



ADMINISTRATIVE RULES OF MONTANA



8.97.2102 GENERAL REQUIREMENTS OF THE ENVIRONMENTAL REVIEW PROCESS

- (1) Section 75-1-201, MCA, requires state agencies to integrate use of the natural and social sciences and the environmental design arts in planning and in decision-making, and to prepare an environmental impact statement (EIS) on each proposal for projects, programs, legislation, and other major actions of state government specifically affecting the quality of the human environment. In order to determine the level of environmental review for each proposed action that is necessary to comply with 75-1-201, MCA, the agency shall apply the following criteria:
 - (a) The agency shall prepare an EIS as follows:
 - (i) whenever an EA indicates that an EIS is necessary; or
 - (ii) whenever, based on the criteria in ARM 8.2.305, the proposed action is a major action of state government significantly affecting the quality of the human environment.
 - (b) An EA may serve any of the following purposes:
 - (i) to ensure that the agency uses the natural and social sciences and the environmental design arts in planning and decision-making. An EA may be used independently or in conjunction with other agency planning and decision-making procedures;
 - (ii) to assist in the evaluation of reasonable alternatives and the development of conditions, stipulations or modifications to be made a part of a proposed action;
 - (iii) to determine the need to prepare the EIS through an initial evaluation and determination of the significance of impacts associated with a proposed action;
 - (iv) to ensure the fullest appropriate opportunity for public review and comment on proposed actions, including alternatives and planned mitigation, where the residual impacts do not warrant the preparation of an EIS; and
 - (v) to examine and document the effects of a proposed action on the quality of the human environment, and to provide the basis for public review and comment, whenever statutory requirements do not allow sufficient time for an agency to prepare an EIS. The agency shall determine whether sufficient time is available to prepare an EIS by comparing statutory requirements that establish when the agency must make its decision on the proposed action with the time required by ARM 8.2.313 to obtain public review of an EIS plus a reasonable period to prepare a draft EIS and, if required, a final EIS.
 - (c) The agency shall prepare an EA whenever:

- (i) the action is not excluded under (e) or (f) and it is not clear without preparation of an EA whether the proposed action is a major one significantly affecting the quality of the human environment;
 - (ii) the action is not excluded under (e) or (f) and although an EIS is not warranted, the agency has not otherwise implemented the interdisciplinary analysis and public review purposes listed in (b) (i) and (iv) through a similar planning and decision-making process; or
 - (iii) statutory requirements do not allow sufficient time for the agency to prepare an EIS.
- (d) The agency may, as an alternative to preparing an EIS, prepare an EA whenever the action is one that might normally require an EIS, but effects which might otherwise be deemed significant appear to be mitigable below the level of significance through design, or enforceable controls or stipulations or both imposed by the agency or other government agencies. For an EA to suffice in this instance, the agency must determine that all of the impacts of the proposed action have been accurately identified, that they will be mitigated below the level of significance, and that no significant impact is likely to occur. The agency may not consider compensation for purposes of determining that impacts have been mitigated below the level of significance.
- (e) The agency is not required to prepare an EA or an EIS for the following categories of action:
 - (i) actions that qualify for a categorical exclusion as defined by rule or justified by a programmatic review. In the rule or programmatic review, the agency shall identify an extraordinary circumstance in which a normal excluded action requires an EA or EIS;
 - (ii) administrative actions: routine, clerical or similar functions of a department, including but not limited to administrative procurement, contracts for consulting services and personnel actions;
 - (iii) minor repairs, operations or maintenance of existing equipment or facilities;
 - (iv) investigation and enforcement; data collection, inspection of facilities or enforcement of environmental standards;
 - (v) ministerial actions: actions in which the agency exercises no discretion, but rather acts upon a given state of facts in a prescribed manner; and
 - (vi) actions that are primarily social or economic in nature and that do not otherwise affect the human environment.
- (f) In addition to the categories of actions listed under (e) , the board has determined that the following programs and/or actions do not have a significant impact on the human environment, are primarily economic in nature, and therefore do not require the preparation of an EA or an EIS;
 - (i) the purchase of all stocks publicly traded on any national or international stock exchange;
 - (ii) the purchase of all bonds issued by governmental entities or by corporations whose stock is listed on any national or international stock exchange. This exemption does not apply to bonds purchased by the board by private placement where the board is the sole provider of funds;

- (iii) the issuance of bonds under the Municipal Consolidation Finance Act through the Montana cash anticipation finance program (Title 17, chapter 5, part 16, MCA) when the proceeds are used to fund loans to local governments to cover temporary cash deficits;
 - (iv) the issuance of bonds under the Montana Consolidation Finance Act through the Montana cash anticipation finance program (Title 17, chapter 5, part 16, MCA) when the proceeds are used to prepay debt to the federal bureau of reclamation where original loan money from the federal government was used to improve existing irrigation structures;
 - (v) the issuance of bonds under the Municipal Consolidation Finance Act through the intermediate term finance program when proceeds are used to finance loans to local governments to acquire vehicles and equipment, or to make modest repairs or improvements to real property. All other uses made under this program are reviewed under these rules;
 - (vi) the purchase of all residential loans made with pension funds;
 - (vii) the purchase of all federally guaranteed loans;
 - (viii) the purchase of all residential multi-family loans;
 - (ix) all deposits made under the linked deposit program pursuant to ARM Title 8, chapter 97, subchapter 14; and
 - (x) limited partnerships where the board is not involved in the investment decision.
- (g) If an extraordinary circumstance pertaining to one of the programs and/or actions excepted in (f) is brought to the attention of the board or board staff, the board shall determine whether such circumstance may create a significant impact on the human environment. If the board determines that such circumstance may create a significant impact on the human environment, then the program and/or action is no longer exempt under (f) and ARM 8.2.302 through 8.2.327 applies.

Authorizing statute(s): Sec. 2-3-103, 2-4-201, MCA

Implementing statute(s): Sec. 2-3-104, 75-1-201, MCA

History: NEW, 1990 MAR p. 1782, Eff. 9/14/90; AMD, 2000 MAR p. 1043, Eff. 2/11/00.