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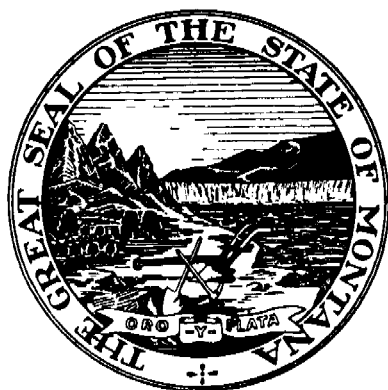
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OF MONTANA

# **MONTANA ADMINISTRATIVE REGISTER**

**1983 ISSUE NO. 4  
FEBRUARY 24, 1983  
PAGES 158-193**



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 4

The Montana Administrative Register (MAR), 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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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 indicates that the proposed rule action is adopted and lists any changes made since the proposed stage. The interpretation section contains the attorney general's opinions and state declaratory rulings. Special notices and tables are inserted at the back of each register.

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BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES  
OF THE STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF CONTINUATION
of rules 16.32.101, 16.32.103,	)	OF RULEMAKING PROCEEDINGS
16.32.107, 16.32.108, 16.32.110,	)	AND REOPENING OF
16.32.111, 16.32.112, 16.32.114,	)	COMMENT PERIOD
and 16.32.118, and the adoption	)	
of a NEW RULE, relating to the	)	
review of certificate of need	)	
applications for new	)	
institutional health services	)	
and facilities	)	(Certificate of Need)

TO: All Interested Persons

1. On August 26, 1982, the department published notice of the proposed amendment of rules 16.32.101, 16.32.103, 16.32.107, 16.32.108, 16.32.110, 16.32.111, 16.32.112, 16.32.114, and 16.32.118, and the adoption of a new rule relating to the review of certificate of need applications for new institutional health services and facilities at page 1586 of the 1982 Montana Administrative Register, issue number 16.

2. After consideration of comments and testimony submitted by health-care provider groups, the department proposes the following amendments to the proposed rules:

16.32.101 DEFINITIONS No change from rule as proposed.

16.32.103 SUBMISSION OF APPLICATION LETTER OF INTENT

(1) At least ~~30~~ 10 [TEN] days before any person enters into a contract to acquire major medical equipment, or makes such equipment available on a regular basis to inpatients of a hospital, the person shall notify the department and the agency qualified as a health systems agency pursuant to 42 USC 300 l of the intent to acquire or make such equipment available and of the use that will be made of it. The notice must be in writing and must contain the following:

(a) All relevant information required by subsection (3) of this rule and by ARM ~~16-32-104~~.

(a) ~~(b)~~ Whether it is anticipated that the equipment will be used on a regular basis for the diagnosis or treatment of inpatients of a hospital.

(b) ~~(e)~~ The names and locations of any such hospital.

(c) ~~(d)~~ The nature of any agreements or understandings with such hospital regarding the terms and conditions of such use including monetary or other compensation or obligations to be paid or incurred by the hospital in return for such use.

(2) At least ~~30~~ 10 [TEN] days before any person acquires or enters into a contract to acquire an existing health care facility, the person shall notify the department and the agency qualified as a health systems agency pursuant

to 42 USC 300 l of the intent to acquire the facility and of the services to be offered in the facility and its bed capacity. The notice must be in writing and must contain the following:

(a) All relevant information required by subsection (3) of this rule and by ARM 16.32.104.

(a) (b) The services currently provided by the health care facility and the present bed capacity of the facility.

(b) (e) Any additions, deletions or changes in such services which will result from the acquisition.

(c) (d) Any changes in bed capacity, redistribution of beds among service categories or relocation of beds from one site to another which will result from the acquisition.

(3) No changes from rule as proposed.

(3) (4) Within 30 10 calendar days after the receipt of the a letter of intent PURSUANT TO SUBSECTIONS (1) AND (2), AND WITHIN 30 CALENDAR DAYS AFTER RECEIPT OF A LETTER OF INTENT PURSUANT TO SUBSECTION (3), the department shall notify, in writing, the applicant whether or not the activity proposed in the letter is subject to review under section 50-5-301, MCA. If the department determines the activity is subject to review, it shall supply an application form to the applicant submitting the letter of intent. The application must be returned to the department within 90 days of receiving it. Failure to return the application form within 90 days requires the process to begin again with the filing of another letter of intent.

(4)(a), (b), (c): No changes from rule as proposed.

(5) and (6) No changes from rule as proposed.

16.32.107 ACCEPTANCE OF APPLICATIONS; REVIEW PROCEDURES No changes from rule as proposed.

16.32.108 INFORMATIONAL HEARING No changes from rule as proposed.

16.32.110 CRITERIA AND FINDINGS No changes from rule as proposed.

16.32.111 DEPARTMENT DECISION No changes from rule as proposed.

16.32.112 APPEAL PROCEDURE No change from rule as proposed.

16.32.114 ABBREVIATED REVIEW (1) If the application does not significantly impact cost or utilization of health care, the department may conduct an abbreviated review of the project.

(2) The following activities may qualify for an abbreviated review:

(a) Decrease in bed capacity of a health care facility which will not have an adverse impact on the delivery of health care in the service area.

(b) Decrease in services provided by a health care facility which will not have an adverse impact on the delivery of health care in the service area.

(c) Equipment replacement which would not expand the health care service offered by the health care facility.

(d) Alterations or improvements of a health care facility which are necessary to bring the facility into compliance with federal or state licensure or certification requirements, federal or state fire and life safety requirements, or local building codes, or to eliminate or prevent imminent safety hazards. This does not include expansion or replacement of buildings.

(e) Licensure change from one category of nursing care to another.

(f) Expansion of a geographic service area of a home health agency providing it does not expand into an existing home health service area, nor into an area into which another applicant in the same batch has proposed to expand.

(g) Six month extension of a certificate of need, pursuant to Section 50-5-305, MCA.

(h) CHANGE OF OWNERSHIP OF A HEALTH CARE FACILITY WHICH DOES NOT INVOLVE A CHANGE IN SERVICES OFFERED OR OF RATES CHARGED FOR SERVICES.

(3) - (9) No changes from rule as proposed.

16.32.118 DURATION OF CERTIFICATE No changes from rule as proposed.

RULE 1 BATCHING PERIODS, SUBMISSION OF APPLICATIONS

(This rule will be numbered 16.32.106)

(1) The following batching periods are established for all categories of service and for all regions of the state:

(a) January 1 through January 20

(b) MARCH 1 THROUGH MARCH 20

(c) ~~+~~ May 1 through May 20

(d) JULY 1 THROUGH JULY 20

(e) ~~+~~ September 1 through September 20

(f) NOVEMBER 1 THROUGH NOVEMBER 20

Except as provided in subsection (5) below, letters of intent will be accepted only during these periods. Letters of intent received at other times will be assigned to the next batching period.

(2) The following challenge periods are established:  
For the batching period ending: The challenge period is:

January 20

February 1 through ~~April 30~~

FEBRUARY 28

MARCH 20

APRIL 1 THROUGH APRIL 30

May 20

June 1 through ~~August 31~~

JUNE 30

JULY 20

AUGUST 1 THROUGH AUGUST 31

September 20

October 1 through ~~Dec-31~~

OCTOBER 31

NOVEMBER 20

DECEMBER 1 THROUGH DEC. 31

(3) The following categories of health services will be batched: general medical-surgical, psychiatric, obstetric, pediatric, skilled nursing, ~~and~~ intermediate care, OTHER.

(4) through (13) No changes from rule as proposed.

3. The most significant comments received and the department's responses are as follows:

16.32.101(3)(b), 16.32.103(1)

COMMENT: Physicians and doctors' offices are exempt from CON review and should not be required to submit a letter of intent prior to purchase of major medical equipment, unless they are acting as "agents" of a health care facility. The specific indicia of that agency relationship should be more clearly set out in the rules.

RESPONSE: While doctors' offices are not included in the definition of "health care facility," CON review applies to any person who makes a capital expenditure "by or on behalf of a health care facility," and to any new health service offered "in or through a health care facility". The department believes that whenever the criteria described in 16.32.101(3)(b) and (c) and 16.32.103(1)(d) are satisfied, the statutory conditions are fulfilled. Because we have shortened and simplified the pre-application process for such purchases (see below), the imposition on physicians who are not in fact subject to CON review is de minimis.

16.32.103(1), (2), (4) and (5)

COMMENT: Persons who are not subject to CON review should not be required to submit letters of intent prior to acquiring facilities or equipment. Subsection (5) should be deleted.

RESPONSE: The department has agreed to a substantial simplification and shortening of the letter of intent review process for such acquisitions, so the burden is minimal. We feel such a procedure is a necessary concomitant to CON review. Otherwise, it would be impossible to determine whether acquisitions of facilities and equipment are in fact subject to CON review until after the fact. Subsection (5) cannot be deleted, as it is required by federal regulations. (42 CFR 123.404(a)(4)(ii), (5)(i))

16.32.144

COMMENT: Change of ownership of a health care facility should be eligible for abbreviated review.

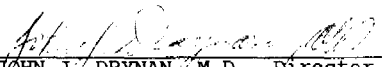
RESPONSE: This suggestion has been adopted. See text.

NEW RULE

COMMENT: The proposal for batching introduces excessive delay and is contrary to the intent of the statute.

RESPONSE: The department has addressed this objection by shortening the batching procedure to six two-month cycles rather than the four three-month cycles as originally proposed.

4. Because pending legislation may alter the department's duties and authorizations under the certificate of need law, the department will defer final action on these rules until action is taken on that legislation. The department hereby re-opens the comment period. Written comments will be received until March 31, 1983.

  
JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State February 14, 1983



BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the Matter of the Amendment)	NOTICE OF PROPOSED
of Rules 23.3.145, 23.3.148, )	AMENDMENT OF RULES
23.3.202, and new rule 23.3.149	23.3.145, 23.3.148,
Concerning Examiner's Duties, )	23.3.202 and ADOPTION OF
Release of Driving Records, )	NEW RULE 23.3.149
Duplicate Licenses, and Driver)	NO PUBLIC HEARING
Rehabilitation Point System. )	CONTEMPLATED

TO: All Interested Persons

1. On April 1, 1983, the Department of Justice proposes to amend rules 23.3.145 concerning the duties of civilian driver examiners, 23.3.148 concerning the release of driving records for consumer reports, and amend 23.3.202 and adopt 23.3.149 concerning the driver rehabilitation point system.

2. The proposed rules provide as follows:

23.3.145 EXAMINER'S DUTIES Duties of a driver examiner include but are not limited to the following:

(1) Be at the examination station punctually and keep the station open during the scheduled hours.

(2) Receive applications for driver's licenses and renewals. Provide applicants with the necessary forms.

(3) Examine applicants and re-examine drivers, by oral, written, and performance tests, for knowledge of the laws and rules of safe driving, for visual or physical defects, and for skill in handling a vehicle to determine whether they meet the requirements established by the Motor Vehicles Division.

(4) Take photographs of all successful applicants.

(5) Give accurate information when requested regarding the motor vehicle laws and the regulations concerning licensing of operators and chauffeurs.

~~(6) Investigate accidents if occasion requires, make reports on such investigations, and give evidence in courts and at agency hearings on such accidents.~~

~~(7) (6) Investigate the habits and general qualifications of accident and violation repeaters when instructed to do so.~~

(8) Check renewal applicants for vision and physical condition to determine whether they meet the requirements established by the Motor Vehicles Division.

4-2/24/83

MAR Notice No. 23-2-67

49) (8) Conduct hearings, investigations, counseling sessions, interviews, and training sessions on driver improvement matters as required.

410) Serve, as assigned, as-a traffic patrol officer.

411) (9) Examine applicants for motorcycle endorsement, by oral, written, and performance tests, for knowledge of the laws and rules of safe driving, for visual or other physical defects, and for skill in handling a motorcycle to determine whether they meet the requirements established by the Motor Vehicles Division.

412) (10) Prepare and deliver safety talks before various groups (such as schools, assemblies and service clubs) and operate projection equipment when directed to do so.

413) (11) Serve notices of suspension and revocation and pick up suspended or void certificates when directed to do so.

414) (12) Appear in hearings to testify regarding examinations or investigations.

(13) Inspect driver licenses for alterations.  
Authority: Sec. 44-1-103 MCA; IMP, 61-5-101 et seq. MCA

23.3.148 RELEASE OF DRIVING RECORDS FOR CONSUMER REPORTS A record of an individual driver held by the Motor Vehicles Division may be released for the purpose of consumer report in compliance with section 31-3-111, MCA. part 1, chapter 3 of title 31, Montana Code Annotated. Authority: Sec. 44-1-103 MCA; IMP, 44-1-103 MCA

23.3.149 DUPLICATE LICENSES. In the event that an instruction permit or operator's or chauffeur's license issued under the provisions of this chapter is lost or destroyed, the person to whom the same was issued may, upon payment of the fee specified in section 61-5-114, MCA, obtain a duplicate or substitute thereof, after furnishing proof satisfactory to the division that such permit or license has been lost or destroyed. The person must also show satisfactory proof of identity before obtaining such duplicate. If the license will expire within 6 months of its loss or destruction, the person should apply for a renewal rather than a duplicate. Authority: Sec. 44-1-103, MCA IMP: 61-5-114, MCA.

23.3.202 DRIVER REHABILITATION POINT SYSTEM (1) The following point values are established for Driver Rehabilitation Program purposes, and discretionary actions pursuant to section 61-5-206(1)(b) are specified:

<u>VIOLATION CODE</u>	<u>DRIVER REHABILITATION POINTS</u>	<u>DESCRIPTION OF OFFENSE</u>
0020	12	Negligent homicide
1170	6	Driving while privilege to do so
9014		is suspended or revoked
1140	2	Operating with foreign driver's license when privilege suspended or revoked by this state
5110-H	10	Driving while under the influence of intoxicating liquor (being in actual physical control)
5111-H	10	Driving while under the influence of any drug (narcotic or other)
4000-H	8	Failure to stop immediately at accident scene where person injured
4001	8	Failure to remain at accident scene where person injured
4002-H	8	Failure to stop immediately at scene where person killed
4003	8	Failure to remain at scene of accident where person killed
4022	8	Failure to render reasonable assistance to injured
4020	4	Failure to identify self and vehicle when involved in an accident.
4060	4	Failure to submit written report of accident within 10 days
5130-H	5	Holding a race or speed contest on highway without written

permission of proper authority  
(state, county, or city)

<u>4050</u>	<u>4</u>	<u>Fail to give notice of accident by quickest means</u>
5131-H	5	Engaging in race or speed contest on public highway without written permission of proper authority
5133-H	5	Holding (engaging in, aiding, or abetting) a speed contest, the roadway of which is not fully and efficiently patrolled
5134-H	2	Careless driving
5120-H	5	Reckless driving
5121-H	5	Eluding police officers
4010-H	4	Failure to stop immediately at property damage accident scene
4011	4	Failure to remain at property damage accident scene
5141-H	3	Speeding: restricted speed zone
5142-H	3	Speeding: 25 miles per hour, urban district
5140-H	<u>3</u> <u>2</u>	Speed restrictions (Basic Rule): Failure to drive in careful and prudent manner (driving at speed that is greater than is reasonable and proper under existing conditions at point of operating; driving at speed that would unduly or unreasonably endanger life, limb, property or other rights of persons using highways; driving at speeds that fail to take into account amount and character of traffic, conditions of brakes, weight of vehicle, etc.)

5143-H	3	Speeding: 35 miles per hour, construction zone
5144-H	3	Speeding: 55 miles per hour night limit
5145-H	3	Speeding: 65 miles per hour night limit on interstate
5146-H	3	Failure to reduce speed when approaching intersection, railroad crossing, etc.
5147-H	3	Speeding: 55 miles per hour night limit (trucks)
5150-H	3	Speeding: speed limit established by Motor Vehicles Division
5160-H	3	Speeding: restricted speed limit established by local authorities
5171-H	3	Failure to pull over when operating slow moving vehicle obstructing traffic
5180-H	3	Speeding: 60 miles per hour truck limit
5181-H	3	Speeding: motor-driven cycle night speed
5182-H	3	Speeding: 50 miles per hour speed when towing trailer house
5183-H	3	Speeding: 65 miles per hour truck speed on interstate
5190-H	3	Speeding: posted speed over elevated structure
1006	2	Operating with foreign driver's license beyond 90 day grace period
1010	2	Violation of privilege granted drivers of government vehicles

1011	2	Violation of privilege granted drivers of road machinery, farm implements and tractors
1020	2	Violation of restrictions on chauffeur's license
1030	2	Violation of restrictions on instruction permit
1031	2	Violation in use of temporary driver's permit
1032	2	Failure to have temporary driver's permit in possession
1070-H	2	Operating in violation of restrictions imposed on driver's license
1110	2	Violation of restrictions imposed on probationary driver's license
1250	2	Failure of person to subject self to traffic control at roadblock
2070-H	2	Exceeding the 102-inch width limit
2079	2	Towing more than one vehicle in combination
2080	2	Drawing more than two motor vehicles by saddle mount method
2081	2	Towing more than one trailer with vehicle rated less than 2000 pounds (manufacturer's rated capacity)
2111	2	Failure to follow directions and requirements of special permit
4199-H	2	Sidewalk (driving on)
5010-H	2	Reckless or unsafe operation of authorized emergency vehicle

5050-H	2	Failure to obey instructions of traffic control devices
5222-H	2	Increasing speed when being overtaken
5230-H	2	Passing on right when prohibited
5240-H	2	Improper passing - highway ahead obstructed
5250-H	2	Improper passing - approaching crest of grade (hill) or curve
5251-H	2	Improper passing - approaching intersection
5252-H	2	Improper passing - approaching within 100 feet of bridge, tunnel or viaduct when view obstructed
5260-H	2	Improper passing - in no passing zone
5270-H	2	Pass to left of rotary traffic island
5271-H	2	Travel wrong direction on one-way street or highway
5280-H	2	Change lane when unsafe to do so
5281-H	2	Improper use of center lane of three lane roadway
5282-H	2	Failure to use designated lane when operating slow-moving vehicles
5290-H	2	Following too closely - reasonable and prudent
5291-H	2	Following too closely - insufficient space between vehicles or combinations

5300-H	2	Driving on other than right-hand roadway of divided highway
5301-H	2	Driving over, across, or within dividing space or barrier of divided highway
5310-H	2	Illegal entrance or exit to restricted access highway
5320-H	2	Violations of limitations put on restricted access highway
5330-H	2	Making right turn from improper lane
5331-H	2	Improper approach to intersections when making right turn
5332-H	2	Making left turn from improper lane
5333-H	2	Improper approach to intersection when making left turn
5334-H	2	Disobedience to signs and markers indicating direction to turn
5340-H	2	Improper turn - crest of grade or on curve
5350-H	2	Improper starting - failure to start vehicle in safety
5360-H	2	Improper turn - not in required position
5361-H	2	Turning when unsafe to do so
5362-H	2	Turning without giving proper signal
5363-H	2	Stopping or slowing without giving appropriate signal



5370	2	Failure to have vehicle equipped with signal lamps when required
5380-H	2	Right of way violation - failure to yield to vehicle on right at intersection
5390-H	2	Right of way violation - failure to yield to hazardous traffic when making left turn
5391-H	2	Right of way violation - failure of approaching drivers to yield to vehicle making left turn
5400-H	2	Right of way violation - failure to yield to vehicle on through highway
5401-H	2	Right of way violation - failure to yield to vehicle entering or crossing highway
5410-H	2	Right of way violation - failure to yield when entering highway from private road or drive
5411-H	2	Right of way violation - failure to yield when entering highway from public approach ramp
5420-H	2	Right of way violation - failure to obey requirements of yield sign
5060-H	2	Failure to yield right of way to vehicle when obeying green go traffic signal
5061-H	2	Failure to yield right of way to pedestrian when obeying green go traffic signal
5062-H	2	Failure to reduce speed when approaching yellow (caution) traffic signal

5063-H	2	Failure to obey red (stop) traffic signal
5064-H	2	Failure to yield right of way to pedestrians or other traffic in intersections when obeying green arrow traffic signal
5080-H	2	Flashing signal violation (red) Flashing signal violation (yellow)
5170-H	2	Obstructing traffic, under minimum reasonable speed, after being warned
5200-H	2	Failure to drive to right of roadway except when passing
5210-H	2	Failure to give approaching vehicle half of roadway
5220-H	2	Improper passing - crowding overtaken vehicle
5221-H	2	Failure to yield to overtaking vehicle
5430-H	2	Right of way violation - failure to yield to authorized emergency vehicle
5431-H	2	Operator of authorized emergency vehicle - failure to drive with due regard to safety of others
5450-H	2	Right of way violation - failure to yield to pedestrian
5452-H	2	Overtaking vehicle stopped at crosswalk
5453-H	2	Right of way violation - failure to yield to school children or school safety patrol
5470-H	2	Failure to exercise due care when observing pedestrian

5570-H	2	Disobedience to signals indicating approach of railroad train
5580-H	2	Failure to stop at railroad crossing when stop sign erected
5590-H	2	Failure to stop at railroad crossing when carrying passengers for hire
5591-H	2	Failure to stop at railroad crossing when driving school bus
5592-H	2	Failure to stop at railroad crossing when carrying explosives
5593-H	2	Failure to stop at railroad crossing when carrying flammable liquids
5610-H	2	Stop sign violation
5620-H	2	Stop violation - emerging from alley, garage or driveway
5630-H	2	Failure to stop for school bus stopped (loading or unloading school children)
5631-H	2	Failure to slow for school bus preparing to stop (flashing amber lights for school children)
5633-H	2	School bus failing to activate flashing amber lights before stopping to receive or discharge school children
5640-H	2	Unlawful use of flashing lights on bus (amber or red)
5690-H	2	Interfering with traffic while backing
5700-HM	2	More than one on one-seated motorcycle

5702-HM	2	Carrying passenger on motorcycle which interferes with driver's operation
5703-HM	2	Carrying package, etc., which interferes with operation of motorcycle
5704-HM	2	Riding motorcycle side-saddle
5705-HM	2	Operating motorcycle on public highway or street without lights
5706-HM	2	Operating more than two motorcycles abreast in traffic lane
5707-HM	2	Failure to comply with duties applicable to motorcycle operators
5720	2	Failure to keep vehicle under control on mountain highways
5721	2	Failure to drive to extreme right side of road in canyons (defiles, mountains)
5730-H	2	Allowing vehicle to coast downgrade
5740	2	Following fire apparatus
5750	2	Crossing fire hose
5852-H	2	Failure of driver to take required precautions upon approaching the blind
7000-H	2	Operating a motor vehicle in unsafe condition without proper lights and equipment
7010-H	2	Failure to have lamps lighted when required
7020	2	Failure to have two headlamps properly operating on motor vehicle

7021	2	Failure to have proper headlamps on motorcycle
7030	2	Failure to have vehicle equipped with one or two tail lamps as required
7051	2	Operating motor vehicle not equipped with stop lamp
7063	2	Failure to have bus or truck properly equipped with stop lamps
7068	2	Failure to have safety chain when required on trailer
7110-H	2	Failure to display lamp or flag on projecting load
7141	2	Failure to have proper emblem on slow-moving vehicle when required
7143	2	Failure of driver of slow-moving vehicle to pull off roadway as required
7160	2	Emergency vehicle - no audible signal
7163	2	Fail to proceed with caution past an alternately flashing or rotating red or blue light, at a speed that is reasonable and proper under the conditions existing at the point of operation (failure to stop for emergency lights.)
7164	2	Fail to stop for an alternately flashing or rotating red or blue light at point of operation (fail to stop for emergency lights).
7200-H	2	Failure to dim within 1000 feet of oncoming traffic

7201-H	2	Failure to dim within 300 feet when approaching vehicle from rear
7231	2	Displaying unauthorized red light
7240	2	Violation in use of red blinker light authorization for fireman's private car
7261-H	2	Inadequate or defective service brakes
7263	2	Fail to have automatic breakaway brakes on trailer which exceeds 3000 pounds G.V.W.
7268	2	Insufficient or inadequate reservoir for air or vacuum brakes
7280-H	2	Defective brakes - motor-driven cycle
7291-H	2	Failure to sound horn to ensure safe operation
7310	2	Failure to have rear view mirror
7311	2	Defective rear-view mirror
7320-H	2	Obstructed windshield
7321-H	2	Defective windshield wipers
7502	2	Moving defective vehicle beyond specified limits
7603	2	Fail to identify disabled vehicle with proper equipment while towing
0012-H	2	Transporting passengers in vehicle carrying explosives

**-(2) The following actions resulting from the accumulation of these points may be taken:**

-(a) A warning letter results from the accumulation of seven points within a 36 month period or from the accumulation of any three pointed violations within a 12 month period.

-(b) An advisory letter results from the accumulation of 12 or more points within a 36 month period.

(c) A 6 month suspension results from the accumulation of 15 or more points in a 36 month period.

(3) The following actions resulting from the accumulation of 6 or more points in an 18 month period may be taken:

(a) the licensee may be required to attend a counseling session or re-take the driving examination or both.

(b) Failure to comply with the requirements of 3(a) will result in a three month suspension. Authority: Sec. 44-1-103 and 61-2-302(1) MCA; IMP, 61-5-201 et seq. and 61-2-302(2) MCA


3. The rules are proposed to be amended and a new rule adopted to institute changes in the practices of the department.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments and adoption of new rule in writing to Assistant Attorney General Sarah M. Power, Justice Building, 215 N. Sanders, Helena, Montana, 59620, no later than March 25, 1983.

5. If a person who is directly affected by the proposed amendments or new rule wishes to express data, views and arguments orally or in writing at a public hearing, he or she must make written request for a hearing and submit the requests along with any written comments to Assistant Attorney General Sarah M. Power, Justice Building, 215 N. Sanders, Helena, Montana, 59620, no later than March 25, 1983.

6. If the agency receives requests for a public hearing on the proposed amendments or new rule from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments; from the Administrative Code Committee of the legislature; from a governmental sub-division or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 59,000 persons based on the 590,000 licensed drivers in Montana.

7. The authority of the department to make the proposed amendments and proposed new rule is based on section 44-1-103, MCA.

  
MIKE GREELY  
Attorney General

Certified to the Secretary of State, February 14,  
1983.



BEFORE THE DEPARTMENT OF SOCIAL  
AND REHABILITATION SERVICES OF THE  
STATE OF MONTANA

In the matter of the repeal )  
of Rule 46.6.1401 pertaining ) NOTICE OF PROPOSED REPEAL  
to the kidney dialysis/trans- ) OF RULE 46.6.1401 PERTAIN-  
plant program. ) ING TO THE KIDNEY DIALYSIS/  
 ) TRANSPLANT PROGRAM. NO  
 ) PUBLIC HEARING IS CONTEM-  
 ) PLATED.

TO: All Interested Persons

1. On April 4, 1983, the Department of Social and Rehabilitation Services proposes to repeal Rule 46.6.1401 pertaining to the kidney dialysis/transplant program.

2. Rule 46.6.1401 proposed to be repealed can be found on page 46-434 of the Administrative Rules of Montana.

3. The authority of the Department to repeal the rule is based on Section 53-2-201, MCA and the rule implements Sections 53-6-201 and 53-6-202, MCA.


4. The End Stage Renal Program has been transferred to the more appropriate Economic Assistance Division. The Department has implemented Rules 46.16.101 through 46.16.115 which pertain to the End Stage Renal Program and can be found beginning at page 46-6193 of the Administrative Rules of Montana. Since Rule 46.6.1401 has been replaced and the program transferred, the Department proposes to repeal this rule as a purely housekeeping function. This repeal does not impact the current End Stage Renal Program in any way.

5. Interested parties may submit their data, views, or arguments concerning the proposed repeal in writing to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than March 28, 1983.

6. If a person who is directly affected by the proposed repeal wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request along with any written comments he has to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than March 28, 1983.

7. If the Department receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed repeal; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25

members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Since no persons will be affected by this proposed repeal, the Department has determined that the number affected for purposes of requesting a hearing is 10 persons.

  
\_\_\_\_\_  
Director, Social and Rehabilitation  
Services

Certified to the Secretary of State February 14, 1983.

BEFORE THE DEPARTMENT  
OF PUBLIC SERVICE REGULATION  
OF THE STATE OF MONTANA

IN THE MATTER of Adoption by )	NOTICE OF ADOPTION
reference of Title 18, Part )	BY REFERENCE OF TITLE 18,
290, C.F.R. regarding infor- )	PART 290, C.F.R.
mation collection for cost of )	
service for certain electric )	
utilities. )	

TO: All Interested Persons

1. On December 30, 1982 the Department of Public Service Regulation published notice of a proposed adoption by reference of a new rule Title 18, Part 290, C.F.R, which sets forth requirements for collection of information regarding cost of service for electric utilities whose total sales exceed 500 million kilowatt-hours per year at pages 2166-2167 of the 1982 Montana Administrative Register Issue Number 24.

2. The Public Service Commission has adopted the rule as proposed.

RULE I. 38.8.101 COST OF SERVICE INFORMATION (1) The Department of Public Service Regulation hereby adopts and incorporates by reference Title 18, Part 290, C.F.R. as they exist on January 30, 1983, which sets forth requirements for collection of information regarding cost of service for electric utilities whose total sales exceed 500 million kilowatt-hours per year. A copy of Title 18, Part 290, C.F.R. may be obtained from the Department of Public Service Regulation, 1227 11th Avenue, Helena, Montana 59620.

3. No comments were received.



THOMAS J. SCHNEIDER, Chairman

CERTIFIED TO THE SECRETARY OF STATE FEBRUARY 14, 1983.

VOLUME NO. 40

OPINION NO. 4

APPROPRIATIONS - Encumbrance and reversion of funds appropriated but unexpended at the close of fiscal year;  
COAL BOARD - Encumbrance of funds appropriated for local impact assistance;  
COAL BOARD - Reversion at close of fiscal year of funds appropriated for local impact assistance;  
ADMINISTRATIVE RULES OF MONTANA - Section 8.101.302;  
MONTANA CODE ANNOTATED - Sections 15-35-108, 17-7-302, 17-7-304, 27-1-105, 90-6-202, 90-6-205, 90-6-207, 90-6-211.

- HELD: 1. The coal board does not incur a "valid obligation" against its appropriation by inviting a full application for grant after screening a pre-application.
2. The provision of section 17-7-304, MCA, requiring the reversion of unexpended and unencumbered portions of appropriations at the close of the fiscal year, applies to the appropriations to the coal board from the local impact and education trust fund.
3. The coal board may encumber funds at the close of a fiscal year only by incurring a "valid obligation" against them under section 17-7-302, MCA.
4. The legislative interpretation of section 90-6-205, MCA, suggests that the Legislature intended to limit the coal board appropriations to seven-fifteenths of the income projected to the local impact and education trust fund in each fiscal year.

3 February 1983

Richard M. Weddle, Esq.  
Montana Coal Board  
Department of Commerce  
1424 Ninth Avenue  
Helena, Montana 59620-0401

Dear Mr. Weddle:

You have requested my opinion on questions dealing with the availability of funds for coal board grants, when procedures for approval of the grants overlap the end of one fiscal year and the beginning of another. Your letter informs me that the coal board customarily reviews grant applications in a two-stage process. Parties seeking grants complete a "pre-application" containing certain information regarding the applicant and the purposes of the application. See ARM § 8.101.302. The board then screens the pre-application and reaches a decision whether to call for a full application. If a full application is requested, the board reviews it and the pre-application and votes to either award or deny the grant. The decision to call for a full application in no way binds the board to award all or part of the money requested.

You further inform me that on June 25, 1982, the board reviewed eight pre-applications on which full applications were requested. The board also voted to "encumber" funds from the board's fiscal year 1982 appropriation sufficient to finance the eight grants on which full applications were requested. On July 27, 1982, the Department of Commerce Central Services Division informed the board by memorandum that it could not accrue the "encumbered" funds from the board's appropriation for fiscal year 1982 because the board had not incurred a "valid obligation" in connection with these grant applications. On August 12, 1982, the board met and approved seven of the eight grant applications.

You present several questions arising from the above facts. First, you inquire whether the board has the power, either through the approval of a grant pre-application or otherwise, to encumber funds in one fiscal year for expenditure in later fiscal years. The question is significant because under section 17-7-304, MCA, the portion of an agency's appropriation not expended or encumbered at the close of a fiscal year reverts "to the several funds and accounts from which originally appropriated," in this case to the local impact and education trust fund. Thus, under the facts stated above, if the board's actions at its June 25, 1982, meeting did not encumber the funds in question, they reverted to the trust fund and became unavailable for coal board grant purposes.

Section 17-7-302, MCA, provides in part that "[a]n appropriation shall be deemed to be encumbered at the time and to the extent that a valid obligation against the appropriation is created...." In my opinion, the board's nonbinding decision to seek a full application from a grant applicant does not constitute a "valid obligation" against the board's appropriation. The significance of the word "obligation" is that it connotes a legally binding duty to perform or refrain from performing an act. § 27-1-105, MCA; see Kinsman v. Stanhope, 50 Mont. 41, 47, 144 P. 1083, 1084 (1914). While the Montana Supreme Court has not construed section 17-7-302, MCA, a California decision provides an example of a "valid obligation." In State v. Agostini, 294 P.2d 769, 773 (1956), the California Court of Appeals construed a statute similar in all pertinent respects to Montana's, and held that a tender of payment by the State in response to an offer to sell real estate constituted a "valid obligation" which prevented a reversion of the funds tendered. There is no evidence that in drafting section 17-7-302, MCA, the Legislature used the term "obligation" in any sense other than the commonly understood meaning set forth above. The facts stated in your letter demonstrate that the coal board incurs no legal duty to provide funds when it requests a full application following review of a pre-application. I therefore conclude that by this action the coal board does not incur a "valid obligation" against its appropriation for purposes of section 17-7-302, MCA.

Your letter suggests that the provisions of section 17-7-304, MCA, should not apply to local impact funds appropriated to the coal board from the local impact and educational trust fund. I disagree. The Legislature appropriates money to the coal board as a discretionary matter under section 90-6-207, MCA. There is no constitutional impediment to reversion of unexpended local impact grant funds to the local impact and education trust fund at the close of a fiscal year, nor is there any indication of a legislative intent to except the coal board grant moneys from the operation of section 17-7-304, MCA.

You next inquire whether the coal board possesses the inherent power to encumber funds at the close of a fiscal year to prevent their reversion to the general fund without complying with section 17-7-302, MCA. In my opinion it does not. The coal board is a creation of

the Legislature and it possesses only those powers which the Legislature has given it. See State ex rel. Jones v. Erickson, 75 Mont. 429, 458, 244 P. 287, 298 (1926). Title 90, chapter 6, part 2, MCA, sets forth the powers and duties of the board. Nowhere in these statutes is the board empowered to disregard the Legislature's mandates regarding expenditure, encumbrance, and reversion of appropriated funds. It is true, as you suggest, that reversion of these moneys to the trust fund may impede the board in fulfilling its duty to provide local impact aid. However, the same argument could be made to defeat reversion of funds in many programs of state government. The constitution does not vest the coal board with the authority to disregard legislatively created financial requirements.

Your next question involves the availability of the reverted funds for reappropriation by the Legislature to the coal board. The local impact and education trust fund is financed by 37½% of the revenue produced by Montana's coal severance tax, §§ 15-35-108(1)(c) and 90-6-202, MCA, and the fund is currently being appropriated only for local impact assistance and educational purposes. § 90-6-207(3), MCA. The amount appropriated to the coal board is left to the discretion of the Legislature, although section 90-6-205, MCA, provides that the amount awarded by the board may not "exceed in any one year seven-elevenths and after June 30, 1979, seven-fifteenths of the revenue paid into the local impact and education trust fund..." You inquire whether the "seven-fifteenths" limitation applies to revenue paid into the trust fund in any given year, or whether the Legislature is free under section 90-6-205, MCA, to appropriate up to seven-fifteenths of the entire aggregate amount in the trust fund for coal board grants. The question takes on added significance when viewed in light of the reversion provisions of section 17-7-304, MCA. If section 90-6-205, MCA, is read to limit the coal board's appropriation to seven-fifteenths of the trust fund revenue projected for that year, unexpended money reverted to the fund may not be reappropriated for grants, since section 90-6-211, MCA, dedicates the principal of the fund to educational purposes except to the extent that section 90-6-205, MCA, allows the coal board to award grants.

Your letter informs me that the Legislature historically has appropriated to the coal board either

seven-elevenths or, after June 30, 1979, seven-fifteenths of the amount projected to accrue to the trust fund for the fiscal year. This legislative interpretation of section 90-6-205, MCA, suggests that the Legislature intended to limit the coal board to seven-fifteenths of each year's revenue paid into the trust fund, rather than seven-fifteenths of the fund's total principal. See Erickson, 75 Mont. at 440. If this interpretation is incorrect, the current Legislature has the power to demonstrate its disagreement by amending the statute or appropriating a sum in excess of seven-fifteenths of the fund's projected revenue for the fiscal year. This can be done by simple majority vote.

Your letter points out that the result of this opinion will be to deprive the coal board of appropriated funds which it is unable to expend or encumber prior to the end of the fiscal year. This may very well be true, but the power to remedy the situation rests with the Legislature. At least three legislative actions are available. The Legislature could affirmatively exempt the coal board from the reversion provisions of section 17-7-304, MCA, in effect reappropriating in each fiscal year the unexpended funds from the prior fiscal year. The Legislature could amend section 90-6-205, MCA, to clarify the application of the "seven-fifteenths" limitation. Finally, the Legislature could simply appropriate to the coal board more than seven-fifteenths of the projected revenue for the upcoming fiscal years, thereby demonstrating its interpretation of the limitation and, in effect, amending it by implication. In addition, your letter points out that the coal board's grant application procedures are not established by statute. The board may wish to investigate the possibility of streamlining its grant procedures with the intent of allowing it to complete action on pending applications before the close of each fiscal year.

THEREFORE, IT IS MY OPINION:

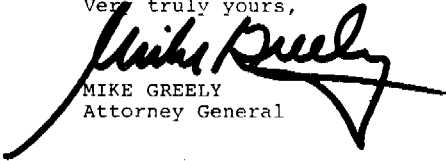
1. The coal board does not incur a "valid obligation" against its appropriation by inviting a full application for grant after screening a pre-application.
2. The provision of section 17-7-304, MCA, requiring the reversion of unexpended and



unencumbered portions of appropriations at the close of the fiscal year, applies to the appropriations to the coal board from the local impact and education trust fund.

3. The coal board may encumber funds at the close of a fiscal year only by incurring a "valid obligation" against them under section 17-7-302, MCA.
4. The legislative interpretation of section 90-6-205, MCA, suggests that the Legislature intended to limit the coal board appropriations to seven-fifteenths of the income projected to the local impact and education trust fund in each fiscal year.

Very truly yours,



MIKE GREELY  
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The Committee has 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. In addition, the Committee 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 Joint Resolution directing an agency to adopt, amend or repeal a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana, 59620.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA  
AND THE MONTANA ADMINISTRATIVE REGISTER

Definition: Administrative Rules of Montana (ARM) is a loose-leaf 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) 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 statute 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 Matter          | 1. Consult General Index, Montana Code Annotated to determine department or board associated with subject matter or statute number.  |
| Department                    | 2. Refer to Chapter Table of Contents, Title 1 through 46, page i, Volume 1, ARM, to determine title number of department's or board's rules.<br>3. Locate volume and title. |
| Subject Matter and Title      | 4. Refer to topical index, end of title, to locate rule number and catchphrase.  |
| Title Number and Department   | 5. Refer to table of contents, page 1 of title. Locate page number of chapter.   |
| Title Number and Chapter      | 6. Go to table of contents of Chapter, locate rule number by reading catchphrase (short phrase describing rule.)   |
| Statute Number and Department | 7. Go to cross reference table at end of each title which lists each MCA section number and corresponding rules.   |
| Rule In ARM                   | 8. Go to rule. Update by checking the accumulative table and the table of contents for the last register issued.   |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 1982. This table includes those rules adopted during the period January 1, 1983 through March 31, 1983, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 1982, this table and the table of contents of this issue of the MAR.

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