

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.18.121 pertaining to updates)
to the Montana Reappraisal Plan and)
Classification and Valuation Manuals)

TO: All Concerned Persons

1. On October 9, 2020, the Department of Revenue published MAR Notice No. 42-1024 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1832 of the 2020 Montana Administrative Register, Issue Number 19. On November 6, 2020, the department published a notice of extension of comment period on the proposed amendment of the above-stated rules at page 2078 of the 2020 Montana Administrative Register, Issue Number 21.

2. On October 30, 2020, a public hearing was held via videoconference to consider the proposed amendment. No proponents were present, no proponent oral testimony was received, and the department received no written comments in direct support. The following persons were present but did not provide oral testimony: Josef Kuchera, F.H. Stoltze Land and Lumber Company (Stoltze Land & Lumber); Sara McConnell, City of Helena. The following persons also provided written comments: Paul McKenzie, Stoltze Land & Lumber; the Forest Lands Taxation Advisory Committee, established under 15-44-103, MCA (committee). The committee's comments and recommendations relative to this rulemaking were provided to the department in the form of summarized meeting minutes from its December 7, 2020 meeting. The committee also provided the department with its final 2021 valuation cycle observations and recommendations - which are not directly related to this rulemaking - in its correspondence dated December 14, 2020. The department will respond to the committee's December 14 letter independently from the responses contained herein.

3. The department has amended ARM 42.18.121 and adopted the reappraisal plan and valuation manuals described therein as proposed, except for the proposed 2021-2026 Montana Forest Land Classification and Valuation Manual (Manual), which has been revised upon adoption in response to comments and recommendations to reinstate content in the Manual which was proposed for discontinuation from the 2015 publication.

4. The department has thoroughly considered the comments received. A summary of the comments and the department's responses are as follows:

COMMENT 1: In his October 23 comments, Mr. McKenzie commented that Stoltze Land & Lumber had been waiting for the committee to convene to discuss the 2021-2026 valuation cycle because the committee had not met since 2014. Mr. McKenzie also provided commentary on his understanding of the function of the committee in

its advisory role to the department and expressed concern that the committee had not provided, among other valuation matters, its review or recommendations for the Manual.

RESPONSE 1: Section 15-7-103, MCA, provides that committee membership is determined by appointment from legislative leaders and the Governor. The department made its inquiries about the status of the committee, but a majority of the appointments were not made until November 9, 2020, and the committee is still not fully appointed. The department cannot offer any speculation regarding the absence of committee meetings since 2014 or the timing of the committee members' appointments.

Regarding Mr. McKenzie's commentary and concerns about the committee in its advisory role to the department, the committee's technical functions of data review in 15-44-103(10)(c), MCA, are plainly stated, and are not necessarily inclusive with the purpose and substance of this rulemaking. Notwithstanding, the department understands Mr. McKenzie's concerns about the committee's review of the Manual incidental to its statutory data review prior to the adoption of the Manual. However, ARM 42.18.121 and the adopted and incorporated plan and manuals are intended to provide stakeholders and the public with beneficial information about the department's valuation processes and methodology and not be a primary source for forest land valuation cycle data such as productivity values, stumpage values, wood production, capitalization rates, net income, and agriculture-related income.

Since Mr. McKenzie is a member of the committee, he will also receive the department's responses to similar observations which were included in the committee's December 14 letter.

COMMENT 2: Mr. McKenzie submitted substantial commentary regarding his concerns over the proposed simplification of the Manual from the 2015 version. Mr. McKenzie believes an overall revision of the publication was unnecessary and claims the intent of the Manual is to guide both appraisers and taxpayers in the application of the rules and law in the complex process of valuation of forest land. Mr. McKenzie contends that manuals are intended to be technical and contain technical details to support complex processes. He suggested that the department could create a separate document for the public if a layperson's guide to forest land classification and valuation was deemed necessary.

RESPONSE 2: The Montana Forest Land Classification and Valuation Manual was originally written to aid the department's staff in understanding the implementation and assessment of private forest land in Montana. The original manual was intended to be simple and informative. In 2009, manual updates included technical and scientific language and information. Since 2009, the department has observed that the audience for the manuals has expanded beyond the industry and includes a greater number of property owners, researchers, and the general public. The information proposed for removal from the 2015 manual was found in the History, Forest Land Tax Act, Forest Productivity, and Potential Productivity Classification System sections of the 2009 manual. While this information is very informative and

explains how the current productivity model was developed, the information itself is not needed for the current forest appraisal process.

The department does agree with Mr. McKenzie that the information contained in pages 5 and 6, and 9 through 12 of the 2015 manual has value. Based on these comments, the department will revise the Manual upon adoption by including the 2015 manual content with minor, but necessary, revisions as an addendum to the Manual.

COMMENT 3: Mr. McKenzie commented that the 2015 manual's history, detail on the productivity classification system, tax classification process, and land eligibility review dates are critical information to both appraisers and taxpayers that simply do not exist elsewhere. Mr. McKenzie also states that if this historical information is removed and not carried forward in future manual versions, it will exist only in archives, which puts the taxpayer and the department at a disadvantage due to lack of access to the information.

The committee concurs with Mr. McKenzie that the historical information of the 2015 manual should be maintained and carried forward in future manuals.

RESPONSE 3: The department directs Mr. McKenzie and the committee to the second paragraph of Response 2 and the incorporation of an addendum to the Manual.

COMMENT 4: Based on the department's verbal agreement to reinstate 2015 manual content described in Responses 2 and 3, the committee gave its overall approval of the Manual during its December 7, 2020 meeting.

RESPONSE 4: The department appreciates and thanks the committee for expediting its meeting schedule, for its discussions and recommendations on forest land valuation policy, for its input regarding this rulemaking and the Manual, and for its overall policy support as the department prepares for the upcoming valuation cycle.

COMMENT 5: Mr. McKenzie commented that the eligibility checklist that resided on page 13 of the 2015 manual is a valuable resource. He suggests the department continue the summary checklist in addition to the checklist's content, which is continued in the 2015 manual.

RESPONSE 5: The checklist described by Mr. McKenzie contains the same information found in the Forest Land Eligibility Requirements section. Consistent with the department's goal to remove unnecessary redundancies in its publications, the department removed the checklist in favor of subsection titles in the Eligibility section. The relevant content remains intact even though the checklist has been removed.

COMMENT 6: Mr. McKenzie commented that he believes there are errors and certain ambiguities in the Manual. He provided examples related to the department's explanations or descriptions of tree species, stocking rate, minimum productivity for productive forest land, cubic foot measurement referencing, restrictions and easements, valuation zone realignments, and application date references.

RESPONSE 6: The department agrees with Mr. McKenzie that in the Tree Species section adding the words "Examples of . . ." to the second paragraph on page 4 provides clarity that this is not an all-inclusive list of the commercial tree species, and based on these comments, the department will revise the Manual accordingly upon adoption.

The department concurs with Mr. McKenzie that adding the words "by crown cover" in the first sentence of the Stocking Rate section provides clarity and the department will revise the Manual accordingly upon adoption.

The department concurs with Mr. McKenzie's comment regarding the incorrect item reference in ARM 42.20.701 and the department will revise the Manual upon adoption to reflect the recently amended version of ARM 42.20.701.

The department appreciates Mr. McKenzie's comments regarding establishing a minimum productivity and the cubic foot measurement and conversion rate. However, the minimum annual net wood production requirement is stated in 15-44-102, MCA, in cubic feet an acre. The department administers this in board feet per acre and the stated conversion factor is part of the productivity model developed by the University of Montana – College of Forestry.

The department thanks Mr. McKenzie and agrees with his comments regarding the simplification of the Productivity section. The department directs Mr. McKenzie to its response in the second paragraph of Response 2 regarding the new Manual addendum which reinstates much of this content.

The department appreciates Mr. McKenzie's comments regarding the 'Restrictions and Easements' section. The department will modify the Manual upon adoption by striking this example.

The department appreciates Mr. McKenzie's comments regarding limited reference to the committee in the Manual. However, the committee's scope of authorization and its responsibilities are covered in sufficient detail in 15-44-103, MCA, and any substantive discussion in the Manual would be redundant and potentially contradictory to what each appointed committee sees in its advisory role to the department.

The department understands Mr. McKenzie's concerns on the importance of including the filing deadlines for the natural disaster reduction and request for classification review. However, these dates are both statutory and in administrative

rule and the variance of circumstances makes it difficult to reliably include those dates in a reference like a manual. For instance, when a taxpayer files a natural disaster reduction and request for classification review, those requests are filed on the Request for Informal Classification and Appraisal Review form (AB-26), which has specific filing dates stated on the form, pursuant to 15-7-102, MCA. Further, the effective date for the natural disaster reduction begins with the year after the filing, as per ARM 42.20.740, rendering the month of the filing of no concern. For these reasons, the department declines to make the changes as requested.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Gene Walborn
Gene Walborn
Director of Revenue

Certified to the Secretary of State December 31, 2020.