard copy of the program proof of completion document issued to participants; and

(g) a copy of all videos or other visual aids used in the training program.

(2) The department strongly ~~encourages~~ supports and recommends the use of an interactive discussion format for both classroom and online curriculums.

(3) The department ~~encourages~~ supports and recommends the use of community-based expert presenters during the training, e.g., a law enforcement officer to present information regarding false identifications, a health expert to present information pertaining to how alcohol affects the body, and an attorney to present potential liability and penalty issues.

(4) and (5) remain as proposed.

(6) In order for a responsible alcohol sales and service training curriculum to be approved by the department, the curriculum must provide at least three hours of instruction and meet course minimum standards to include the following content:

(a) the effects of alcohol on the human body, to include behavior cues and absorption rate factors;

(b) information on standard drink sizes and equivalency;

~~(b)~~(c) information, including but not limited to, a review of Montana alcoholic beverage laws and criminal, civil, and administrative penalties related to 16-3-301, 16-6-304, and 27-1-710, MCA;

~~(c)~~(d) an explanation of the three types of liability, their full consequences, and the importance of not selling or serving to underage and intoxicated persons;

~~(d)~~(e) procedures for checking identification and the acceptable forms of identification;

~~(e)~~(f) procedures for gathering proper documentation that may affect the licensee's liability, including maintaining an incident log, training records, licensee's policies, and conditions of employment;

~~(f)~~(g) training for handling difficult situations, such as persons who exhibit uncooperative, disruptive, or intimidating behavior;

~~(g)~~(h) evaluation techniques regarding intoxicated persons or others who pose a potential liability, and recommended approaches for refusing sales or service;

~~(h)~~(i) a final test that includes questions concerning alcohol and its effect on the body and behavior, recognizing and dealing with the problem drinker, Montana liquor laws, and terminating service~~;~~. The portion of the exam concerning Montana liquor laws shall consist of uniform questions approved by the department. To keep

the integrity of training, the program should have different tests that are used randomly; and

~~(i)~~(j) the participant~~s~~ must pass the final test with a minimum score of ~~85~~ 80 percent~~;~~.

~~(j) the portion of the final test concerning Montana liquor laws must consist of uniform questions approved by the department; and~~

~~(k) to keep the integrity of training, the program should have different final tests that are used randomly.~~

(7) The curriculum must be delivered in a manner that accomplishes results based on an empirical objective evaluation and the department may periodically conduct a review of approved training to ensure ~~it~~ that curriculum delivery meets the minimum standards.

(8) The department will continually strive to improve the effectiveness of both the training and the testing and will consider, among other factors, the future rate of violations by servers as a percentage who have undergone each type of training and testing. If the department determines that a particular training or testing method is less successful than others, the department may require improvements in the less successful training or testing methods, or choose to not continue certification of such training.

(9) through (12) remain as proposed.

(13) Within 30 days of each training session, training providers must:

(a) issue a certificate to each participant who successfully completed the training and passed the test that includes:

(i) full name;

(ii) date of birth; and

(iii) date of training.

(b) provide electronic notification to the department, in a format prescribed by the department, the following information for all participants:

(i) the training provider's name;

(ii) the date of training;

(iii) the type of training (i.e., online, classroom, or both);

(iv) the participant's full name;

(v) the participant's date of birth; and

(vi) ~~the last four digits of the participant's social security number (SSN) or if no SSN exists, an alternative such as a visa or passport number; and~~

~~(vii)~~ the participants passing or failing score.

AUTH: 16-4-1009, MCA

IMP: 16-3-301, 16-4-1001, 16-4-1002, 16-4-1003, 16-4-1004, 16-4-1005, 16-4-1006, 16-4-1007, 16-4-1008, 16-6-304, 16-6-305, MCA

42.13.101 COMPLIANCE WITH LAWS AND RULES (1) through (6) remain as proposed.

(7) A penalty for a licensee or licensee's employee not having a valid alcohol server training certificate shall be assessed against the licensee for whom the employee works at the time of the violation. The penalty for this violation is imposed against the licensee, and the licensee having multiple untrained employees on a

particular date shall not be considered multiple violations; however, continued noncompliance on a future date may be considered as an additional violation of the server training requirement. The penalty shall be assessed in addition to any penalty for other Montana alcoholic beverage code violations such as sales to underage persons and/or sales to intoxicated persons, and the violation will be considered a separate violation by the department. Penalties for not having valid alcohol server training certificates may be taken into account based on the mitigating factors described in (8) when determining a licensee's total number of violations in a three-year period for purposes of the progressive penalty schedule in (3). However, the monetary penalty for each server training certificate violation shall be $50 for a first offense, $200 for a second offense, and $450 for a third ~~offic~~e offense in a three-year period.

(a) Example: If a licensee has one previous violation for sale after hours, and later violates the training certificate provision, the licensee will be penalized $50 for the training certificate violation, although the violation will be considered a second violation on the licensee's record. Then, if the licensee commits another violation within the same three-year period (for instance, a sale to an underage person), the penalty for that violation will be a third-violation penalty.

(8) through (13) remain as proposed.

AUTH: 16-1-303, 16-4-1009, MCA
IMP: 16-3-301, 16-4-406, 16-4-1001, 16-4-1002, 16-4-1003, 16-4-1004, 16-4-1005, 16-4-1006, 16-4-1007, 16-4-1008, 16-6-305, 16-6-314, MCA

4. Therefore, the department adopts New Rule I (42.13.902), New Rule II (42.13.903), and New Rule III (42.13.904), amends ARM 42.13.101 with the amendments shown above, and amends ARM 42.13.111 as proposed.

5. An electronic copy of this notice is available on the department's web site at www.revenue.mt.gov. Locate "Legal Resources" in the left hand column, select the "Rules" link and view the options under the "Notice of Proposed Rulemaking" heading. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State January 3, 2012

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to the acceptance of electronic records and electronic signatures by the Business Services Division and repeal of ARM 44.5.201 pertaining to filing for certification authorities statement	)))))))	NOTICE OF ADOPTION AND REPEAL

TO: All Concerned Persons

1. On November 25, 2011, the Secretary of State published MAR Notice No. 44-2-165 pertaining to the public hearing on the proposed adoption and repeal of the above-stated rules at page 2505 of the 2011 Montana Administrative Register, Issue Number 22.

2. The Secretary of State has adopted the above-stated rule as proposed: New Rule I (44.2.301).

3. The Secretary of State has repealed ARM 44.5.201 as proposed.

4. No comments or testimony were received.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 3rd day of January, 2012.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.6.201 pertaining to search criteria for Uniform Commercial Code certified searches	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On November 25, 2011, the Secretary of State published MAR Notice No. 44-2-176 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 2508 of the 2011 Montana Administrative Register, Issue Number 22.

2. The Secretary of State has amended the above-stated rule as proposed.

3. No comments or testimony were received.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 3rd day of January, 2012.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to a name availability standard for registered business names	))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On November 25, 2011, the Secretary of State published MAR Notice No. 44-2-177 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 2510 of the 2011 Montana Administrative Register, Issue Number 22.

2. The Secretary of State has adopted the above-stated rule as proposed: New Rule I (44.5.131).

3. No comments or testimony were received.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 3rd day of January, 2012.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife, and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

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

Definitions:

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

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

Use of the Administrative Rules of Montana (ARM):

Known 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

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2011. This table includes those rules adopted during the period October 1, 2011, through December 31, 2011, and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 2011, 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 2011/2012 Montana Administrative Register.

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