

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I, the amendment of ARM 42.20.675, and the repeal of ARM 42.20.660, 42.20.665, 42.20.670, and 42.20.680 pertaining to agricultural land valuation)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL
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TO: All Concerned Persons

1. On January 3, 2020, at 10:30 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

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, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on December 13, 2019. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY. ARM Title 42, chapter 20, subchapter 6, contains several administrative rules which describe how the department gathers agricultural land data and how it is used in the valuation and application of 15-7-201, MCA. In its review of these administrative rules, the department observes that certain rules contain redundancies to statute, follow outdated language usage or writing styles, and in some cases, do not reflect current department practices.

The department proposes to adopt New Rule I as a means of consolidating content from ARM 42.20.660, 42.20.665, 42.20.670, and 42.20.680, which describe how the department calculates agricultural land's productivity value per acre for non-irrigated summer fallow farm land, non-irrigated continuously cropped farm land, non-irrigated continuously cropped hay land, and grazing land. The adoption of New Rule I and the proposed repeal of ARM 42.20.660, 42.20.665, 42.20.670, and 42.20.680 are necessary to remove repetition of what is present in 15-7-201, MCA, or within the subchapter's rules.

The department also proposes amendments to ARM 42.20.675 to address redundancies to statute, outdated language usage or writing styles, and updates to current practices.

If adopted as proposed, this rulemaking will result in two primary rules to address the valuation of all non-irrigated farm land and irrigated farm land, respectively, that are clear, concise, and easier to reference.

While this general statement of reasonable necessity covers the basis for the following proposed rulemaking, it is supplemented below, where necessary, to explain rule-specific changes.

4. The rule as proposed to be adopted provides as follows:

NEW RULE I NON-IRRIGATED AGRICULTURAL LAND VALUATION

(1) The department calculates productivity per acre values for non-irrigated agricultural land subclasses described in (3) and (4) using the statutory formula provided in 15-7-201, MCA. However, the department applies the formula per industry standard as $I/R = V$.

(2) The department calculates net income per acre (I) for the land subclasses in (3) by:

(a) multiplying the land's soil productivity by the average commodity price provided in ARM 42.20.681 to determine the gross income per acre; and

(b) multiplying the gross income per acre by the land owner's typical crop share percentage.

(3) The land owner's typical crop share percentage for non-irrigated summer fallow farm land is 12.5% and for non-irrigated continuously cropped farm land and non-irrigated continuously cropped hay land is 25%.

(4) For grazing land, the department determines net income per acre by deducting the land owner's expenses of 25% from the gross income per acre value.

AUTH: 15-1-201, MCA

IMP: 15-7-103, 15-7-201, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, in New Rule I, the department proposes consolidating the most relevant provisions from ARM 42.20.660(1), 42.20.665(1), 42.20.670(1), and 42.20.680(1), and revising them into proposed (1) through (4). New Rule I is necessary for the department to achieve its goal to minimize its rules, when possible, for multiple rules that contain substantially the same subject matter and procedures.

The department also proposes restating the statutory productive capacity value formula in (1) in a fashion that reflects how the department and the valuation industry read and apply the formula: with the equal sign (=) and quotient (V) placed to the right of the dividend (I) and divisor (R). The department believes this restatement of the department's application of the statutory formula is necessary to confirm the understanding between the department and the valuation industry on the application of the formula.

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

42.20.675 IRRIGATED AGRICULTURAL FARM LAND VALUATION

~~(1) The department calculates productivity per acre values for irrigated farm land values for each year are: using the formula provided in 15-7-201, MCA. However, the department applies the formula per industry standard as $I/R=V$.~~

~~(a) Calculated by using the formula defined in 15-7-201, MCA, where the agricultural land productivity valuation formula is:~~

~~(i) $V = I/R$;~~

~~(ii) V is the productivity value of the agricultural land;~~

~~(iii) I is the net income attributed to the acre of land using a crop share approach, which means applying the percentage of income from production (the share) that is attributed to the landlord (owner) of the land; and~~

~~(iv) R is the capitalization rate or the rate that converts an ongoing income stream into an estimate of value.~~

~~(b) The per acre irrigated farm land value is calculated as follows:~~

~~(i) Gross income per acre = Number of tons per acre times the average price per ton for alfalfa;~~

~~(ii) Net income per acre = Gross income per acre times 25 percent, which is the landlord's crop share percentage for irrigated farm land;~~

~~(iii) Less water cost = Net income per acre minus water cost allowance; and~~

~~(iv) Productivity value per acre = Net income per acre less water cost allowance divided by the capitalization rate.~~

~~(c) The allowable water cost classes for irrigated farm land are as follows:~~

<u>WATER COST CLASSES (WC)</u>					
WC2	WC3	WC4	WC5	WC6	WC7
\$20.00	\$25.00	\$30.00	\$35.00	\$40.00	\$45.00
\$24.99	\$29.99	\$34.99	\$39.99	\$44.99	\$49.99

~~(2) Water costs are the combination of allowable labor costs, on-farm energy costs, and a \$15 base water cost which is applicable to every acre of irrigated land. Total allowable water costs may not exceed \$50 for each acre of irrigated land.~~

~~(3) Allowable labor costs which pertain to this rule are \$15 for flood irrigation, \$10 for sprinkler irrigation, and \$5 for pivot irrigation, as provided in 15-7-201, MCA.~~

~~(4) Allowable energy costs, expressed as cost per acre, are the actual costs incurred in the energy cost base year, which is the calendar year immediately preceding the year published by the department in ARM 42.18.124, for energy to provide water from a definitive source to identifiable fields by use of commonly accepted irrigation system practices.~~

~~(5) Energy costs shall be documented with electrical or fuel statements. The taxpayer shall furnish specific information about the irrigation system and pumps. If receipts for the taxpayer's irrigation energy costs cannot be separated from the overall farm operation, a letter to the department explaining how the irrigation energy costs were calculated will be sufficient.~~

~~(2) The department calculates net income per acre (I) by:~~

~~(a) multiplying the land's soil productivity by the average commodity price provided in ARM 42.20.681 to determine the gross income per acre;~~

(b) multiplying the gross income per acre by the land owner's typical crop share percentage for irrigated farm land which is 25%; and

(c) subtracting allowable water costs per acre of irrigated farm land from the value determined in (2)(b). The department calculates allowable water costs as provided in 15-7-201, MCA, and the department's Montana Agricultural Land Classification and Valuation Manual, adopted and incorporated by reference in ARM 42.18.121.

(3) The department calculates the minimum value of irrigated farm land by determining net income per acre (I) by:

(a) multiplying a productivity of 23 bushels of spring wheat per acre by the commodity price provided in ARM 42.20.681 to determine gross income per acre; and

(b) multiplying the gross income per acre by the land owner's typical crop share percentage for non-irrigated continuously cropped farm land which is 25%.

(4) Pursuant to 15-7-201, MCA, the department assigns the irrigated farm land the higher per acre value as calculated in (2) and (3).

~~(6) (5) By July 1 of the year following the energy cost base year, all irrigated land taxpayers must provide all required irrigation type, irrigated acreage, and energy cost information incurred in the energy cost base year to the department on the prescribed forms. Failure to provide the required information will result in no energy cost deduction to the irrigated land value calculated by the department for property tax purposes. If the land owner fails to provide their energy costs to the department, as required by 15-7-201, MCA, the department will calculate the irrigated farm land productivity value without an energy cost deduction.~~

~~(7) The minimum value of irrigated land is determined by using 23 bushels of spring wheat and the nonirrigated continuously cropped farm land methodology.~~

~~(8) To make changes in the irrigated land values for tax years after the year published by the department in ARM 42.18.124, irrigated land taxpayers must provide to the department updated information by the first Monday in June of the current tax year or within 30 days of receiving a notice of classification and appraisal, whichever is later. That information will be limited to land use and irrigation system changes. A change in ownership is not a basis for using energy costs from a different year other than the energy cost base year. Failure to provide the updated information by the deadline will result in no change being made in the irrigated land values previously calculated by the department.~~

~~(9) (6) The department may conduct field reviews and gather energy cost data and conduct property field reviews and energy cost audits on energy costs to ensure equality of treatment for all irrigated land taxpayers. The department may adjust the irrigated land values if information supports that action. The irrigated land taxpayer will be notified in writing of that action.~~

AUTH: 15-1-201, MCA

IMP: 15-7-103, 15-7-201, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity provided above, the department proposes amending ARM

42.20.675 to update the catchphrase of the rule to more closely align with New Rule I and comply with ARM 1.2.214.

The department proposes to add into (1) the restatement of the department's application of the statutory productive capacity value formula for the same reasons expressed for New Rule I. Based on the amendment, the text in current (1)(a) becomes unnecessary and is proposed for removal.

The department proposes revising and relocating net income per acre calculation methodologies from (1)(b) to proposed (2)(a) and (b). The amendments are necessary for consistency between 15-7-201, MCA, the rule, and the Montana Agricultural Land Classification and Valuation Manual (Ag. Manual).

The department proposes removing the water cost table, allowable water, labor, and energy costs text in current (1)(c) through (5) and replacing it with proposed (2)(c) stating the department uses calculated allowable water costs provided in 15-7-201, MCA, and the Ag. Manual. The amendments are necessary for consistency between 15-7-201, MCA, the rule, and the Ag. Manual. The removal of text in current (5) is necessary because the text is outdated and does not reflect current department practice. Land owners no longer provide electrical or fuel receipts to the department when reporting their energy costs because any reporting of such data is made to the department through an online process.

The department proposes relocating and revising text from (7) to proposed (3), regarding the department's methodology for determining minimum value of irrigated land. The proposed amendments clarify a valuation process and provide necessary cross-referencing to a component of the calculation which is provided in ARM 42.20.681. The department also believes that the relocation of this text to proposed (3) is better for subject matter organization.

The department proposes (4) to notify land owners that the department determines value of irrigated farm land at the higher of the two values calculated under the processes in (2) and (3), as required by 15-7-201, MCA. The department believes it is necessary to reference the department's statutory authority and process in rule in the event the net income value of a land owner's irrigated farm land is less than if the land were not irrigated.

The department proposes (5) which removes text that is redundant to that found in 15-7-201, MCA, and revises the section to describe the department's process for calculating the irrigated farm land productivity value when the land owner does not submit their energy costs to the department. This is necessary because the department must complete its valuation duties and also inform land owners of the consequences of not providing the department with this required information.

The department further proposes to remove (8) which contains language currently present in 15-7-102, MCA, regarding timely requests for informal review of valuation, and an obsolete cross-reference to ARM 42.18.124, which was repealed in 2018.

Lastly, the department proposes revising, for brevity, proposed (6) to clarify the necessity that energy cost audits may be performed by the department to ensure appropriate costs were provided by land owners to the department.

6. The department proposes to repeal the following rules:

42.20.660 NONIRRIGATED SUMMER FALLOW FARM LAND

AUTH: 15-1-201, MCA
IMP: 15-7-103, 15-7-201, MCA

42.20.665 NONIRRIGATED, CONTINUOUSLY CROPPED FARM LAND

AUTH: 15-1-201, MCA
IMP: 15-7-103, 15-7-201, MCA

42.20.670 NONIRRIGATED CONTINUOUSLY CROPPED HAY LAND

AUTH: 15-1-201, MCA
IMP: 15-7-103, 15-7-201, MCA

42.20.680 GRAZING LAND

AUTH: 15-1-201, MCA
IMP: 15-7-103, 15-7-201, MCA

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: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m., January 10, 2020.

8. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

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

10. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at sosmt.gov/ARM/register.

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

12. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption, amendment, and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Gene Walborn
Gene Walborn
Director of Revenue

Certified to the Secretary of State November 26, 2019.