



ADMINISTRATIVE RULES OF MONTANA



8.2.304 GENERAL REQUIREMENTS OF THE ENVIRONMENTAL REVIEW PROCESS

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 a detailed statement (an EIS) on each proposal for projects, programs, legislation, and other major actions of state government significantly 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:

- (1) The agency shall prepare an EIS as follows:
 - (a) whenever an EA indicates that an EIS is necessary; or
 - (b) 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.
- (2) An EA may serve any of the following purposes:
 - (a) 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;
 - (b) 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;
 - (c) to determine the need to prepare an EIS through an initial evaluation and determination of the significance of impacts associated with a proposed action;
 - (d) 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
 - (e) 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.
- (3) The agency shall prepare an EA whenever:

- (a) the action is not excluded under (5) 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;
 - (b) the action is not excluded under (5) and although an EIS is not warranted, the agency has not otherwise implemented the interdisciplinary analysis and public review purposes listed in (2) (a) and (d) through a similar planning and decision-making process; or
 - (c) statutory requirements do not allow sufficient time for the agency to prepare an EIS.
- (4) 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.
- (5) The agency is not required to prepare an EA or an EIS for the following categories of action:
- (a) actions that qualify for a categorical exclusion as defined by rule of justified by a programmatic review. In the rule or programmatic review, the agency shall identify any extraordinary circumstances in which a normally excluded action requires an EA or EIS;
 - (b) administrative actions: routine, clerical or similar functions of a department, including but not limited to administrative procurement, contracts for consulting services, and personnel actions;
 - (c) minor repairs, operations, or maintenance of existing equipment or facilities;
 - (d) investigation and enforcement: data collection, inspection of facilities or enforcement of environmental standards;
 - (e) ministerial actions: actions in which the agency exercises no discretion, but rather acts upon a given state of facts in a prescribed manner; and
 - (f) actions that are primarily social or economic in nature and that do not otherwise affect the human environment.

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

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

History: NEW, 1988 MAR p. 2692, Eff. 12/23/88.