

PROCEDURAL GUIDELINES FOR IMPLEMENTATION OF REGULATORY IMPACT ANALYSIS UNDER MEPA

I. Triggering of Regulatory Impact Evaluation Requirements

- A. Is the agency preparing an EA or an EIS on the proposed action? If not, no further analysis is required.
- B. If so, is it regulating the use of private tangible personal property or real property under a regulatory statute adopted pursuant to the police power of the state? (Property management, grants of financial assistance, and the exercise of the power of eminent domain are not within this category.) If not, no further regulatory impact analysis is required.
- C. If so, is the agency proposing to deny an application for a permit or other permission, or to place on the approval of the application a condition that has not been agreed to by the regulated person at the time of publication of the EA or EIS? If not, no further regulatory impact analysis is required.
- D. If so, does the proposed regulatory action restrict the use of the regulated or potentially regulated person's private property? If not, no further regulatory impact analysis is required.
- E. If so, is the agency required by a statute to deny the application or impose the restriction in the manner that the agency proposes to impose it? (For example, the Legislature has mandated that vegetation be reestablished by stripping, storing, and replacing topsoil and then seeding. The agency must either deny a permit application that does not contain a reclamation plan that commits the applicant to perform these activities or the agency must impose conditions to require them.) If so, no further regulatory impact analysis is required. If not, the agency must analyze the regulatory impacts and must do any alternatives analysis required under F below.
- F. Are there alternative methods that will implement the statute or rule in a manner that will reduce, minimize, or eliminate the restriction on the use of private property? If so, the agency must analyze and consider the alternative method or methods.

II. Evaluation Requirements and Documentation

- A. Extent - The EA or EIS must analyze the impact on private property of the proposed restriction; state whether there are alternatives that would reduce, minimize, or eliminate the regulation; analyze any alternatives; and discuss the benefits to be derived from imposing the restriction. The analysis must

describe the types of expenditures that the restriction would require and whether or not the market value of the property would be affected. The agency should, to the degree reasonably practicable, estimate the cost of compliance with the restriction and the amount of decrease or increase in property value, if any. The agency should consult with the regulated person in determining these values. If quantification is not reasonably practicable, the agency should describe the economic impact in qualitative terms.

B. Statement of Rationale -

1. The analysis should state the agency's rationale for any of the following decisions:
 - (a) that the action does not restrict the use of private property and a regulatory impact analysis is therefore not necessary;
 - (b) that there are no alternatives that would reduce, minimize, or eliminate restrictions on private property rights; and
 - (c) that the agency should not implement the alternative that is least restrictive to private property. (This requires a statement of reasons if the agency chooses not to implement the least restrictive alternatives. It does not prohibit implementation of the least costly alternative.)
2. Any document or other information upon which the agency has relied in making its determination should be referenced.

III. Other Provisions

- A. A regulatory restriction analysis does not diminish or expand the private property protections afforded by the United States and Montana Constitutions.
- B. Ongoing programs may continue while a programmatic EA or EIS is being prepared.