

2020 Coal Board Application Revision Recommendations Summary

Commerce Staff Recommendations

- Re-format Application to be more consistent with other Commerce application guidelines including cover page, headers, footers, font, and logo, remove gray boxes in the guidelines
- Re-format application to include guidelines for application followed by the Application as an Appendix.
- Request one hard copy and one electronic copy application; 8 hard copy applications no longer needed
- 10-day rule – Does the Board want to continue with the 10-day rule including a 10-day waiver process?
- Clarify MEPA requirements in the body of the Application Guidelines
- Add a Grant Administration Manual to assist grantees administration process including draw requests, reporting requirements, and closeout (draft included)
- Propose that applicants may appear in person or by conference call at the meeting.
- Remove Examples and only include templates – this will reduce page length.
- Staff will add information about how to submit a Non-Disclosure Agreement to protect any information that the applicant does not want public, and provide a Commerce approved template to the application guidelines. This may not be applicable to all applicants.
- Staff recommend adding questions to the Severity of Impact section of the application that follows statute

Staff Environmental Comments

Planning studies and capital equipment purchases may both qualify for a categorical exclusion under ARM 8.2.328(2)(b) and (c) as long as the conditions in ARM 8.2.328(3) are not present.

The public review process needs to match the complexity and seriousness of the environmental issues associated with the proposed action (project). Generally speaking, projects or actions that qualify for a categorical exclusion under ARM 8.2.328(2) or 8.2.304(5) do not require a robust public review process or really any formal public meeting or hearing under MEPA. The effect of a categorical exclusion is that MEPA does not apply. Open public meeting and public participation laws still apply. If there is any question as to whether one of the conditions in ARM 8.2.328(3) is present, a public meeting may be a good idea to allow the public to comment on the proposed course of action and the potential environmental impacts. Ultimately, it is up to the Board to determine the level of public review.

If an EA is required or completed, then a public review process is necessary; however, the appropriate level of public review must be determined on a case by case basis. See ARM 8.2.307. At the very least, the EA must be made available for public review. At the very most, a notice must be published, a public hearing must be held, public comment must be accepted, and the agency must consider the substantive comments received before making a final decision on the proposed action.

Providing clarification and additional guidance in the Application or Guidelines regarding appropriate levels of the public review process may be helpful. Coal Board's ARM 8.101.202 incorporates Commerce's rules for implementing MEPA. Under ARM 8.2.304(5)(a), the Board may specify the types of actions that qualify for a categorical exclusion. The Board must do this by rule (adopting an ARM) or by a

programmatic review (which may be adopting Guidelines or a Manual). The Board must identify any extraordinary circumstances in which a normally excluded action (e.g. maybe funding an engineering study) would require an EA or EIS (e.g. if it was known the engineering study was absolutely going to directly lead to construction). Ultimately, the language in the Guidelines/Manual/ARM should allow the Board discretion to require an applicant to prepare an EA (or EIS) based on the facts and circumstances surrounding the proposed project. (see ARM 8.2.328(4)).

Public Recommendations

Dear Coal Board Staff,

In response to your request for public input regarding the Coal Board application revision, I offer the following:

- 1) Questions 1-18 (Summary information, Project Summary, Project Budget Form, Budget Narrative, and Implementation Schedule) seem essential and do not require a large amount of time to prepare.
- 2) Question 19 (Description of Relationship to Coal Board Statutory Grant Criteria) takes a more significant amount of time to prepare to sufficiently address all the questions. I hesitate to offer suggestions for specific questions, because the value of the question to those who evaluate the applications is what is most important. Therefore, I respectfully suggest that the revision team looks at the four statutory criteria and simplify/sculpt the questions within Question 19 to insure the Coal Board receives just the information needed to evaluation if the criteria is met without excess or redundancy of information. Possibly starting with the grant application scoring process and seeing what questions help the team assess if criteria is met would reveal each questions value for the Coal Board team.

Thank you for your efforts to increase efficiency,

Warm regards,
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