

MONTANA ENVIRONMENTAL POLICY ACT

1. Types of Activities Reviewed

As outlined in the Montana Environmental Policy Act (MEPA) and agency MEPA Administrative Rules, all agencies of the state must conduct an environmental review when making decisions or planning activities that may have an impact on the environment. Depending on the scope and significance of the project, the agency must prepare either an Environmental Assessment (EA), a Mitigated Environmental Assessment (Mitigated EA), or an Environmental Impact Statement (EIS). The environmental review process applies not only to actions initiated by the agency, but also to the issuance of state permits and licenses.

Statute: 75-1-101, *et seq.*, MCA

2. Review Process

A. Environmental Assessments (EA)

A state agency must prepare an EA when it is considering an action that may impact the environment and it is unclear whether an EIS is needed, or it is clear that the impacts of the proposed action are not significant, or statutory requirements do not allow sufficient time for the agency to prepare an EIS. The level of analysis required for an EA depends on the complexity of the proposed action, the environmental sensitivity of the area affected, the degree of uncertainty as to whether the proposed action will have a significant impact on the environment, and the need for and complexity of mitigation required to avoid significant impacts. If an EIS is not needed, the agency must explain why an EA is sufficient.

B. Mitigated Environmental Assessment (Mitigated EA)

A state 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 that 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.

C. Environmental Impact Statements (EIS)

A state agency must prepare an EIS whenever an EA indicates an EIS is necessary, or when the agency determines that the proposed action is a

major action that will significantly affect the state's environment. An EIS must discuss the environmental impact of the proposed action, any adverse environmental effects that cannot be avoided should the action be taken, alternatives to the proposed action if it is a state-sponsored project, the relationship between the short-term uses of the environment and the maintenance and enhancement of long-term productivity, and any irreversible and irretrievable commitments of resources that would be involved if the proposed action were taken.

Prior to preparing an EIS, the agency must solicit public comment to determine the scope of the analysis.

The agency must then prepare a draft EIS and distribute it for public comment. Depending on the comments received, the agency may revise the draft EIS and publish a final EIS, or adopt the draft as the final EIS. The final EIS must include a summary of the major conclusion and supporting information from the draft EIS; a list of all sources of oral and written comments on the draft EIS; the agency's responses to those comments; information obtained subsequent to circulation of the draft EIS; and the agency's recommendation, preferred alternative, or proposed decision together with an explanation of the reasons for the decision.

3. **Actions Excluded or Exempted from Environmental Review**

The agency is not required to prepare an EA or an EIS for the following categories of action:

A. **Actions Exempted By Statute**

23-2-657, MCA	The Montana Department of Fish, Wildlife and Parks (FWP) when taking actions as a snowmobile area operator or providing funding assistance to snowmobile area operators if the action or funding has been previously subject to an environmental review
30-16-103(3)(b), MCA	Small business licenses under the Montana Small Business Licensing Coordination Act
61-10-121, MCA	Issuance of an oversized load permit when existing roads through existing right-of-ways are used
75-1-201(1)(b), MCA	Legislation

75-1-201(1)(d), MCA	A transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for use or permission to act by an agency does not trigger review if there is not a material change in terms or conditions of the entitlement or unless otherwise provided by law
75-1-201(3), MCA	Montana Public Service Commission activities
75-2-211(5), MCA	The transfer of permits for portable emission sources
75-20-303(6)(c)(1), MCA	Siting modifications within a major facility siting corridor
77-1-121(2) & (3), MCA	Montana Department of Natural Resources and Conservation's (DNRC) or Montana Board of Land Commissioner's issuance of lease renewals and state leases and licenses subject to further permitting by the Montana Department of Environmental Quality
77-1-121(3), MCA	Nonaction on the part of the DNRC or the Board even though it has the authority to act
77-1-121(4), MCA	DNRC and Board action in relation to and compliance with local government actions concerning planning and zoning
77-1-130(6), MCA	Issuance of historic right-of-way deeds across state lands
77-1-617(2), MCA	A qualified exemption for reciprocal access agreements on state land
77-1-1112(7), MCA	Authorization of historic use of navigable river beds
77-2-363(7), MCA	Sale of a parcel formerly leased as a cabin or home site
77-5-201(3)(c), MCA	Certain emergency timber sale situations or time dependent access situations involving timber
82-4-250(4), MCA	Transfer of certain coal mine operating permits
82-4-305, MCA	Small Miners
82-4-342(5), MCA	Certain actions that involve minor amendments to a hard-rock mine operating permit
87-1-303(3), MCA	Domestic livestock trailing on land owned or controlled by the FWP
90-4-310(6), MCA	Emergency energy orders issued by the Governor

- B. 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 must identify any extraordinary circumstances in which a normally excluded action requires an EA or EIS (MEPA Model Rule III(5); DEQ, ARM 17.40.318, Montana Department of Fish, Wildlife and Parks, ARM 12.2.454, DNRC, ARM 36.11.447, Montana Department of Commerce, Coal Board, ARM 8.101.203, Montana Department of Transportation, ARM 18.2.261);
- C. Administrative actions: routine, clerical or similar functions of a department, including but not limited to administrative procurement, contracts for consulting services, and personnel actions (MEPA Model Rule III(5));
- D. Minor repairs, operations or maintenance of existing equipment or facilities (MEPA Model Rule III(5));
- E. Investigation and enforcement: data collection, inspection of facilities, or enforcement of environmental standards (MEPA Model Rule III(5));
- F. Ministerial actions: actions in which the agency exercises no discretion, but rather acts upon a given state of facts in a prescribed manner (MEPA Model Rule III(5));
- G. Actions that are primarily social or economic in nature and that do not otherwise affect the human environment (MEPA Model Rule III(5)); and
- H. Actions taken that are immediately necessary to control the impacts of an emergency (MEPA Model Rule XIX).

4. Fees

If the cost of preparing the EIS exceeds \$2,501, the agency may collect a fee from the applicant to pay the costs of EIS preparation. A fee schedule based on the cost of the proposed project is outlined in the statute.

Statute: 75-1-203, MCA

5. Additional Information

When a single project requires permits from two or more agencies, a lead agency will be designated to collect the EIS fee and to coordinate preparation of the document.

Statute: 75-1-101, *et seq.*, MCA

