



ADMINISTRATIVE RULES OF MONTANA



18.2.261 ACTIONS THAT QUALIFY FOR A CATEGORICAL EXCLUSION

- (1) Categorical exclusions (CE) are types of actions which do not individually, collectively, or cumulatively require the preparation of an environment assessment or an environmental impact statement unless the action involves one or more of the extraordinary circumstances stated in (5).
- (2) The following actions meet the criteria for categorical exclusions and normally do not require further approvals by the Federal Highway Administration (FHWA) when a federal action occurs:
 - (a) activities which do not involve or lead directly to construction, such as planning and research activities; grants for training; engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; and federal-aid system revisions which establish classes of highways on the federal-aid highway system;
 - (b) approval of utility installations along or across a transportation facility;
 - (c) construction of bicycle and pedestrian lanes, paths, and facilities;
 - (d) activities included in the state's highway safety plan under 23 U.S.C. 402;
 - (e) transfer of federal lands pursuant to 23 U.S.C. 107(d) and/or 23 U.S.C. 317 when the land transfer is in support of an action that is not otherwise subject to FHWA review under the National Environmental Policy Act;
 - (f) the installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction;
 - (g) landscaping;
 - (h) installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur;
 - (i) the following actions for transportation facilities damaged by an incident resulting in an emergency declared by the Governor of Montana and concurred in by the Secretary, or a disaster or emergency declared by the President pursuant to the Robert T. Stafford Act (42 U.S.C. 5121):
 - (i) emergency repairs under 23 U.S.C. 125; and
 - (ii) the repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility (such as a ferry dock or bus transfer station), including ancillary transportation facilities (such as pedestrian/bicycle paths and bike lanes), that is in operation or under construction when damaged and the action:

- (A) occurs within the existing right-of-way 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
 - (B) is commenced within a two-year period beginning on the date of the declaration;
- (j) acquisition of scenic easements;
- (k) determination of payback under 23 U.S.C. 156 for property previously acquired with federal-aid participation;
- (l) improvements to existing rest areas and truck weigh stations;
- (m) ridesharing activities;
- (n) bus and rail car rehabilitation;
- (o) alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons;
- (p) program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand;
- (q) the purchase of vehicles by a federal transit fund applicant where the use of these vehicles can be accommodated by existing facilities or by new facilities which themselves are within a CE;
- (r) track and railbed maintenance and improvements when carried out within the existing right-of-way;
- (s) purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site;
- (t) promulgation of rules, regulations, and directives;
- (u) deployment of electronics, photonics, communications, or information processing used singly or in combination, or as components of a fully integrated system, to improve the efficiency or safety of a surface transportation system or to enhance security or passenger convenience. Examples include, but are not limited to, traffic control and detector devices, lane management systems, electronic payment equipment, automatic vehicle locaters, automated passenger counters, computer-aided dispatching systems, radio communications systems, dynamic message signs, and security equipment including surveillance and detection cameras on roadways and in transit facilities and on buses;
- (v) projects, as defined in 23 U.S.C. 101, that would take place entirely within the existing operational right-of-way. Existing operational right-of-way refers to right-of-way that has been disturbed for an existing transportation facility or is maintained for a transportation purpose. This area includes the features associated with the physical footprint of the transportation facility (including the roadway, bridges, interchanges, culverts, drainage, fixed guideways, mitigation areas, etc.) and other areas maintained for transportation purposes such as clear zone, traffic control signage, landscaping, any rest areas with direct access to a

controlled access highway, areas maintained for safety and security of a transportation facility, parking facilities with direct access to an existing transportation facility, transit power substations, transit venting structures, and transit maintenance facilities. Portions of the right-of-way that have not been disturbed or that are not maintained for transportation purposes are not in the existing operational right-of-way;

- (w) federally funded projects:
 - (i) that receive less than \$5,000,000 of federal funds; or
 - (ii) with a total estimated cost of not more than \$30,000,000 and federal funds comprising less than 15 percent of the total estimated project cost;
 - (x) localized geotechnical and other investigation to provide information for preliminary design and for environmental analyses and permitting purposes, such as drilling test bores for soil sampling; archeological investigations for archeology resources assessment of similar survey; and wetland surveys;
 - (y) environmental restoration and pollution abatement actions to minimize or mitigate the impacts of any existing transportation facility (including retrofitting and construction of stormwater treatment systems to meet federal and state requirements under sections 401 and 402 of the Federal Water Pollution Control Act (33 U.S.C. 1341; 1342)) carried out to address water pollution or environmental degradation;
 - (z) modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (including parking, weaving, turning, and climbing lanes), if the action meets the constraints in (4);
 - (aa) highway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting, if the project meets the constraints in (4);
 - (bb) bridge rehabilitation, reconstruction, or replacement, or the construction of grade separation to replace existing at-grade railroad crossings, if the actions meet the constraints in (4);
 - (cc) purchase, construction, replacement, or rehabilitation of ferry vessels (including improvements to ferry vessel safety, navigation, and security systems) that would not require a change in the function of the ferry terminals and can be accommodated by existing facilities or by new facilities which themselves are within a CE; or
 - (dd) rehabilitation or reconstruction of existing ferry facilities that occupy substantially the same geographic footprint, do not result in a change in their functional use, and do not result in a substantial increase in the existing facility's capacity. Example actions include work on pedestrian and vehicle transfer structures and associated utilities, buildings, and terminals.
- (3) Additional actions which meet the criteria for a CE may be designated as CEs only after the FHWA approval when a federal action occurs. Documentation must be submitted to FHWA for approval when a federal action occurs which demonstrates that the specific conditions or criteria for these CEs are satisfied and that significant environmental effects will not result. Examples of such actions include but are not limited to:
- (a) transportation corridor fringe parking facilities;
 - (b) construction of new truck weigh stations or rest areas;

- (c) approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts;
 - (d) approvals for changes in access control;
 - (e) construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic;
 - (f) rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users;
 - (g) construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic;
 - (h) construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and where there is no significant noise impact on the surrounding community;
 - (i) acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition qualify for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the MEPA process. No project development on such land may proceed until the MEPA process has been completed:
 - (i) Hardship acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety, or financial reasons that remaining in the property poses an undue hardship compared to others;
 - (ii) Protective acquisition is done to prevent imminent development of a parcel which may be needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project; or
 - (j) actions described in (2)(z), (2)(aa), and (2)(ab) that do not meet the constraints in (4).
- (4) Actions described in (2)(z), (2)(aa), and (2)(ab) may not be processed as CEs under (2) if they involve:
- (a) an acquisition of more than a minor amount of right-of-way or that would result in any residential or nonresidential displacements;
 - (b) an action that does not meet the terms and conditions of a U.S. Army Corps of Engineers nationwide or general permit under section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act of 1899;

- (c) a finding of "adverse effect" to historic properties under the National Historic Preservation Act, the use of a resource protected under 23 U.S.C. 138 or 49 U.S.C. 303 (section 4(f)) except for actions resulting in de minimis impacts, or a finding of "may affect, likely to adversely affect" threatened or endangered species or critical habitat under the Endangered Species Act;
 - (d) construction of temporary access, or the closure of existing road, bridge, or ramps, that would result in major traffic disruptions;
 - (e) changes in access control; or
 - (f) a floodplain encroachment other than functionally dependent uses (e.g., bridges, wetlands) or actions that facilitate open space use (e.g., recreational trails, bicycle and pedestrian paths); or construction activities in, across, or adjacent to a river component designated or proposed for inclusion in the National System of Wild and Scenic Rivers.
- (5) The preparation of an environmental assessment or an environmental impact statement will be required if the project involves any of the following extraordinary circumstances:
- (a) significant impact on publicly owned parklands, recreation areas, wildlife or waterfowl refuges, or any significant historic site;
 - (b) significant impact on wetlands or prime farmlands;
 - (c) significant impact on the human environment that may result from large acquisitions of right-of-way, relocations of persons or businesses, changes in traffic patterns, changes in grade, or other types of changes;
 - (d) significant impact on air, noise, or water quality;
 - (e) substantial controversy on environmental grounds; or
 - (f) any other kind of significant environmental impact.

Authorizing statute(s): 2-3-103, 2-4-201, 75-1-103, 75-1-201, MCA

Implementing statute(s): 75-1-103, 75-1-201, MCA

History: NEW, 1989 MAR p. 900, Eff. 7/14/89; AMD, 2014 MAR p. 2950, Eff. 12/12/14.