



ADMINISTRATIVE RULES OF MONTANA



18.7.219 ELIGIBLE PROJECTS FOR LONGITUDINAL INTERSTATE USE

- (1) A right-of-way use agreement is a lease as per 23 CFR 710.105.
- (2) An applicant must apply for a right-of-way use agreement from the department's Utility Permitting Administration System (UPAS) through the department's website at www.mdt.mt.gov or www.mdtupas.com. The procedures and conditions for all eligible project facility installations and maintenance are set forth in the right-of-way use agreement terms and conditions, ARM Title 18, chapter 7, subchapter 2, and the department's right-of-way utilities manual.
- (3) An electronic use convenience fee is due upon submission of each UPAS application. Applications shall be reviewed in the order they are received. The department shall consider all relevant factors, including but not limited to:
 - (a) the maximum occupancy of facilities and remaining availability of interstate right-of-way at the proposed project location;
 - (b) the feasibility of the proposed project location and the impact to the traveling public's safety and convenience;
 - (c) conflicts with existing or future highway projects;
 - (d) the maintenance area necessary for the proposed project location; and
 - (e) the requirements set forth in 60-4-601, MCA.
- (4) All appropriate underground or above-ground requirements in state and federal statute, regulations, and rules must be met including, but not limited to:
 - (a) the department shall enter right-of-way use agreements in a manner so as to reserve, where possible, sufficient underground right-of-way for eligible projects as defined in 60-4-601, MCA;
 - (b) above-ground facilities or infrastructure must be located outside the clear recovery area without reduction in safety for the traveling public and without any impacts to standard maintenance operations unless otherwise approved by the department;
 - (c) each facility owner must obtain a separate UPAS permit; and
 - (d) each facility's dedicated power source must obtain a separate UPAS permit.
- (5) Right-of-way use agreement terms shall include an application fee of \$100, due upon department notification to applicant.

- (6) The department shall deposit the revenues derived from the right-of-way use agreement and related fees in the state special revenue highway restricted account established in 15-70-126, MCA.
- (7) The applicant shall not commence construction work within the interstate right-of-way until the right-of-way use agreement and the UPAS permit have been approved by the department.
- (8) Facilities installed under a right-of-way use agreement must comply with ARM Title 18, chapter 7, subchapter 2 for general utility installation and maintenance requirements.
- (9) Assignment of a right-of-way use agreement is not binding until approved by the department. An assignment may only be denied for good cause, which reasons may include, but are not limited to:
 - (a) all payments due have not been received; or
 - (b) the terms of the right-of-way use agreement have been violated.
- (10) If a facility owner disagrees with the department's decision to deny an application or refuse to renew a right-of-way use agreement, the facility owner must submit a written request for a formal hearing that must be received by the department within 30 days of the date on the department's notice. A formal hearing consists of a contested case proceeding under the Montana Administrative Procedure Act.

Authorizing statute(s): 60-2-201, 60-3-101, 60-4-601, MCA

Implementing statute(s): 60-2-201, 60-4-601, 60-5-101, 60-5-104, MCA

History: NEW, 2023 MAR p. 1012, Eff. 9/9/23.