



ADMINISTRATIVE RULES OF MONTANA



18.7.231 GENERAL CONSIDERATIONS

- (1) The following general considerations shall apply to occupancy of highway right-of-way by utility facilities covered by ARM 18.7.222 through 18.7.231.
 - (a) If the state should deem it necessary and/or desirable to change, construct, reconstruct, or otherwise use for highway purposes, the premises occupied by utility facilities, or any portion thereof, and such change, construction, reconstruction or usage should necessitate changes in utility structures or installations, the utility shall make the necessary changes and the costs thereof shall be paid in accordance with the law in effect at the time the change is required to be made; state and utility reserve the right to test validity or constitutionality of any such law. The department reserves the right to expand highway facilities over existing underground utilities located within highway right-of-way without adjusting the utility facility, if the construction work does not conflict with the utility.
 - (b) The utility facility owner shall be liable, and state shall not be liable, to the general public for any injury to or death of any person whomsoever, or for the loss of or damage to property of any kind or nature to whomsoever belonging when such injury, death, loss or damage arises out of or results from the construction, maintenance, or repair of existing or future utility facilities located within the highway right-of-way, or the installation or operation of such utility facilities within the highway right-of-way, regardless of whether or not the department has expressed or implied approval of the construction, maintenance, repair, installation or operation of such facilities within the highway right-of-way. If any highway or transportation facility or structure is damaged by any party, whether through negligence or otherwise, then that party is fully responsible for the cost to repair the structure and any associated costs, including, but not limited to those liabilities set forth in the previous sentence.
 - (c) If the work done by the utility interferes in any way with highway drainage, the utility, at its expense, shall make such reasonable provisions as the department may direct to correct such drainage.
 - (d) Clearing of trees, bushes and other vegetation shall be held to the minimum required for construction and safety. All such clearing shall be revegetated in accordance with 7-22-2152, MCA. Spraying of vegetation to inhibit growth is prohibited.
 - (e) In the event it is necessary to cut or disturb a paved portion of a roadway, then such disturbance shall be properly patched, and shall be maintained for one year from the installation date. If the responsible party does not perform required repairs within 30 days of notification, the department may make such repair and charge the full cost to the responsible party.

- (f) The utility shall return the right-of-way to its original condition as nearly as practicable and shall remove all of its rubbish and debris promptly following completion of its activities.
- (g) Work performed by the utility within the highway right-of-way shall be subject to inspection at all times.
- (h) Subsequent to the initial installation, all repair, maintenance, reconstruction, relocation, or removal of utility facilities shall be accomplished in such a manner as will cause the least interference with normal operation and maintenance of the highway.
- (i) The state shall not be responsible or liable for damage which may occur to utility facilities occupying highway right-of-way under these regulations.
- (j) Upon termination of occupancy, the utility shall remove its above-ground facilities and restore the right-of-way as nearly as practicable to the condition existing at the time of initial occupancy thereof. Reasonable and ordinary deterioration caused by use or the elements or the acts of nature are excepted.
- (k) Retired or abandoned below-ground facilities shall, at the discretion of the department, be removed by the facility owner, and any costs (including costs associated with the proper removal of hazardous or solid wastes) associated with such removal shall be the responsibility of the utility facility owner.
- (l) The utility, at its sole expense, shall maintain in a satisfactory condition, the installations and structures occupying the highway right-of-way. Maintenance work, except in emergency situations, may not be conducted from within access control limits of controlled-access highways.
- (m) Where the state's right-of-way is by easement for highway purposes only, utility occupancy may be subject to approval by the owner of the underlying fee interest. The utility company is encouraged to determine whether it is in its best interest to obtain such approval prior to installing its facilities.
- (n) New utility facility installations, including those needed for highway purposes, will not be permitted within scenic strips, overlooks, rest areas, recreation areas, the rights-of-way of highways adjacent thereto, the rights-of-way of highways which pass through historic sites and public parks, archaeological sites that have been determined eligible for listing on the national register of historic places, a wetland protected by Executive Order 11990, or any other environmentally sensitive area, except as follows:
 - (i) New underground utility facilities may be permitted within such areas where they do not require extensive removal of, or damage to, trees visible to the highway user, or impair the appearance of the area.
 - (ii) New aerial installations are to be avoided at such locations unless there is no feasible and prudent alternative to the use of such lands by the aerial facility and it is demonstrated that:
 - (A) Alternate locations for the utility facilities are not available or are extremely difficult and unreasonably costly, or are less desirable from the standpoint of scenic appearance.
 - (B) Underground installations are not technically or economically feasible, or are more detrimental to the scenic appearance of the area.

- (C) The proposed utility installation will be made at a location and in a manner that will not significantly detract from the area, and will employ suitable designs and materials which the greatest weight to visual quality.
- (iii) Situations involving unusual hardship or other extenuating circumstances within scenic and public use areas will be considered.
- (iv) If avoidance of such areas is not feasible, and the applicant demonstrates to the satisfaction of the department that mitigation of any adverse impacts is possible and preferable to complete avoidance, then the department may allow the applicant to occupy such areas provided such mitigation measures are taken.
- (o) The installation of utility facilities or conduits on the right-of-way of federal-aid or direct federal highway projects for the purpose of draining adjacent wetlands onto the highway right-of-way is inconsistent with Executive Order 11990, Protection of Wetlands, dated May 24, 1977, and shall not be permitted. The filling, dredging or draining of wetlands located on highway right-of-way shall not be allowed unless in compliance by all federal and state laws and regulations.
- (p) The utility company shall comply with the Montana Environmental Policy Act, 75-1-101, et seq., MCA; the Threatened and Endangered Species Act, 16 USC 1531, et seq.; the Migratory Bird Treaty Act, 16 USC 701, et seq.; the Bald and Golden Eagle Protection Act, 16 USC 668, et seq.; and all other applicable environmental laws, regulations or provisions.
- (q) Whenever a utility installation, adjustment, or maintenance activity will affect the movement of traffic or traffic safety, the utility shall implement a traffic control plan and use traffic control devices as necessary to ensure safe and expeditious movement of traffic around the work site and the safety of the utility work force. The traffic control plan and the application of traffic control devices shall conform to the standards set forth in the Manual on Uniform Traffic Control Devices (MUTCD) , and 23 CFR 655, subpart F. No road closure shall occur without prior approval from the district engineer. In all cases, it is necessary that utility work be undertaken in a manner that will minimize interference with the traveling public.

Authorizing statute(s): 60-3-101, 60-4-402, MCA

Implementing statute(s): 60-3-101, 60-4-402, MCA

History: Eff. 12/31/72; AMD, 1995 MAR p. 1043, Eff. 5/12/95; AMD, 2024 MAR p. 1880, Eff. 7/27/24.