



ADMINISTRATIVE RULES OF MONTANA



8.2.328 ACTIONS THAT QUALIFY FOR A CATEGORICAL EXCLUSION

- (1) The following types of actions do not individually, collectively, or cumulatively require the preparation of an environmental assessment or an environmental impact statement, unless the action involves one or more of the extraordinary circumstances stated in (3).
- (2) The following actions meet the criteria for categorical exclusions and will not normally require preparation of either an environmental assessment or an environmental impact statement in considering applications for grants or loans to finance these projects:
 - (a) projects that will be partially funded by, or for which the applicant must obtain a permit from, a state or federal agency which, by reason of its funding or permitting function, has primary responsibility to consider the environmental impacts of the project under MEPA or the National Environmental Policy Act;
 - (b) activities which do not involve or lead directly to construction, such as planning studies, scientific research and analysis, surveys, or engineering;
 - (c) projects primarily involving the acquisition of capital equipment;
 - (d) projects that involve only minor repairs or rehabilitation to an existing facility, including functional replacement of an existing facility or facility components;
 - (e) projects where the footprint of the proposed structures, pipelines, or other infrastructure would be substantially unchanged from existing conditions, and there is no increase in the population served by the facility, other than that described in (3)(d)(iii); or
 - (f) emergency repairs, reconstruction, restoration, retrofitting, or replacement of an existing facility that is in operation or under construction when damaged and the action:
 - (i) occurs within the existing facility footprint and in a manner that substantially conforms to the preexisting design, function, and location as the original (which may include upgrades to meet existing codes and standards as well as upgrades warranted to address conditions that have changed since the original construction); and
 - (ii) is commenced within six months after the date of the emergency;
 - (g) projects relating to existing infrastructure systems such as sewer systems, drinking water supply systems, and stormwater systems, including combined sewer overflow systems that involve:
 - (i) minor upgrading;
 - (ii) minor expansion of system capacity;

- (iii) rehabilitation (including functional replacement) of the existing system and system components; or
 - (iv) construction of new minor ancillary facilities adjacent to or on the same property as existing facilities; or
 - (h) projects in unsewered communities involving the replacement of existing on-site systems, provided that the new on-site systems do not result in substantial increases in the volume of discharges or in loadings of pollutants from existing sources, and do not relocate existing discharges.
- (3) Actions described in (2) may not be processed as categorical exclusions if:
- (a) they involve substantial public controversy over the project's potential effect on the quality of the human environment;
 - (b) the proposed project might have a significant effect on the quality of the human environment; or
 - (c) the project might affect sensitive environmental or cultural resource areas or endangered or threatened species and their critical habitats;
 - (d) for projects related to water, sewer, or stormwater infrastructure in (2)(g), if:
 - (i) the action would authorize facilities that will provide a new discharge or relocate an existing discharge to ground or surface waters;
 - (ii) the action would result in an increase above permit levels established for the facility under the Montana pollutant discharge elimination system or Montana ground water pollution control system for either volume of discharge or loading rate of pollutants to receiving waters;
 - (iii) the action would authorize facilities that will provide capacity to serve a population at least 30% greater than the existing population;
 - (iv) the action is not supported by the state, or other regional growth plan or strategy;
 - (v) the action directly or indirectly involves or relates to upgrading or extending infrastructure systems primarily for the purposes of future development.
- (4) If information available to the department indicates that a proposed project in one of the categories described in (2) may involve one of the situations described in (3), the department may, in its sole discretion, require an applicant to prepare an environmental assessment or environmental impact statement as may be appropriate.

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

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

History: NEW, 2015 MAR p. 1481, Eff. 9/25/15; AMD, 2022 MAR p. 610, Eff. 4/30/22.