

VOLUME NO. 35**Opinion No. 8**

ADMINISTRATIVE PROCEDURE ACT — Department of health and environmental sciences, state plan as rule; ADMINISTRATIVE PROCEDURE ACT — Department of health and environmental sciences, state plan, publication of; DEPARTMENT OF HEALTH — Administrative Procedure Act, state plan as rule. Sections 82-4202 (2) and 82-4206 (3), R.C.M. 1947.

- HELD:**
- 1. A state plan prepared by the department of health and environmental sciences pursuant to federal law or regulations is a rule pursuant to section 82-4202 (2), R.C.M. 1947, and therefore is subject to the requirements of the Montana Administrative Procedure Act.**
 - 2. Because of the size and changeable nature of a state plan the agency, with the consent of the secretary of state, need not publish the entire state plan but may, if copies of the state plan are made available to the public, publish a notice stating the general subject matter of the state plan in the Montana Administrative Code and Register, pursuant to section 82-4206 (3), R.C.M. 1947.**

February 8, 1973

Mr. Charles L. O'Donnell, Attorney
Dept. of Health & Environmental Sciences
Cogswell, Building
Helena, Montana 59601

Dear Mr. O'Donnell:

You have requested my opinion concerning the applicability of the Montana Administrative Procedure Act (sections 82-4201 through 82-4225, Revised Codes of Montana, 1947) to "state plans" prepared by the department of health and environmental sciences pursuant to federal law, or regulations. You wish to know whether a "state plan" would be a "rule" as is defined by section 82-4202

(2), R.C.M. 1947, and therefore subject to the publication requirements of the Act.

A rule is defined by the Montana Administrative Procedure Act as:

... each agency regulation, standard or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. ... Section 82-4202 (2), supra.

“State plans” as you have defined them are required where federal funds are involved, and are changed from time to time in connection with state programs. As such, these plans are required by federal law or regulations prior to receipt of federal funds. Because of federal requirements, these plans would be agency standards that implement law or policy, and would therefore be a rule as is defined by section 82-4202 (2).

You have expressed concern that because of the length of the various state plans, and because of the somewhat limited public interest in the contents of the state plans, that publication in the Montana Administrative Code would create a needless expense to the state of Montana. Section 82-4206 (3), R.C.M. 1947, provides that:

... The **secretary of state**, with the consent of the adopting agency, **may omit from the code or register any rule the publication of which would be unduly cumbersome, expensive or otherwise inexpedient**, if the rule in printed or duplicated form is made available on application to the agency, and if the code or register contains a notice stating the general subject matter of the omitted rule and stating how a copy may be obtained. (Emphasis supplied)

THEREFORE, IT IS MY OPINION:

1. A state plan, prepared by the department of health and environmental sciences pursuant to federal law or regulations, is a rule pursuant to section 82-4202 (2), R.C.M. 1947, and therefore is subject to the requirements of the Montana Administrative Procedure Act.
2. Because of the size and changeable nature of a state plan, the agency, with the consent of the secretary of state, need not publish the entire state plan but may, if copies of the state plan are made available to the public, publish a notice stating the general subject matter of the state plan in the Montana Administrative Code and Register pursuant to section 82-4206 (3), R.C.M. 1947.

Very truly yours,

Robert L. Woodahl
Attorney General