

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 23

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 8.99.901,) ON PROPOSED AMENDMENT
8.99.904, 8.99.908, and 8.99.912)
pertaining to the award of grants and)
loans under the Big Sky Economic)
Development Program)

TO: All Concerned Persons

1. On January 4, 2008, at 1:30 p.m., the Department of Commerce will hold a public hearing in Room 228 of the Park Avenue Building, 301 South Park Avenue, at Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., December 28, 2007, to advise us of the nature of the accommodation that you need. Please contact Angela Nelson, Business Resources Division, Department of Commerce, 301 South Park Avenue, P.O. Box 200505, Helena, Montana 59620-0505; telephone (406) 841-2792; fax (406) 841-2731; or e-mail anelson@mt.gov.

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

8.99.901 DEFINITIONS (1) through (9) remain the same.

(10) "Eligible economic development organization" means an economic development organization that is located in a county that is not part of a certified regional development corporation region, and which meets the eligibility requirements established by the department and published by it in the Big Sky Economic Development Trust Fund Application Guidelines dated ~~2007~~ 2008.

(11) through (18) remain the same.

AUTH: 90-1-204, MCA

IMP: 90-1-204, MCA

8.99.904 INCORPORATION BY REFERENCE OF RULES GOVERNING SUBMISSION AND REVIEW OF APPLICATIONS (1) The department adopts and incorporates by reference the Big Sky Economic Development Trust Fund Application Guidelines dated ~~2007~~ 2008 as rules governing the submission and review of applications under the program. A copy of the guidelines may be obtained from the Department of Commerce, P.O. Box 200505, Helena, MT 59620-0505.

(2) remains the same.

AUTH: 90-1-204, MCA
IMP: 90-1-204, MCA

8.99.908 MAXIMUM AWARD AMOUNT (1) through (3) remain the same.

(4) Maximum award amounts to certified regional development corporations and other eligible economic development organizations shall be established and published by the department in the Big Sky Economic Development Trust Fund Application Guidelines dated ~~2007~~ 2008.

AUTH: 90-1-204, MCA
IMP: 90-1-204, MCA

8.99.912 ELIGIBLE BUSINESS (1) Basic sector businesses and other businesses identified by the department in the Big Sky Economic Development Trust Fund Application Guidelines dated ~~2007~~ 2008 are eligible for financial assistance from funds that are awarded to local governments under this program.

AUTH: 90-1-204, MCA
IMP: 90-1-204, MCA

REASON: 17-5-703 and 90-1-201, MCA, et seq. created the Big Sky Economic Development Fund and assigned the administration of the fund to the Department of Commerce. The department is proposing these amendments to reflect the updated 2008 Guidelines. The Big Sky Economic Development Fund program is an economic development program that aides in the development of good-paying jobs for Montana residents and promotes long-term, stable economic growth in Montana. Amendments are also reasonably necessary because the Legislature mandated that the department adopt rules to implement the Big Sky Economic Development Program in 90-1-204, MCA.

4. Concerned persons may submit their data, views, or arguments concerning the proposed amendments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Angela Nelson, Business Resources Division, Department of Commerce, 301 South Park Avenue, P.O. Box 200505, Helena, Montana 59620-0505, fax (406) 841-2731, or e-mail anelson@mt.gov, and must be received no later than 5:00 p.m., January 14, 2008.

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

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Department of Commerce, 301 South Park Avenue, P.O. Box

200501, Helena, Montana 59620-0501, by fax to (406) 841-2701, by e-mail to lgregg@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

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

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

/s/ G. MARTIN TUTTLE
G. MARTIN TUTTLE
Rule Reviewer

/s/ ANTHONY J. PREITE
ANTHONY J. PREITE
DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State November 26, 2007.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC
ARM 20.7.1101 and 20.7.1102) HEARING ON PROPOSED
pertaining to conditions on probation) AMENDMENT
or parole)

TO: All Concerned Persons

1. On January 3, 2008 at 10:00 a.m. a public hearing will be held in Room 24 of the Department of Corrections Annex at 515 N. Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Corrections 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 December 20, 2007 to advise us of the nature of the accommodation that you need. Please contact Myrna Omholt-Mason, 1539 11th Ave., P.O. Box 201301, Helena, Montana 59620-1301, telephone: (406) 444-3911, fax: (406) 444-4920, e-mail: momholt-mason@mt.gov.

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

20.7.1101 CONDITIONS ON PROBATION OR PAROLE (1) ~~Residence.~~
The offender must obtain prior approval from his/her supervising officer before taking up residence in any location. ~~The probationer/parolee offender shall not change his/her place of residence without first obtaining written permission from his/her supervising officer or the officer's designee. The offender must make the residence open and available to an officer for a home visit or for a search upon reasonable suspicion. The offender will not own dangerous or vicious animals and will not use any device that would hinder an officer from visiting or searching the residence.~~

(2) ~~Travel.~~ The probationer/parolee shall not leave his assigned district without first obtaining written permission from his supervising officer. At the time of his release, the probationer/parolee will be assigned a district and provided written notification of the same. offender must obtain permission from his/her supervising officer or the officer's designee before leaving his/her assigned district.

(3) ~~Employment and/or program.~~ The probationer/parolee shall offender must seek and maintain employment or maintain a program approved by the Board of Pardons and Parole or the supervising officer. Unless otherwise directed by his/her supervising officer, the offender must inform his/her employer and any other person or entity, as determined by the supervising officer, of his/her status on probation, parole, or other community supervision. He shall not change such employment or program without first obtaining permission from his supervising officer.

(4) Reports. ~~Unless otherwise directed, the offender must~~ The probationer/parolee is required to submit written monthly reports to his/her supervising officer on forms that will be provided by the probation and parole bureau. He shall personally contact his probation/parole officer on the dates and times specified by the officer. The offender must personally contact his/her supervising officer or designee when directed by the officer.

(5) Weapons. ~~The probationer/parolee shall not own, possess or be in control of any firearm, including black powder, or deadly weapon as so defined by state or federal statute. offender is prohibited from using, owning, possessing, transferring, or controlling any firearm, ammunition (including black powder), weapon, or chemical agent such as oleoresin capsicum or pepper spray.~~

(6) Financial. ~~The probationer/parolee shall always consult with his supervising officer and shall~~ offender must obtain permission from his/her supervising officer before engaging in a business, purchasing real or personal property, or purchasing an automobile, or incurring a debt.

(7) Search of person or property. ~~Upon reasonable cause, the probation or parole client shall submit to a search of their person, vehicle or residence by a probation/parole officer at any time without a warrant. suspicion that the offender has violated the conditions of supervision, a probation and parole officer may search the person, vehicle, and residence of the offender, and the offender must submit to such search. A probation and parole officer may authorize a law enforcement agency to conduct a search, provided the probation and parole officer determines reasonable suspicion exists that the offender has violated the conditions of supervision.~~

(8) Laws and conduct. ~~A probationer/parolee shall~~ The offender must comply with all municipal, county, state, and federal laws and ordinances; and He shall further conduct himself/herself as a good citizen. The offender is required, within 72 hours, to report any arrest or contact with law enforcement to his/her supervising officer or designee. The offender must be cooperative and truthful in all communications and dealings with any probation and parole officer and with any law enforcement agency.

(9) The offender is prohibited from using or possessing alcoholic beverages and illegal drugs, including marijuana, regardless of whether the offender has received a registry identification card from the Department of Public Health and Human Services pursuant to Title 50, chapter 46, part 1, MCA. The offender is required to submit to bodily fluid testing for drugs or alcohol on a random or routine basis and without reasonable suspicion.

(10) The offender is prohibited from gambling.

(11) The offender shall pay all fines, fees, and restitution ordered by the sentencing court.

(9) (12) Special conditions. ~~The Montana Board of Pardons, and Parole and the sentencing court, or the department of corrections and human services may require other and have the authority to order the offender to abide by additional conditions to be placed upon the probationer or parolee. and such conditions must be contained in the judgment or parole decision. The Department of Corrections may require an offender committed to the department to abide by additional conditions for the privilege of serving the offender's sentence in the community instead of in a correctional facility, prerelease center, or other correctional facility.~~

~~The conditions shall be in writing by the agency involved and shall be made a part of any agreement signed by the probationer/parolee.~~

AUTH: 2-4-201, 46-23-1011, 53-1-203, ~~53-24-204~~, MCA
IMP: 46-23-1011, 46-23-1021, MCA

STATEMENT OF REASONABLE NECESSITY: The Department of Corrections proposes these rule changes to provide guidance to offenders and probation and parole officers, as well as to the general public. The proposed rule changes are necessary to provide explicit direction to offenders about the types of activities that are restricted or prohibited as well as about the types of activities and behaviors that are expected of offenders while on community supervision. The proposed rule changes are necessary to provide notice to offenders about how their rights may be infringed upon as a result of being supervised in the community instead of being incarcerated. The proposed rule changes are reasonable because they are designed to provide for the safety of the public by permitting adequate monitoring of offenders on probation and parole. The changes are reasonable because they comport with Montana statutes and case law.

These rules have been in existence for several decades without any revision or updating. The changes proposed here have been drafted so as to update and modernize the rules so as to more accurately reflect the reality of supervising felony offenders in the community. Each of the changes are addressed below:

- (1) Currently, the rules only address the obligations of an offender when he/she changes residence. The first sentence is proposed so as to encompass the requirement that the offender's address must be approved by the P&P officer upon entering probation or parole. The requirement of obtaining permission is not just for a change of residence. Permission is required of any residence, even the offender's initial residence upon entering supervision.
- (2) This proposed change more concisely states the obligation of the offender to obtain permission to travel outside of the designated area.
- (3) The addition of the second sentence imposes an obligation on the offender to inform his/her employer of his/her status on probation and parole. The Department of Corrections believes public safety is enhanced by requiring offenders to so inform employers. This sentence also gives discretion to the P&P officer to require additional notification. For example, offenders who are self-employed as carpenters, painters, or in other trades should be required to inform customers of their probationary or parole status. The Department of Corrections believes this is appropriate policy and that the public would want to be informed before permitting someone into their home or residence.
- (4) This proposed change more concisely states the obligation of the offender to regularly report to the P&P officer.
- (5) This proposed change more concisely states the prohibition against weapons.
- (6) This proposed change more concisely states the obligation of the offender to communicate with the P&P officer when contemplating significant financial decisions. All offenders have the financial obligation associated with their crime,

including fees and restitution to victims; therefore, this financial condition is necessary and reasonable to provide adequate supervision by the P&P officer.

(7) This proposed change more concisely and accurately states the right of a P&P officer to search the person, residence, or vehicle of an offender upon reasonable suspicion that a violation has occurred.

(8) The second sentence is necessary because P&P officers must know when an offender has had contact with law enforcement. Even so-called minor traffic violations should be reported to P&P officers, but sometimes are not disclosed. It is critical that P&P officers are notified when an offender has contact with law enforcement.

(9) This has been the subject of a recent Supreme Court oral argument during which a justice noted that the Department of Corrections has the authority to promulgate an administrative rule prohibiting offenders on probation or parole from using alcohol. The justice noted that such a rule change would clear up confusion about alcohol use among offenders and would standardize the policy statewide. The Department of Corrections believes this prohibition is critical to protect the public and provide offenders with the best chance at rehabilitation from criminality. As for marijuana, several P&P officers have experienced offenders who have "doctor shopped" so as to obtain permission to use "medical marijuana." Several of these offenders have been convicted of drug offenses. The Department of Corrections believes it is poor public policy to permit offenders to use illegal drugs. The final sentence of this section ensures the P&P officer can test offenders for the use of prohibited substances, a necessary tool to supervise offenders.

(10) Offenders have financial obligations to the state and to the victims of their crimes and gambling is not an appropriate use of the limited financial resources available to most offenders.

(11) This rule concisely states the offender's obligation to pay fines, fees, and restitution.

(12) This rule change concisely states the ability of the Board of Pardons and Parole to impose additional restrictions on an offender who seeks early release on parole.

20.7.1102 WRITTEN AGREEMENT (1) ~~The foregoing conditions will be reduced to writing and indicated as conditions of probation and parole and will be signed by the probationer or parolee before they may be effected. probation and parole officer is required to provide in writing to the offender all of the conditions of probation, parole, or other community supervision. The offender must agree to the conditions before he/she is eligible to be supervised on probation, parole, or other community supervision.~~ Further, such written agreement will contain the following statement: "I do hereby waive extradition to the state of Montana from any state in the union and from any territory or country outside the continental United States or to the state of Montana. I understand that this probation or parole is granted to and accepted by me subject to the conditions, limitations, and restrictions stated herein and with the knowledge that the Montana ~~Board of~~ Board of Pardons and Parole, or the sentencing court or the Montana ~~Department of~~ Department of Corrections and human services have the power at any time in case of violation of the conditions, limitations, and restrictions of my probation or parole, ~~and~~ to cause my detention and return to

incarceration at any institution so designated by the department. I have read or have had read to me the foregoing conditions of my probation and parole. I fully understand them and I agree to abide by and strictly follow them and fully understand the penalties involved should I in any manner violate the foregoing conditions, limitation, or restrictions."

AUTH: 2-4-201, MCA
IMP: 46-23-1101, MCA

STATEMENT OF REASONABLE NECESSITY: This proposed rule change is necessary to clarify the obligation of the P&P officer to provide a written copy of the rules to the offender. The rule change is necessary to ensure that the offender will not be supervised unless he/she agrees to and signs the rules. The rule change is reasonable because it is designed to provide written notice to the offender of his/her obligations while supervised in the community.

4. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Myrna Omholt-Mason at the contact information listed in paragraph 2, and must be received no later than 5:00 p.m. on January 10, 2008.

5. The Department of Corrections maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name, e-mail, and mailing address of the person 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 sent or delivered to the Department of Corrections, 1539 11th Ave., Helena, MT 59601, by fax to (406) 444-4920, by e-mail to momholt-mason@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

6. An electronic copy of this Notice of Public Hearing will be available through the department's web site at www.cor.mt.gov. The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register. However, the department advises that it will decide any conflict between the official version and the electronic version in favor of the official printed version. In addition, the department advises that the web site may be inaccessible at times, due to system maintenance or technical problems.

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

8. Brenda Elias, Hearings Examiner, will preside over and conduct the hearing.

/s/ Mike Ferriter
MIKE FERRITER
Director of Corrections

/s/ Colleen A. White
COLLEEN A. WHITE
Rule Reviewer

Certified to the Secretary of State November 26, 2007.

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

In the matter of the adoption of New)	NOTICE OF PUBLIC HEARING
Rules I through IX pertaining to)	ON PROPOSED ADOPTION
awarding grants to carry out the)	
purposes of the Montana Community)	
Health Center Support Act)	

TO: All Interested Persons

1. On January 4, 2008, at 10:30 a.m., a public hearing will be held in Room C207, of the Department of Public Health and Human Services Cogswell Building, 1400 Broadway, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process (including reasonable accommodations at the hearing site) or who need an alternative accessible format of this notice. If you need an accommodation, contact the department no later than 5:00 p.m. on December 24, 2007. Please contact Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210; telephone (406)444-4094; fax (406)444-1970; e-mail dphhslegal@mt.gov.

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

RULE I PURPOSE (1) These rules establish a procedure for awarding grants to carry out the purposes of the Montana Community Health Center Support Act.

AUTH: 50-4-804, MCA
IMP: 50-4-804, 50-4-805, MCA

RULE II DEFINITIONS (1) "Advisory group" means the nine member group appointed as provided in 50-4-810, MCA, that recommends to the department the protocols and priorities among goals it considers appropriate for funding.

(2) "Applicant" means the entity applying for the grant. An entity applying for a grant will be expected to apply for federal grants supporting Public Health Service Act (PHSA) (2007) Section 330 grantees when available.

(3) "Bureau of Primary Health Care (BPHC)" means the bureau within the Health Resources and Services Administration (HRSA) of the federal Department of Health and Human Services that oversees the determination of Community Health Center (CHC) status and makes a recommendation regarding federally qualified health center (FQHC) and FQHC look-alike status. A health care center that wants Section 330 grant money of the PHSA must apply to the BPHC as provided in 42

CFR 51 (2007), et seq.

(4) "Capital Expenditure Application" means an application for a one-time capital expenditure to an existing federally qualified health center to expand services by increasing medical, dental, or mental health capacity by purchasing equipment or renovating clinic facilities.

(5) "Centers for Medicare and Medicaid Services (CMS)" is the division of the federal Department of Health and Human Services that confers FQHC and FQHC look-alike status and implements FQHC reimbursement policy.

(6) "Community health center (CHC)" means a health care center that meets the requirements of 42 USC 254b and 42 CFR 51, et seq. and is receiving federal Section 330 grant money under the PHSA.

(7) "Comprehensive primary health care services" means the basic, entry-level health care that is generally provided in an outpatient setting, at a minimum providing or arranging for the provision of all of the following:

- (a) diagnosis, treatment, consultation, referral, and other services rendered by a licensed physician or other qualified personnel;
- (b) diagnostic laboratory and radiological services;
- (c) preventive health services, including medical social services, nutritional assessment, and referral, preventive health education, children's eye and ear examinations, well child care (including periodic screening), prenatal and postpartum care, cancer screening, immunization, and voluntary family planning service;
- (d) emergency medical services;
- (e) transportation services as needed for adequate patient care;
- (f) dental services provided by a licensed dentist or other qualified personnel;
- (g) mental health and substance abuse services;
- (h) vision services;
- (i) pharmaceutical services;
- (j) therapeutic radiological services;
- (k) public health services (including nutrition education and social services);
- (l) ambulatory surgical services; and
- (m) services, including the services of outreach workers (including those fluent in languages other than English), which promote and facilitate the optimal use of health services (42 CFR 51c102(h) and 51c102(j)).

(8) "Department" means the Montana Department of Public Health and Human Services.

(9) "Department committee" means employees of the department appointed by the department director to participate in the screening and grant awards determination in this rule.

(10) "Expanded Medical Capacity Application" means an application to expand the medical services offered by existing federally qualified health centers or other facilities that have received federally qualified health center look-alike status.

(11) "Federally qualified health center" means a facility that meets the definition of 42 USC 1396d(l)(2)(B) (2007). A FQHC is entitled to receive enhanced Medicaid and Medicare reimbursement. Community health centers, federally qualified health center look-alikes, and certain tribal and urban Indian entities are FQHCs. Federally qualified health centers are also referred to as federally qualified community health centers in Montana statute.

(12) "FQHC look-alike" means a FQHC that has been determined by the United States Department of Health and Human Services to meet the requirements to be a Section 330 grantee but has not received Section 330 grants. A FQHC look-alike is entitled to receive enhanced Medicaid and Medicare reimbursement.

(13) "Medically underserved area or population (MUA/MUP)" means an area or population designated by the Secretary of the United States Department of Health and Human Services as having a shortage of primary health services. Designation information may be obtained from the primary care office within the department.

(14) "New Access Points Application" means an application to create and support a health center which will serve a significant portion of a population located in a medically underserved area (MUA), or designated as a medically underserved population (MUP). Successful applicants will be expected to apply for federally qualified health center look-alike status and federal community health center grants at the first available opportunity.

(15) "New Satellite Access Application" means an application by an existing 330 grant funded federally qualified health center to establish a new access point to serve a new patient population that is outside the approved scope of project.

(16) "Public Health Service Act (PHSA)" means the federal Public Health Service Act codified at 42 USC 201, et seq. (2007).

(17) "Section 330 grantee" means a CHC that meets the requirements of 42 USC 254b and 254c (2007) and has been awarded federal grant money under the PHSA.

(18) "Service Expansion Application" means an application to expand the medical, mental health, or dental services offered by existing federally qualified health centers or other facilities that have received federally qualified health center look-alike status.

AUTH: 50-4-804, MCA

IMP: 50-4-801, MCA

RULE III PROTOCOLS AND PRIORITIES AMONG GOALS (1) The advisory group appointed pursuant to 50-4-810, MCA, shall advise the department committee, in writing, of its recommendations for the protocols and priorities related to awarding state grant(s) from among the following goals:

(a) create and support new access points for comprehensive primary health care services by applicants that will be working toward FQHC status;

(b) create and support new access satellites in new locations for comprehensive primary health care services by existing CHCs in new locations;

(c) expand the medical capacity of existing FQHCs that are Section 330 grantees;

(d) expand the medical, mental health, or dental services offered by existing FQHCs that are Section 330 grantees; or

(e) award one time grants for FQHCs to purchase equipment or renovate clinic facilities.

(2) Final decision of the protocols and priorities will be made by the department committee. If the department committee does not follow the recommendations of the advisory group, it must comply with the requirements of 50-

4-811, MCA.

AUTH: 50-4-804, MCA

IMP: 50-4-805, MCA

RULE IV ELIGIBILITY FOR GRANT (1) To be eligible for consideration for a state grant an applicant must submit a proposal and meet the requirements listed in (1)(a) through (f) and (2). The applicant for:

(a) "capital expenditure" must be to an existing FQHC. Capital expenditure grants are for the purchase of equipment or renovation of clinic facilities. Capital expenditure applications must demonstrate that additional services will be made available and/or increase patient capacity per department guidelines for capital expenditure applications;

(b) "expanded medical capacity" must be able to meet the qualifications contained in the United States Department of Health and Human Services, Policy Information Notice (PIN) 2006-09 dated February 8, 2006;

(c) "new access points" must be able to meet the qualifications for new access points described in the United States Department of Health and Human Services, HRSA-08-077 dated September 28, 2007;

(d) "new satellite access sites" must be able to meet the qualifications for new access points described in the United States Department of Health and Human Services, HRSA-08-077 dated September 28, 2007;

(e) "service expansion" must be able to meet the qualifications for service expansion grants contained in the United States Department of Health and Human Services, Policy Information Notice (PIN) 2003-03 dated February 12, 2003; and

(f) "state grants" must also apply for FQHC look-alike status and/or 330 grants, where applicable.

(2) The applicant for new access points and new satellite access sites must be able to meet all the requirements of 42 CFR 51 (2007), et seq. and provide evidence that the following requirements of 42 CFR 51 will be met:

(a) The applicant will have a governing board with at least nine but not more than 25 members, a majority of whom are individuals served or will be served by the health center and are representative of the health center's patient demographics. No more than one-half of the remaining members of the governing board may be individuals who derive more than ten percent of their annual income from the health care industry. The remaining members of the governing board shall be representative of the area which the center serves.

(b) The applicant will have a sliding schedule of fees that is linked to the patient's ability to pay for patients with incomes up to 200% of the federal poverty level.

(c) The applicant will be serving a significant portion of a population located in a medically underserved area (MUA) or designated as a medically underserved population (MUP).

(d) The applicant will serve all patients without discrimination.

(3) The applicant for service expansion, expanded medical capacity, or capital expenditure must meet the requirements of 42 CFR 51 (2007), et seq. and provide evidence that the following requirements of 42 CFR 51 have been met:

(a) The applicant must have or intend to have a governing board with at least nine but not more than 25 members, a majority of whom are individuals served or will be served by the health center and are representative of the health center's patient demographics. No more than one-half of the remaining members of the governing board may be individuals who derive more than ten percent of their annual income from the health care industry. The remaining members of the governing board shall be representative of the area which the center serves.

(b) The applicant must have a sliding schedule of fees that is linked to the patient's ability to pay for patients with incomes up to 200% of the federal poverty level.

(c) The applicant must be serving a significant portion of a population located in a medically underserved area (MUA) or designated as a medically underserved population (MUP).

(d) The applicant must serve all patients without discrimination.

AUTH: 50-4-804, MCA

IMP: 50-4-802, 50-4-805, MCA

RULE V REQUESTS FOR PROPOSALS FOR MONTANA COMMUNITY HEALTH CENTER SUPPORT ACT GRANTS

(1) The department will solicit proposals and award grants whenever funding is appropriated by the Legislature. The Department of Administration's request for proposals (RFP) process will be utilized to solicit applications based on the priority among projects determined pursuant to [RULE III]. The opportunity to make a proposal for a grant will also be posted on the department's web site. The RFP will include the application selection criteria established pursuant to [RULE VI].

(2) The applicant's proposal will consist of a brief statement of the amount of the funds requested and how the applicant proposes to use such funds. The proposal must disclose if it is for capital expenditure, expanded medical capacity, new access points, new satellite access, or service expansion. The applicant should also include a description of need, impact on access, projected number of additional patients served and encounters, timelines for providing services and applying for federal grant and/or look-alike status.

(3) In addition a new access point or new satellite access application must include:

(a) its most recent application to the Secretary of HHS for a grant under Section 330 of the Public Health Service Act, if such grant application has been or will be submitted;

(b) its most recent application to the Secretary of HHS requesting designation as a federally qualified health center "look-alike" if such application has been or will be submitted;

(c) its service expansion application which it has submitted or will submit to the Secretary of HHS;

(d) its expanded medical capacity application which it has submitted or will submit to the Secretary of HHS; and

(e) its capital expenditure application which it will submit to the department. The applicant should refer to the United States Department of Health and Human

Services, HRSA-08-077 dated September 28, 2007; or the United States Department of Health and Human Services, Policy Information Notice (PIN) 2003-03 dated February 12, 2003; or the United States Department of Health and Human Services, Policy Information Notice (PIN) 2006-09 dated February 8, 2006; or department guidelines for capital expenditure applications; whichever is most appropriate for additional requirements.

AUTH: 50-4-804, MCA

IMP: 50-4-802, 50-4-805, 50-4-806, MCA

RULE VI CRITERIA FOR AWARDING GRANTS (1) Proposals will be evaluated by the department committee using criteria developed by the advisory group and the criteria by category of application as located at the United States Department of Health and Human Services, HRSA-08-077 dated September 28, 2007; or the United States Department of Health and Human Services, Policy Information Notice (PIN) 2003-03 dated February 12, 2003; or the United States Department of Health and Human Services, Policy Information Notice (PIN) 2006-09 dated February 8, 2006, or department guidelines for capital expenditure applications.

(2) In addition to the criteria listed above, the advisory group may develop additional criteria related specifically to Montana and its unique circumstances. Additional criteria to be considered may include, but is not limited to: high need areas; impact; federal funding opportunities, readiness, collaborations, and cost per client served. Any criterion used in addition to the criteria in the previous paragraph shall be listed in the request for proposal.

(3) The advisory group may elect to develop weighting criteria related specifically to Montana and its unique circumstances. Weighting criteria does not have to conform to the weights assigned in the United States Department of Health and Human Services, HRSA-08-077 dated September 28, 2007; or the United States Department of Health and Human Services, Policy Information Notice (PIN) 2003-03 dated February 12, 2003; or the United States Department of Health and Human Services, Policy Information Notice (PIN) 2006-09 dated February 8, 2006; or department guidelines for capital expenditure applications. The advisory group will determine state-specific scoring methodology for the criteria identified above, and also identify any preferences.

(4) If the department committee does not follow the recommendations of the advisory group, it must comply with the requirements of 50-4-811, MCA.

AUTH: 50-4-804, MCA

IMP: 50-4-802, 50-4-805, 50-4-806, MCA

RULE VII INITIAL SCREENING OF PROPOSALS (1) The department committee will conduct an initial screening of the proposals to determine if the applicants have complied with the requirements set forth in the request for proposal. The department committee may allow an applicant to correct omissions or errors in its proposal that are not material. When exercising this option, the department committee shall notify all other applicants of the corrections made.

AUTH: 50-4-804, MCA
IMP: 50-4-805, 50-4-806, MCA

RULE VIII REVIEW OF PROPOSALS BY DEPARTMENT COMMITTEE

(1) An objective grant review process will be performed by the department committee consistent with the criteria stated in [RULE VI].

AUTH: 50-4-804, MCA
IMP: 50-4-805, 50-4-806, MCA

RULE IX AWARD AND ADMINISTRATION OF GRANT (1) Final grant awards determination will be made by the department committee. The department committee shall advise the advisory group, in writing, of its determination of grant awards to applicant(s). If the department committee does not follow the recommendation(s) of the advisory group, it must comply with the requirements of 50-4-811, MCA.

(2) Applicants that are to be awarded grants by the department will negotiate a contract with the department. Grant amounts will be awarded prior to the end of the state fiscal year.

(3) The contract will be administered by the Hospital and Clinic Services Bureau, Health Resources Division of the department.

(4) The contract may be terminated for nonperformance or underperformance on the part of the applicant. The department committee may make a determination of nonperformance or underperformance based on the applicants' demonstrated work toward accomplishing the objectives of their request for proposal. The applicant will be notified by the department committee of their determination of nonperformance or underperformance. The applicant will be afforded an opportunity to remedy the nonperformance or underperformance. The department committee may make a determination of continuing nonperformance or underperformance based on the applicants' demonstrated work toward accomplishing the objectives of their request for proposal. The applicant will have the right to request a hearing if aggrieved by the determination of continuing nonperformance or underperformance of the department committee. Hearing rights under this rule will be detailed in the department committee's determination of continuing nonperformance or underperformance.

(5) Grant awards will not supplant already available funds and in-kind resources.

(6) Grant award monies will cease once federal monies are received by the applicant for the same purpose as this grant award.

(7) In the event of (4) or facility closure, the department reserves the right to recoup unused capital grants and/or assets purchased with the monies derived from this grant award.

(8) Benchmarks and other reporting tools may be used by the department to determine performance on the part of applicants that obtain grant awards.

(9) Grant awards amounts may be expended over a time period not to exceed one year beyond the end of the biennium the grant was awarded if the

project requires it and if legislative funding permits it. After that time period has elapsed, an application must be submitted for continuation of state funding based upon compliance with grant requirements and meeting performance measures.

AUTH: 50-4-804, MCA

IMP: 50-4-802, 50-4-805, 50-4-806, MCA

4. The Department of Public Health and Human Services is proposing the adoption of New Rules I through IX to establish a grant program for community health centers. These rules are necessary to implement House Bill 406 of the 2007 Montana Legislature which establishes the Montana Community Health Center Support Act and is codified at 50-4-801 through 50-4-815, MCA.

The Montana Community Health Center Support Act was passed to assist in addressing the health care needs of Montanans. Approximately one-fifth of Montana's population has no public or private health insurance. Many Montanans who are uninsured or underinsured experience difficulty in accessing medical and dental services. Uninsured and underinsured people are more likely than those with adequate insurance to be hospitalized for conditions that could have been avoided, to be diagnosed with acute conditions resulting in higher rates of disability and death, or to postpone recommended tests or treatment.

These rules implement the legislative mandate to enhance access to primary care and preventative care for Montana residents by strengthening and supporting Montana's community health centers. This will be done by creating a grant process; to create and support new nonfederally funded community health centers until federal funds are granted; to expand the medical, mental health, or dental services offered by existing federally qualified health centers or other facilities that have received federally qualified health center look-alike status; and to provide one-time grants for capital expenditures to existing federally qualified health centers and facilities with federally qualified health center look-alike status. \$650,000 is available for grants under the Montana Community Health Center Support Act for state fiscal years 2008 and 2009.

These new rules further define the relationship between the department and the advisory group in the awarding of grants under the Montana Community Health Center Support Act.

RULE I

New Rule I establishes the purpose of these new rules which is to implement the Montana Community Health Center Support Act.

RULE II

New Rule II defines the terms that will be used within these rules.

RULE III

New Rule III details the process for the advisory group to make recommendations to the department for setting protocols and priorities among goals for awarding grants under the Montana Community Health Center Support Act.

RULE IV

New Rule IV defines the requirements for prospective applicants to apply for Montana Community Health Center Support Act grants.

RULE V

New Rule V states the Request for Proposal process the department will use to award grants.

RULE VI

New Rule VI establishes that to award Montana Community Health Center Support Act grants the department will use criteria and weights established by the federal government and the state advisory group.

RULE VII

New Rule VII details the initial screening process the department will follow for grant applications.

RULE VIII

New Rule VIII establishes that an objective grant review process will be used to award grants.

RULE IX

New Rule IX describes the process for awarding and administering grants by the department and that the department will notify the advisory group of final grant awards and explain any variance from the advisory group's recommendation.

Cumulative fiscal impact and number of persons affected. There are presently 15 FQHCs providing services for Montanans. In addition there are numerous satellites. Combined they receive \$4.8 million in Medicaid reimbursement annually. The fiscal impact of grants under the Montana Community Health Center Support Act is \$650,000 for state fiscal years 2008 and 2009.

5. Interested persons may submit comments orally or in writing at the hearing. Written comments may also be submitted to Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210,

Helena MT 59604-4210, no later than 5:00 p.m. on January 14, 2008. Comments may also be faxed to (406)444-1970 or e-mailed to dphslegal@mt.gov. The department maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. To be included on such a list, please notify this same person or complete a request form at the hearing.

6. 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. The web site may be unavailable at times, due to system maintenance or technical problems.

7. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by letter dated November 15, 2007, sent postage prepaid via USPS.

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

/s/ Geralyn Driscoll
Rule Reviewer

/s/ John Chappuis for
Director, Public Health and
Human Services

Certified to the Secretary of State November 26, 2007.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed adoption of)	NOTICE OF PUBLIC
NEW RULE I; amendment of ARM 42.2.304,)	HEARING ON PROPOSED
42.2.306, 42.2.321, 42.2.501, 42.2.503,)	ADOPTION, AMENDMENT,
42.2.505, 42.2.510; amendment and transfer)	AMENDMENT AND
of ARM 42.2.401; and repeal of ARM)	TRANSFER, AND REPEAL
42.2.309 and 42.2.320 relating to general)	
department rules)	

TO: All Concerned Persons

1. On January 8, 2008, at 9:00 a.m., a public hearing will be held in the Director's Office (Fourth Floor) Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption, amendment, amendment and transfer, and repeal of the above-stated rules.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., December 27, 2007, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

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

NEW RULE I VOLUNTARY DISCLOSURE PROGRAM FOR NONFILING TAXPAYERS (1) The voluntary disclosure program allows qualified entities and individuals, and qualified shareholders, and partners of qualified pass-through entities to disclose their tax liabilities voluntarily and settle their tax obligations in a voluntary disclosure agreement. Affected taxpayers may contact the department directly as provided for in (3) or use the services of the Multistate Tax Commission's National Nexus Program. The department encourages those qualified entities, qualified shareholders, and qualified partners with a need to come into compliance with multiple states or other jurisdictions to use the services of the National Nexus Program to resolve their compliance issues. The National Nexus Program provides a single point of contact and substantially uniform procedures. Information regarding the National Nexus Program can be found at www.mtc.gov.

(a) If a taxpayer contacts the department directly, the department will not enter into a voluntary disclosure agreement on terms more favorable than the terms

the taxpayer would have entered into through the services of the National Nexus Program.

(2) To qualify for a voluntary disclosure agreement with the department, a qualified entity, qualified shareholder, qualified partner, or qualified individual must meet all of the following criteria:

(a) have not filed a return for the tax type covered by the agreement within the last five years;

(b) have had no previous contact by the department or its agencies, including the Multistate Tax Commission, regarding a tax covered by the agreement, including but not limited to, notification of audit, review, assessment, request for information, letter from the department following a foreign company's registration with the Montana Secretary of State, or a letter from the department following a domestic company's formation by filing documents with the Montana Secretary of State;

(c) voluntarily come forward and make an application for a voluntary disclosure agreement that contains the information required by (3);

(d) agree to file returns specified in the agreement and pay all the taxes and statutory interest for the entire lookback period within the time period and manner specified in the agreement without further action by the department;

(e) agree to register with the Secretary of State (if a business entity), file returns, and pay all taxes for periods after the lookback period without further action by the department; and

(f) have not been a party to any criminal investigation or pending civil or criminal litigation for nonpayment, delinquency, or fraud in relation to any tax due.

(3) To request a voluntary disclosure agreement, a qualified entity, qualified shareholder, qualified partner and/or representatives or qualified individual must submit a written request to the department including the following information:

(a) if an entity:

(i) a full and accurate statement of the entity's activities for five immediately preceding filing periods;

(ii) a full and accurate statement of the entity's activities in Montana for five immediately preceding filing periods; and

(iii) the number of years the entity has been doing business in Montana;

(b) if an individual:

(i) a full and accurate statement of the individual's activities in Montana for five immediately preceding filing periods;

(ii) the addresses at which the individual has resided for the five immediately preceding filing periods; and

(iii) the number of years the individual maintained a place of abode in Montana;

(c) the type of tax or taxes for which they are requesting voluntary disclosure;

(d) an explanation for the failure to register with the Secretary of State, if an entity;

(e) an explanation of the failure to file Montana returns and pay taxes;

(f) proposed voluntary disclosure agreement terms; and

(g) an estimate of the tax liability for the lookback period.

(4) A qualified entity or individual may preserve confidentiality by not revealing its name or any information that could readily identify the company or

individual during the voluntary disclosure process until the agreement is finalized.

(5) The voluntary disclosure agreement is voidable by the department if the qualified entity, shareholder, partner, or individual:

- (a) misrepresents material facts relevant to the agreement;
- (b) fails to file returns or pay taxes and statutory interest for the lookback period within the time specified in the agreement;
- (c) reneges on an installment payment arrangement; or
- (d) fails to continue to comply with Montana tax law.

AUTH: 15-1-201, 15-30-305, 15-31-501, MCA

IMP: 15-1-206, 15-30-101, 15-30-142, 15-31-101, 15-31-111, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I to clarify the procedures that must be followed by taxpayers when applying for the department's voluntary disclosure program for nonfilers. These rules describe the opportunity and procedures for previously nonfiling taxpayers to contact the department directly to resolve their compliance issues. Further, the rules describe how the opportunity to contact the department directly coordinates with the services of the Multistate Tax Commission's National Nexus Program in which Montana also participates.

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

42.2.304 DEFINITIONS The terms used by the department are, in great part, defined in Titles 15, 16, 39, and 72, MCA. In addition to these statutory definitions, the following definitions apply to ARM Title 42, unless context of a particular chapter or rule provides otherwise:

- (1) through (7) remain the same.
- ~~(8) "CALP" means a computer assisted land pricing model system.~~
- ~~(9) "CAMAS" means a computer assisted mass appraisal system.~~
- (10) through (32) remain the same but are renumbered (8) through (30).
- (31) "Lookback period", for purposes of the voluntary disclosure program, means the filing periods agreed upon for which returns must be filed and all taxes and statutory interest must be paid under a voluntary disclosure agreement.
- (33) through (35) remain the same but are renumbered (32) through (34).
- ~~(36)~~ (35) "Noncontiguous parcels of land" means land acreage in the same ownership that meets one of the two following standards:
 - (a) acreages that do not touch, but are each an integral part of the operation of a bona fide agricultural operation; or
 - (b) acreages that would meet the definition of contiguous contained in ~~(14)~~ (9) were the acreages not separated by one or more of the following features only:
 - (i) roads and highways;
 - (ii) navigable rivers and streams;
 - (iii) local taxing authority boundaries;
 - (iv) railroad lines; or
 - (v) federal or state land that is leased from the federal or state government

by a taxpayer whose land ownership is contiguous to the federal or state land.

(37) through (43) remain the same but are renumbered (36) through (42).

~~(44)~~ (43) "Pass-through entity information return" means the same as ~~(29)~~ (27).

(45) and (46) remain the same but are renumbered (44) and (45).

(46) "Qualified entity", for purposes of the voluntary disclosure program, is a corporation, trust, limited liability company, or partnership that meets the conditions in [NEW RULE I(2)].

(47) "Qualified individual", for purposes of the voluntary disclosure program, is an individual who meets the conditions in [NEW RULE I(2)], or is a beneficiary of a trust that meets the conditions in [NEW RULE I(2)].

(48) "Qualified partner", for purposes of the voluntary disclosure program, is an individual or entity who is treated as a partner of a qualified entity for federal income tax purposes and who themselves meets the conditions of [NEW RULE I(2)].

(49) "Qualified shareholder", for purposes of the voluntary disclosure program, is a shareholder in an S corporation that is a qualified entity as defined in (46), and who themselves meets the conditions of [NEW RULE I(2)].

(47) and (48) remain the same but are renumbered (50) and (51).

~~(49)~~(52) "Reasonable time" means within five years or the normal statute of limitations, whichever is later.

~~(50)~~(53) "Residence" means the same as ~~(19)~~ (17).

(51) through (60) remain the same but are renumbered (54) through (63).

AUTH: 15-1-201, 15-30-305, 15-31-501, 16-1-303, 16-10-104, 16-11-103,
MCA

IMP: 15-1-102, 15-1-206, 15-1-601, 15-30-101, 15-30-105, 15-30-131, 15-30-142, 15-30-1101, 15-30-1102, 15-30-1111, 15-30-1112, 15-30-1113, 15-30-1121, 15-31-101, 15-31-111, Title 15, chapter 31, part 3, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.2.304 to delete the definition for CALP in this rule because it better fits in chapter 18 which is the property appraisal rules. The definition of CAMAS is no longer applicable to the department's appraisal process. The department is proposing to add the definitions of "lookback period", "qualifying entity", "qualified individual", "qualified partner", and "qualified shareholder" to clarify the terms used in New Rule I as they apply to the voluntary disclosure program of the department. The definition of "reasonable time" is being amended to clarify that the department will apply the later of the five years or the statute of limitations. The other amendments are necessary to correct the internal references which occurred from the previously stated amendments to this rule.

42.2.306 PENALTY AND INTEREST (1) and (2) remain the same.

(3) Interest on all outstanding individual income taxes after December 31, 2007, shall accrue at the rate of 8% per annum calculated daily. The rate applies to all outstanding taxes regardless of the tax year or when the return was filed. The rate does not affect any interest accrued prior to December 31, 2007. Examples of how this rule affects the calculation of interest are as follows:

(a) Taxpayer A timely filed a return for the 2005 tax year but has not paid their liability. From the original due date of April 15, 2006, until December 31, 2006, interest is assessed at 12% per annum. From January 1, 2007, until December 31, 2007, interest is assessed at 8% per annum. From January 1, 2008, until December 31, 2008, interest is assessed at 8% per annum.

(b) Taxpayer B files a return for the 2004 tax year on March 15, 2008, and pays the tax at that time. From the original due date of April 15, 2005, until December 31, 2006, interest is assessed at 12% per annum. From January 1, 2007, until December 31, 2007, interest is assessed at 8% per annum. From January 1, 2008, until March 15, 2008, interest is assessed at 8% per annum.

(c) Taxpayer C files a return for the 2005 tax year on October 15, 2006, and pays the tax and interest at a rate of 12% at that time. On June 7, 2008, the taxpayer files an amendment to the 2005 tax year to report an increase in tax resulting from a federal revenue agent's report. Interest on the increased liability is computed as follows: From the original due date of April 15, 2006, until December 31, 2006, interest is assessed at 12% per annum. From January 1, 2007, until December 31, 2007, interest is assessed at 8% per annum. From January 1, 2008, until December 31, 2008, interest is assessed at 8% per annum.

(4) For purposes of determining interest on the underpayment of estimates provided in 15-30-241, MCA, the rate in effect on the original due date of the tax return shall be used. For example, a return for the 2007 tax year is due April 15, 2008, so the rate that became effective January 1, 2008, shall be used to compute interest on the underpayment of estimates.

AUTH: 15-1-201, 15-1-216, 16-10-104, 16-11-103, 39-51-301, MCA

IMP: 15-1-206, 15-1-207, 15-1-216, 15-1-701, 15-1-708, 16-1-409, 16-1-411, 16-11-143, ~~16-11-203~~, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.2.306 because 15-1-216, MCA, directs the department to determine the interest rate for each calendar year by rule. Section 15-1-216, MCA, further directs the department to acquire the interest rate from the Internal Revenue Service for the fourth quarter of the preceding year. The department was advised in September that the interest rate the Internal Revenue Service had established for the applicable period would be 8%.

42.2.321 DEPARTMENT PROGRAMS RELATED TO PUBLIC PARTICIPATION (1) The department shall develop procedures that outline the elements stated in ARM 42.2.322 through ~~42.2.327~~ 42.2.325. The exact mechanism and extent of activity may vary in relation to available resources, public response, and the nature of issues involved.

AUTH: 15-1-201, 16-1-303, 16-10-104, 16-11-103, MCA

IMP: Title 2, chapter 3, part 1, 15-1-201, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.2.321 to delete the internal rule citations of ARM 42.2.326 and 42.2.327 because those

rules were repealed in 2006.

42.2.501 APPLICATION OF PARTIAL PAYMENTS (1) Partial payments that are received by the department for payment of a ~~collection service fee and tax liability and a collection service fee, if any,~~ must be applied proportionately between the tax liability and the collection service fee and ~~the tax liability at the rate set by the debt collection internal service fund.~~ Payment of the tax liability is applied in the order of tax, penalty, and then interest.

(2) through (4) remain the same.

~~(5) The application of partial payments received by the department, as shown in (1), will apply to payments processed beginning July 26, 2002.~~

AUTH: 2-4-201, 15-1-201, 15-30-305, 15-31-501, 15-35-122, 15-53-155,
MCA

IMP: 2-4-201, 15-1-206, 15-1-216, 15-30-304, 15-30-321, 15-30-323, 15-31-111, 15-31-502, 15-31-506, 15-31-510, 15-31-522, 15-31-543, ~~15-31-545,~~ 15-35-105, 15-35-121, 15-37-108, 15-38-107, 15-38-110, 15-53-145, 15-59-106, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.2.501 because the collection service fee referenced in this rule is no longer applicable. The department is deleting the implementing citation of 15-31-545, MCA, because that statute has been repealed. Additionally, the department is proposing to delete (5) as it is no longer necessary.

42.2.503 JEOPARDY ASSESSMENT AND EMERGENCY EXECUTION

(1) If the department finds the assessment or collection of a deficiency will be jeopardized by delay and a deficiency notice has not been issued, the deficiency, penalty, and accrued interest become immediately due and payable on the date the department mails the taxpayer a written notice:

(a) through (e) remain the same.

(f) that while filing the objection or request as provided in (1)(e) will not stop or delay collection proceedings, including issuing a Warrant for Distraint, if the taxpayer files the objection or request and it is subsequently determined in the department dispute resolution proceedings or on subsequent appeal that the amount of tax collected is in excess of the amount due, the amount of the overpayment will be credited against any income tax, penalty, or interest then due from the taxpayer and the balance of the excess refunded to the taxpayer as provided in 15-30-149 and 15-31-531, MCA.

(2) If the department finds the collection of a deficiency, for which a Notice of Deficiency has been mailed, will be jeopardized by delay and the time for filing a written objection to the amount of the Statement of Account or a Request for Informal Review form (APLS101F) with the department as provided in ARM 42.2.510 has not yet expired, the deficiency, penalty, and accrued interest become immediately due and payable on the date the department mails the taxpayer a written notice:

(a) through (c) remain the same.

(d) that if it is subsequently determined in the department dispute resolution

proceedings or on subsequent appeal that the amount of tax collected is in excess of the amount due, the amount of the overpayment will be credited against any income tax, penalty, or interest then due from the taxpayer and the balance of the excess refunded to the taxpayer as provided in 15-30-149 and 15-31-531, MCA.

(3) and (4) remain the same.

AUTH: 15-30-305, MCA

IMP: 15-30-204, ~~15-30-225~~, 15-30-312, 15-31-531, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.2.503 to add the applicable implementing cite and delete 15-30-225, MCA, as an implementing cite because it was repealed.

42.2.505 INTEREST ON UNPAID TAX (1) Interest on unpaid tax must be calculated as set forth in 15-1-216, MCA.

(2) ~~A taxpayer must file an amended Montana return within 90 days after filing an amended federal return or receiving notice that their taxable income was changed or corrected by the IRS, or other competent authority, as required by 15-30-304, MCA.~~

(3) In the case where there is unpaid tax for a year that is reduced by the carryback of a subsequent year's net operating loss, interest on the unpaid tax accrues to the later of:

(a) the due date of the loss year return; or

(b) the date the loss year return is actually filed. This limited interest calculation applies only to the unpaid tax offset by the net operating loss carryback.

AUTH: 15-30-305, MCA

IMP: 15-30-142, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.2.505(2) because the language pertains to the fact that an amended Montana return must be filed with 90 days after filing an amended federal return or receiving notice that the taxpayer's taxable income was changed or corrected by the IRS. This provision is already addressed in ARM 42.15.314 and does not belong in ARM 42.2.505.

42.2.510 REVIEW OF STATEMENT OF ACCOUNT NOTICES (1) This rule applies to all department actions where a statement of account (SOA) or deficiency assessment, as defined in ARM 42.2.304, is issued. A statement of account does not include centrally assessed appraisal reports and centrally assessed assessment notices which are covered by ARM 42.2.511.

(2) through (9) remain the same.

AUTH: 15-1-201, 15-1-211, 15-1-701, 15-31-501, 15-35-122, 15-36-322,
MCA

IMP: 15-1-211, 15-1-406, 15-8-601, 15-23-102, 15-23-107, 15-30-142, ~~15-~~

~~30-257~~, 15-31-503, 15-37-109, 15-37-114, 15-38-108, 15-39-110, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.2.510 to direct taxpayers to the rule that defines the term "statement of account". The department is proposing to delete 15-30-257, MCA, because that statute was repealed.

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

42.2.401 (42.15.526) SMALL BUSINESS LIABILITY FUNDS (1) through (3) remain the same.

(4) Upon termination of the independent liability fund the trustee shall file with the department ~~information returns (federal form 1099 or Montana form 1-A)~~ a copy of the Federal Form 1099. The returns must provide the amount of any distribution, to whom the distribution was made, and the calendar year of the distribution for any distribution made from the principal or income of the fund.

AUTH: 15-30-305, 15-31-501, MCA

IMP: 15-30-107, 15-30-127, 15-31-117, 15-31-118, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.2.401 because the Montana form 1-A is no longer available. A copy of the Federal Form 1099 will suffice. The department further proposes to transfer this rule to chapter 15 and reference that rule in chapter 26 because the text of the rule is more applicable to those chapters.

6. The department proposes to repeal the following rules:

42.2.309 VOLUNTARY DISCLOSURE which can be found on page 42-113 of the Administrative Rules of Montana.

AUTH: 15-1-201, 15-1-211, 15-30-305, MCA

IMP: 15-1-206, 15-30-101, 15-30-105, 15-30-142, 15-30-304, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.2.309 because the expiration date for the voluntary disclosure expired on September 1, 2006.

42.2.320 INTEGRATED REVENUE INFORMATION SYSTEM (IRIS) ADMINISTRATIVE FEE which can be found on page 42-115 of the Administrative Rules of Montana.

AUTH: 15-1-141, MCA

IMP: 15-1-141, 17-5-2001, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.2.320

because it is no longer applicable. An appropriation was authorized by the 2005 Legislature for the Integrated Revenue Information System (IRIS) and the funding mechanism set forth in ARM 42.2.320 is no longer required.

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: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov and must be received no later than January 18, 2008.

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

9. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

10. 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 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.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State November 26, 2007

BEFORE THE STATE LOTTERY COMMISSION
DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT AND
2.63.1201 and the repeal of ARM) REPEAL
2.63.1007, concerning the State)
Lottery's procedures pertaining to prizes)
and sales incentives)

TO: All Concerned Persons

1. On October 25, 2007, the State Lottery Commission published MAR Notice No. 2-63-392 regarding the proposed amendment and repeal of the above-stated rules at page 1569 of the 2007 Montana Administrative Register, Issue Number 20.

2. The commission has amended and repealed the above-stated rules as proposed.

3. No comments or testimony were received.

By: /s/ Robert Crippen
Robert Crippen, Chair
Montana Lottery Commission

By: /s/ Dal Smilie
Dal Smilie, Rule Reviewer
Department of Administration

Certified to the Secretary of State November 26, 2007.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF AMENDMENT
23.16.102, 23.16.103, 23.16.117,)	
23.16.401, 23.16.502, 23.16.508,)	
23.16.1245, 23.16.1716, 23.16.1914,)	
23.16.1915, 23.16.1916, 23.16.1916A,)	
23.16.2001, 23.16.2107, and)	
23.16.2302 concerning the effective date)	
of forms, removal of Form 1 from the)	
rules, and application time limit for)	
utilizing an approved automated)	
accounting and reporting system as part of))	
a vending agreement)	

TO: All Concerned Persons

1. On October 25, 2007, the Department of Justice published MAR Notice No. 23-16-190 regarding the public hearing on the proposed amendment of the above-stated rules at page 1572, 2007 Montana Administrative Register, Issue Number 20.

2. The Department of Justice has amended ARM 23.16.102, 23.16.103, 23.16.117, 23.16.401, 23.16.502, 23.16.508, 23.16.1245, 23.16.1716, 23.16.1914, 23.16.1915, 23.16.1916, 23.16.1916A, 23.16.2001, and 23.16.2302 exactly as proposed.

3. ARM 23.16.2107 is not being amended at this time. On November 21, 2007, the Department of Justice published MAR Notice No. 23-16-191 regarding a Notice of Extension of Comment Period on Proposed Amendment of ARM 23.16.2107 at page 1859, 2007 Montana Administrative Register, Issue Number 22, with an expanded statement of reasonable necessity.

4. A public hearing was held on November 15, 2007. No adverse comments or suggestions were offered at the public hearing and no changes have been made to the proposed rules.

By: /s/ Mike McGrath
MIKE McGRATH
Attorney General, Department of Justice

/s/ Jon Ellingson
JON ELLINGSON
Rule Reviewer

Certified to the Secretary of State November 26, 2007.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 24.29.1529 related to)
allowable charges for prescription drugs)
under a workers' compensation claim)

TO: All Concerned Persons

1. On October 25, 2007, the department published MAR Notice No. 24-29-226 regarding the public hearing on the proposed amendment of the above-stated rule at page 1581 of the 2007 Montana Administrative Register, issue no. 20.

2. On November 16, 2007, a public hearing was held in Helena concerning the proposed amendment. No oral or written comments were received. In addition, no written comments were received before the close of the comment period.

3. The department has amended ARM 24.29.1529 as proposed.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State November 26, 2007

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

In the matter of the amendment of ARM)
37.30.730 pertaining to Vocational)
Rehabilitation Program provider fees)
)

NOTICE OF AMENDMENT

TO: All Interested Persons

1. On October 25, 2007, the Department of Public Health and Human Services published MAR Notice No. 37-414 pertaining to the public hearing on the proposed amendment of the above-stated rule, at page 1588 of the 2007 Montana Administrative Register, issue number 20.
2. The department has amended ARM 37.30.730 as proposed.
3. No comments or testimony were received.

/s/ Cary B. Lund
Rule Reviewer

/s/ John Chappuis for
Director, Public Health and
Human Services

Certified to the Secretary of State November 26, 2007.

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, 2007. This table includes those rules adopted during the period September 1, 2007, through December 31, 2007, and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 2007, 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 2006 and 2007 Montana Administrative Register.

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