

Chapter Trans 400

WISCONSIN ENVIRONMENTAL POLICY ACT PROCEDURES FOR DEPARTMENT ACTIONS

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Trans 400.01 Authority. (1) This chapter is promulgated under the authority of ss. 1.11, 85.16 (1) and 227.11 (2), Stats.

(2) As specified in s. 227.01 (13) (d), (e) and (y), Stats., the definition of “rule” and the requirement to promulgate statements of general policy and interpretation of statutes as administrative rules do not apply to action or inaction of the department which relates to the use of highways and is made known by signs or signals, relates to the construction or maintenance of highways or bridges, except as provided in ss. 84.11 (1r) and 85.025, Stats., or prescribes measures to minimize the adverse environmental impact of bridge and highway construction and maintenance.

(3) As specified in ss. 20.395 (9) (qx), 84.01 (15), 84.015 and 84.03 (1), Stats., the department is directed to construct and maintain highways and related projects within the meaning of title 23, United States Code, and all acts amendatory and supplementary thereto, and the federal regulations issued under that code, as well as to receive and expend all funds in accordance with the requirements of acts of congress making such funds available.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92.

Trans 400.02 Purpose. The purpose of this chapter is to implement the Wisconsin environmental policy act, s. 1.11, Stats., by establishing the policy by which the department will consider environmental effects of its major actions on the quality of the human environment, by identifying actions under the jurisdiction of the department that have the potential to affect the quality of the human environment, by determining the appropriate environmental analysis and documentation necessary for each action, by ensuring an opportunity for public participation in the process, and by establishing procedures by which the department will consider the effects of its actions on the quality of the human environment.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92.

Trans 400.03 Applicability. (1) The provisions of this chapter shall apply to all department actions which may affect the quality of the human environment.

(2) Where another state or federal agency has concurrent responsibility with the department for a proposed EA action, a joint environmental assessment, or EA, may be prepared with the other agency if the EA meets the requirements of this chapter. The department shall make an independent judgment on the need for an environmental impact statement, or EIS, in accordance with this chapter.

(3) Where a proposed action involves another state or federal agency approval or decision, and it has been determined that an EIS shall be prepared in accordance with NEPA or WEPA, the WEPA requirement for an EIS under this chapter may be waived if:

(a) A joint EIS is prepared; or

(b) After review of the other state or federal EIS by the department, it appears that the requirements as to content of the EIS prescribed in s. 1.11, Stats., and this chapter have been met, and the

EIS was developed and prepared through appropriate participation by the department with the other agencies in a coordinated effort to satisfy the requirement of NEPA and WEPA.

(4) If the joint EIS under sub. (3) appears to comply with the requirements of WEPA and this chapter, public hearings shall be held in accordance with this chapter unless they are held in Wisconsin by the lead agency with effective participation by the department.

(5) The department may accept certification of compliance by a county, city, village or town with any environmental laws applicable to improvements under the jurisdiction of the local government for which reimbursement is sought from the department through the local roads improvement program in s. 86.31, Stats.

Note: The Wisconsin Environmental Policy Act (WEPA), s. 1.11, Stats., requires environmental documentation for major department actions that significantly affect the quality of the human environment. The National Environmental Policy Act (NEPA) and its implementing regulations similarly require environmental documentation for major federal actions, such as a federal agency approving the use of federal funds or issuing a permit for department actions. For department actions that require federal approval, the department prepares the required environmental documentation. Where NEPA applies to a department action, WEPA typically also applies. The intent of this chapter is to implement WEPA regulations that are consistent with NEPA and its implementing regulations for all department actions to which these laws apply.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92; am. (2), Register, February, 1999, No. 518, eff. 3-1-99.

Trans 400.04 Definitions. In this chapter:

(1) “Access roads” means the various, incidental, public roads that provide service and access to state parks, national and state forests, and state institutions.

(2) “Alternatives” means other reasonable actions or activities which may achieve the same or altered purpose of the proposed action including the alternative of taking no action.

(3) “Categorical exclusion” means an action which meets the definition of the term in 40 CFR 1508.4, and in 23 CFR 771.116, 23 CFR 771.117, 23 CFR 771.118, or chapter 6 of order 5050.4B of the federal aviation administration of the United States department of transportation, or other actions of the department for which neither an EA, EIS nor other environmental documentation is required by this rule.

Note: The specific versions of federal regulations and federal agency orders as referenced throughout this chapter are adopted in s. Trans 400.05 and are reproduced at appendix 1 to this chapter.

(4) “Cooperating agency” means any Native American tribe, or any local, state, or federal agency, other than the lead or transportation agency, which has jurisdiction by law over the proposed action or which has special expertise with respect to any relevant environmental effect generated by the proposed action or alternative.

(5) “Department” means the Wisconsin department of transportation or a local agency when acting under the direction of the department.

(6) “DEIS” or “draft environmental impact statement” means the preliminary version of an EIS.

(7) “EA” or “environmental assessment” means a concise, comprehensive document containing an analysis of a proposed action to determine the significance of the action’s environmental effects and whether or not the action constitutes a major action.

(8) “Environmental effect” or “environmental impact” means a beneficial or adverse influence resulting from an action of the department. The term includes ecological, aesthetic, historic, cultural, economic, social or health effects.

(9) “EIS” or “environmental impact statement” means a written report containing an analysis of a proposed major action and its alternatives to identify and address their effects on the quality of the human environment.

(10) “ER” or “environmental report” means a brief document used internally by the department to demonstrate a proposed action fits the criteria or conditions for approval as a categorical exclusion under s. Trans 400.08 (1) (d) or has been properly coordinated with other agencies having jurisdiction by law over specific activities.

(11) “FEIS” or “final environmental impact statement” means the final version of an EIS.

(12) “FONSI” or “finding of no significant impact” means an approved, completed EA containing a finding that the proposed action is not a major action.

(13) “Human environment” means the natural or physical environment and the relationship of people with that environment.

(14) “Joint lead agency” means the department together with any local, state or federal agency having equal responsibility for the preparation, content and processing of an environmental document for a proposed action.

(16) “Lead agency” means the local, state or federal agency preparing or having taken primary responsibility for preparing the environmental document for a proposed action.

(17) “LEIS” or “legislative environmental impact statement” means a written report containing an analysis to identify and address the effects on the quality of the human environment of a department-initiated report or recommendation on a proposal for legislation.

(18) “Major action” means an action that will have significant effects on the quality of the human environment. It does not include actions whose significance is based only on economic or social effects.

(19) “Major and significant new proposal” means a new proposal developed by the department which, if legislatively authorized and funded, may significantly affect the quality of the human environment and represents a significant departure from, or expansion of, the department’s existing responsibilities by substantially expanding or substantially reducing total resources allocated to any existing programs.

(20) “Mitigation” means avoiding, minimizing, rectifying, reducing, eliminating or compensating for adverse environmental effects of a proposed action.

(21) “NEPA” means the national environmental policy act, 42 USC 4321, et seq.

(22) “Notice of availability,” “notice of intent,” “notice of opportunity for public hearing” or “notice of public hearing” means a class I notice as defined in ch. 985, Stats.

(22m) “Participating agency” means any Native American tribe or any local, state, or federal agency, other than the lead agency, with an interest in the project. “Participating agency” includes cooperating agencies but does not include nongovernmental organizations or other private entities.

(23) “ROD” or “record of decision” means a public record which identifies:

- (a) The department’s selected course of action.
- (b) The selected action’s environmental effects.
- (c) Alternatives to the action that were considered.

(d) Mitigation measures selected.

(e) Reason for rejection of suggested reasonable mitigation measures.

(24) “Reevaluation” means the review of an approved draft or final environmental document, including DEIS, FEIS, ROD, EA, FONSI, ER, and CE, to assess whether there have been changes in the proposed action, the applicable laws, regulations, or policies, the affected human environment, the anticipated environmental impacts, or the proposed mitigation measures.

(25) “Scoping” means an early, open process with the public and public agencies for identifying the anticipated range of issues for a proposed action.

(26) “Significant effects” means considerable and important impacts of department actions on the quality of the human environment.

(27) “SEE” or “system-plan environmental evaluation” means a conceptual environmental evaluation, that shall be considered the “detailed statement” required by statute commonly known as “environmental impact statement,” developed as an integral element of a system plan that contemplates that if the plan recommendations are implemented, there will be subsequent project or site-specific environmental reviews. A SEE also serves as the LEIS regarding reports or recommendations on legislation required to implement the plan.

(28) “System plan” means a plan which identifies transportation facility or service needs for a statewide system. The needs are identified conceptually without addressing specific design and locational details.

(29) “Tiering” means the coverage of general matters in a broad EIS with subsequent narrower statements or environmental analyses which incorporate by reference the general discussion of the EIS.

(30) “WEPA” means the Wisconsin environmental policy act, s. 1.11, Stats.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92; am. (7) and (12), Register, February, 1999, No. 518, eff. 3-1-99; CR 16-069: am. (3) to (5), (10), r. (15), cr. (22m), am. (24) Register October 2019 No. 766, eff. 11-1-19.

Trans 400.05 Federal regulations adopted. References throughout this chapter to federal regulations and orders are hereby adopted by the department and are attached hereto in appendix 1: 23 CFR 771.115, 771.116, 771.117, and 771.118, April 1, 2015; 40 CFR 1500.4, 1500.5, 1506.8, and 1508.4, July 1, 2015; 49 CFR 266.19, October 1, 2014; and the United States department of transportation federal aviation administration order 5050.4B, chapters 6, 7, and 9, April 28, 2006.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92; am. Register, February, 1999, No. 518, eff. 3-1-99; CR 16-069: am. Register October 2019 No. 766, eff. 11-1-19.

Trans 400.06 Policy. (1) The department shall strive to protect and enhance the quality of the human environment in carrying out its basic transportation mission and shall consider pertinent environmental factors consequential to any proposed actions. The policy expressed in this section and the procedures defined in this chapter shall be implemented as an integrated process beginning during the initial planning stage for department action.

(2) The department acknowledges WEPA as a legal obligation shared by all divisions of the department to evaluate and be aware of environmental consequences of proposed actions.

(3) Alternative courses of action shall be evaluated and decisions on proposed actions shall be made in the best overall public interest consistent with state and federal statutes and regulations. Decisions on proposed actions shall be based upon a balanced consideration of the findings of the environmental document, public comments, and the need for safe and efficient transportation consistent with local, state and national environmental goals.

(4) Public involvement, interagency coordination and consultation, and a systematic interdisciplinary approach to analysis

of the issues shall be essential parts of the environmental process for proposed actions.

(5) Measures necessary for the mitigation of adverse environmental impacts of proposed actions shall be part of the development and evaluation of alternatives.

(6) The department shall implement procedures to make the WEPA process more useful to decision makers and the public by reducing paperwork and reducing delay utilizing the means for achieving these goals as specified in the rules of the United States council on environmental quality at 40 CFR 1500.4 and 1500.5, which are attached hereto in appendix 1. Environmental documents shall be concise, clear, and to the point and emphasize real environmental issues and alternatives.

(7) In carrying out its responsibility under s. 1.11, Stats., the department shall substantially follow the guidelines issued as rules by the United States council on environmental quality and federal transportation agencies.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92; CR 16-069: am. (5), (6) Register October 2019 No. 766, eff. 11-1-19; correction in (1) made under s. 35.17, Stats., Register October 2019 No. 766.

Trans 400.07 Action designation and environmental documentation. (1) The designations, EIS and CE shall be used to categorize department actions. Actions designated EIS actions shall be considered major actions, and actions designated CE shall be considered categorical exclusions. An EA and an ER describe procedures to be followed to categorize department actions. The EA process yields a determination whether an action requires an EIS or a finding of no significant impact. The ER process confirms whether an action falls within a categorical exclusion or requires further evaluation and documentation.

(2) Actions and procedures designated EIS, EA or ER shall require the following environmental documentation:

(a) *EIS or LEIS.* An EIS action is a major action. An LEIS may be prepared for a major and significant new proposal.

1. An environmental impact statement, or EIS, shall be prepared for major actions.

2. A legislative environmental impact, or LEIS, may be prepared when a major and significant new proposal consists of a report or recommendation of the department on a proposal for legislation initiated by the department that is not within the scope of any categorical exclusion.

(b) *EA, SEE or screening sheet.* An EA is a procedure followed for an action for which the significance of the environmental impact is not clearly established. An EA, SEE or screening sheet may be used as follows:

1. An EA shall be prepared for those project actions for which the significance of the environmental impact is not clearly established. If it is concluded from the analysis in the EA that the action is a major action, an EIS shall be prepared. If it is concluded from the analysis in the EA that the action is not a major action, the EA shall be revised to constitute a FONSI, and the FONSI shall serve as the environmental document. The FONSI shall be prepared only after availability of the EA for public, and cooperating and participating agency, review and comment and the incorporation of any appropriate revisions resulting from the public involvement process. Where a permit will be required or other agency coordination is specifically required by law, the FONSI may serve as the vehicle for such permit or coordinating agency approval.

2. A SEE may be prepared in the case of proposals contained in system plans, if it is concluded they are major and significant new proposals. If it is concluded from an analysis of the system plan that it does not contain any major and significant new proposals, a clear statement of that determination may be incorporated within the system plan or as a separately identifiable and retained record of the department's determination.

3. In the case of reports or recommendations of the department on proposals for legislation initiated by the department, if it is concluded from the screening sheet they contain major and sig-

nificant new proposals, an LEIS may be prepared. If it is concluded from the screening sheet that they do not contain any major and significant new proposals or are within the scope of any categorical exclusion, a clear statement of that determination may be included on the screening sheet.

(c) *ER.* An ER is a procedure followed for an action that is likely to fit the criteria for a conditional categorical exclusion in 23 CFR 771.117 (d), 23 CFR 771.118 (d), or federal aviation administration order 5050.4B, chapter 6, paragraph 605, or otherwise requires coordination with or concurrence of another agency. An environmental report, or ER, shall be prepared to demonstrate whether the proposed action does fit the criteria or conditions for approval as a categorical exclusion and has been properly coordinated with other agencies having jurisdiction by law over specific activities. The ER shall serve as the department's record of coordination with other agencies having jurisdiction over specific activities, including the following activities:

1. Construction-related activities including, but not limited to, stream crossings, fills in wetlands and temporary structures in or over streams or wetlands.

2. Defined land use acquisition including, but not limited to, the acquisition of agricultural lands, historic or archeological sites, and state, county or national forest lands.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92; am. (1), (2) (intro.), (a), (b) and (c) (intro.), Register, February, 1999, No. 518, eff. 3-1-99; CR 16-069: am. (2) (intro.), (b) 1., (c) (intro.) Register October 2019 No. 766, eff. 11-1-19.

Trans 400.08 Categorization of department actions. (1) Based on federal regulations and past experience with analysis of similar actions the following are categorized as EIS, EA, ER or CE:

(a) *EIS — Environmental Impact Statement.* The following are examples of department major actions that normally require the preparation of an environmental impact statement:

1. 'Highways and transit.' a. Construction of a new controlled access freeway.

b. Construction of a new highway project of 4 or more lanes on a new location.

c. Construction or extension of a fixed transit facility, such as rapid rail, light rail, commuter rail, or bus rapid transit that will not be located within an existing transportation right-of-way.

d. New construction or extension of a separate roadway for buses or high occupancy vehicles not located within an existing highway facility.

2. 'Airports.' a. Unconditionally approving or funding the first airport layout plan or airport location for a new commercial service located in a metropolitan statistical area.

b. Unconditionally approving or funding a new runway to accommodate air carrier aircraft at a commercial service airport located in a metropolitan statistical area.

3. 'Railroads.' a. Construction of a new major railroad.

b. Construction of new major facilities to handle freight, maintenance or passengers.

Note: The federal highway administration regulations at 23 CFR 771.115 (a) and federal aviation administration order 5050.4B, chapter 9, paragraph 903, identify types of federally funded actions which normally require the preparation of an environmental impact statement.

(b) *EA — Environmental Assessment.* EA procedures apply to actions for which the significance of the environmental impacts is not clearly established and require the preparation of an environmental assessment to make that determination.

1. 'Highways and transit.' In addition to actions the department determines to meet the criteria for an EA action under this chapter, the department may apply EA procedures to the highway and transit actions generally identified in 23 CFR 771.115 (c).

2. 'Airports.' In addition to actions the department determines to meet the criteria for an EA action under this chapter, the department may apply EA procedures to actions generally identified in federal aviation administration order 5050.4B.

3. 'Administrative facilities.' Examples of department actions regarding administrative facilities to which EA procedures normally apply are: construction of a new or replacement administrative building, including an office building, state patrol academy, driver licensing and testing station, state patrol communications building, or other similar facility, at a new location.

4. 'Financial assistance.' This provision applies to issuance as well as acceptance of the following grants by the department:

- a. Financial grant for railroad construction action that may require an EIS.
- b. Financial grant for construction of new port facilities.
- c. Financial grant for construction of a new disposal facility for harbor dredge material.
- d. Financial grant for dredging of material for the purpose of expanding an existing harbor.
- e. Financial grant for disposal of contaminated harbor dredge material into a new disposal facility.

5. 'Policy, contract, standard and specification changes.' Examples of department actions regarding policy, contract, standard, and specification changes to which EA procedures normally apply are:

- a. Change in policy for nonhighway use of highway right-of-way or non-railroad use of railroad right-of-way by utility companies, or for access to public roads or private residential or commercial driveways or farm crossings.
- b. Change in policy for transport of hazardous cargo, such as explosives, hazardous wastes, toxins, radioactive material, or any other similar cargo.
- c. Change in policy for the maintenance program relating to the use of deicing materials, or to the use of pesticides, herbicides or insecticides within the right-of-way, or to the use of cutback asphalt or creosoted ties, or other similar materials.
- d. Change in policy for acquisition of scenic easements.
6. 'System planning.' Publication or adoption of a system plan. Preparation of a SEE or EA for a system plan is discretionary.

(c) *CE — Categorical Exclusions.* CE actions are categorically excluded from the requirement to prepare environmental documentation because, based on past experience with similar actions, they do not involve significant environmental impacts. They are actions which do not induce significant impacts to planned growth or land use for the area, do not require the relocation of significant numbers of people, do not have a significant impact on any natural, cultural, recreational, historic or other resource, do not involve significant air, noise, or water quality impacts, do not have significant impacts on travel patterns, and do not otherwise, either individually or cumulatively, have any significant environmental impacts.

1. 'Highways, transit, and rail.' In addition to actions the department determines to meet the criteria for a CE action under this chapter, the department may classify as CE actions those highway, transit, and rail actions identified in 23 CFR 771.116 (c), 23 CFR 771.117 (c), and 23 CFR 771.118 (c).

2. 'Airports.' In addition to actions the department determines to meet the criteria for a CE action under this chapter, the department may classify as CE actions those airport actions identified in federal aviation administration order 5050.4B.

3. 'Administrative facilities.' Examples of department actions regarding administrative facilities that are classified as CE actions are: minor construction or expansion of an airport facility, such as a runway, taxiway, apron, service or entrance road, or passenger handling or parking facility.

4. 'Financial assistance.' This provision applies to issuance as well as acceptance of grants by the department.

a. Financial grant for repair or modification of existing facilities in locations below ordinary high water mark that are within

an area designated by a bulkhead line, a lake bed grant, or a submerged lands lease.

b. Financial grant for maintenance dredging of navigable waterway.

c. Financial grant for disposal of contaminated dredge material at existing approved disposal facilities.

(d) *ER — Environmental Report.* ER actions require documentation with an environmental report. The environmental report shall demonstrate that the action meets the criteria for a categorical exclusion by demonstrating that specific conditions or criteria for the action have been addressed and that significant environmental effects will not result.

1. 'Highways, transit, and rail.' In addition to actions the department determines to meet the criteria for an ER action under this chapter, the department may apply ER procedures to the highway, transit, and rail actions identified in 23 CFR 771.116 (d), 23 CFR 771.117 (d) and 23 CFR 771.118 (d).

2. 'Airports.' In addition to actions the department determines to meet the criteria for an ER action under this chapter, the department may apply ER procedures to actions identified in the federal aviation administration order 5050.4B.

3. 'Administrative facilities.' Examples of department actions regarding administrative facilities to which ER procedures normally apply are: extensive remodeling, expansion or modification of an administrative building, including an office building, state patrol academy, driver licensing and testing station, state patrol communications building, or other similar facility, which either substantially increases the capacity of the facility or substantially changes its use.

4. 'Financial assistance.' This provision applies to issuance as well as acceptance of the following grants by the department.

a. Financial grant for repair or modification of existing port facilities in locations below the ordinary high-water mark that are not within an area designated by a bulkhead line, a lake bed grant, or a submerged lands lease.

b. Financial grant for repair of an approved disposal facility for contaminated dredge material.

c. Financial grant under the transportation economic assistance program for the construction of a local transportation facility.

5. 'Policy, contract, standard and specification changes.' Examples of department actions regarding policy, contract, standard, and specification changes to which ER procedures normally apply are:

- a. Change in policy on artificial lighting for highways and airports.
- b. Change in policy for planting and landscaping on transportation corridors.
- c. Processing a contract change for significant changes in design.
- d. Major change in design standards or construction specifications.

(2) In addition, the following actions and activities of the department are categorized as CE actions:

(a) Activities exempt by statute or approved as categorical exclusions by the United States council on environmental quality pursuant to 40 CFR 1508.4.

(b) Enforcement activities.

(c) Emergency activities to protect public health, safety and the human environment.

(d) Ancillary activities which are part of a routine series of related department actions.

(e) Actions which individually or cumulatively do not significantly affect the quality of the human environment and do not involve unresolved conflicts in the use of available resources.

(f) The budget request of the department as a whole submitted to the department of administration and legislature pursuant to s. 16.42, Stats.

(g) Proposals for enabling or conforming legislation that are required to be enacted to comply with federal law or federal standards as the department is authorized by ss. 20.395 (9) (qx), 84.01 (15), 84.015 and 84.03 (1), Stats., as a matter of federal preemption, but only to the extent so required and no further.

(h) Reports or recommendation on proposals for legislation for which the department has performed or caused to be performed a SEE as an integral part of system plans.

(i) Budget requests associated with implementation of a system plan for which a SEE has been completed.

(j) Reports or recommendations on revenue proposals.

(k) Expenditure or appropriation requests involving only an existing department program, except requests that constitute major and significant new proposals.

(L) Reports or recommendations on proposals for legislation that have not been initiated by or sponsored by the department.

(m) Budgetary proposals submitted in response to a request by the governor, the legislature, legislative committees, or individual legislators.

(n) Reports or recommendations on proposals for legislation that relate to the level of transportation aids payments to local units of government, including mass transit aids.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92; r. and recr. (1), am. (2) (intro.) and (a), Register, February, 1999, No. 518, eff. 3-1-99; CR 16-069; am. (1) (a) (intro.), 1. c., 2. a., b., (b) (intro.), r. and recr. (1) (b) 1., 2., am. (1) (b) 3., cr. (1) (b) 5. (intro.), renum. (1) (c) (intro.) to (1) (d) (intro.) and am., r. and recr. (1) (c) 1., 2., renum. (1) (c) 3., 4. to (1) (d) 3., 4. and am. 3., renum. (1) (d) (intro.) to (1) (c) (intro.) and am., r. and recr. (1) (d) 1., 2., renum. (1) (d) 3., 4. to (1) (c) 3., 4. and am. 3., am. (2) (a), (f) Register October 2019 No. 766, eff. 11-1-19; correction in (1) (c) 4. a. made under s. 35.17, Stats., Register October 2019 No. 766.

Trans 400.09 Scoping. (1) As part of system plan development process, the department may perform SEE scoping. This scoping is to identify the issues to be addressed, alternatives to be analyzed, and the affected public or agencies involved in the system plan development. No scoping is required for reports or recommendations on proposals for legislation, LEIS's, or ER or CE actions.

(2) For actions requiring an EIS or EA procedures, the department shall determine by means of scoping, insofar as possible at the time that a proposed action is approved for planning, development or implementation, the probable action designation, environmental review and agency coordination that will be required. If a decision to prepare an EIS is made, the department shall inform the public and affected agencies by publishing a notice of intent in the Wisconsin administrative register and a local newspaper of general circulation. The notice of intent shall include:

- (a) A statement that an EIS will be prepared.
- (b) A brief description of the proposed action.
- (c) A preliminary list of possible alternatives.
- (d) A brief discussion of the proposed scoping process.
- (e) Names and addresses of the contact persons at the federal and state review agencies.

(3) The scoping process shall include, to the extent feasible, affected local, state and federal agencies, any affected American Indian tribes, and other interested persons. The scoping process may consist of meetings, hearings, workshops, surveys, questionnaires, interagency committees, or other appropriate methods or activities, and may be integrated with other public participation requirements.

(4) The department shall use the scoping process to accomplish the following:

(a) Determine the scope of issues to be analyzed in depth in the environmental document.

(b) Identify and eliminate from detailed study and further consideration alternatives which are unreasonable and issues which

are not significant or which have been covered and documented by prior environmental review related to the proposed action.

(c) Establish a schedule for document preparation and for opportunities for public involvement.

(d) Determine, when the department is involved in the development of proposals with other state agencies, which agencies may be joint lead agencies or whether one agency should be designated the lead agency.

(e) Ensure the required involvement of any cooperating and participating agencies.

(f) Determine whether tiering shall be used to improve or simplify the environmental processing of complex actions.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92; am. (1) and (2) (intro.), Register, February, 1999, No. 518, eff. 3-1-99; CR 16-069; am. (4) (e) Register October 2019 No. 766, eff. 11-1-19.

Trans 400.10 Preparation and content of environmental documents. (1) PREPARATION. The environmental documents shall be prepared by one of the following:

(a) The department.

(b) Local units of government under the direction of the department and with final review and approval responsibility by the department.

(c) A consultant under the direction of the department and with final review and approval responsibility by the department.

(2) SEE CONTENT. While the general issues to be addressed by a SEE are similar to those in the individual project evaluations, it is recognized that, in most cases the analysis of transportation alternatives, including multi-modal analyses where appropriate, will be qualitative, reflecting the broad level of generality of system plans. Therefore, by necessity, a SEE shall be more conceptual, qualitative, and general than is common with the individual project environmental reviews. A SEE, prepared as an integral part of a system plan, may address the following matters:

(a) The range of environmental effects, including the effects on sensitive land and water resources, of system plans.

(b) In non-attainment areas, the range of air quality impacts which might be expected from system plan recommendations.

(c) The range of system plan effects on energy consumption.

(d) The relation of system plans to adopted regional development goals and plans, including potential effects of transportation on land use and land use on transportation demand.

(e) The range of anticipated effects of system plans on traffic congestion.

(f) The range of anticipated effects of system plans on economic development.

(g) The qualitative comparison of the costs of system plans and expected benefits.

(h) The range of effects of system plans on communities.

(3) DEIS AND FEIS CONTENT. (a) The DEIS and FEIS shall be consistent with applicable laws, orders and policies, and shall include all of the following:

1. A summary which describes the proposed action and discusses the major environmental issues and controversies associated with the proposal.

2. A statement of purpose and need for the proposed action.

3. A discussion of the proposed action. The discussion shall:

a. Evaluate alternatives.

b. Specify the reasons for eliminating any of the alternatives from further consideration.

c. Address each reasonable alternative being considered in detail, so that their relative merits and liabilities can be compared.

4. A brief description of the human environment of the area or areas that may be affected by each of the alternatives under consideration. The amount of detail of such description shall be commensurate with the significance of the potential environmental impacts, but shall at a minimum identify and describe:

a. The existing quality of the human environment, including the economy, land use, demographics and projections of the population, traffic, natural and physical characteristics and their use, energy consumption, historic and archeological sites, and recreational facilities.

b. The required agency coordination, public involvement and permits or authorizations.

c. The relationship of the proposed action to adopted or proposed land use plans, policies, controls, and goals and objectives of affected communities, including potential effects of transportation on land use and land use on transportation demand.

5. A discussion of the environmental consequences. The discussion shall include the following:

a. The environmental impacts of the alternatives.

b. The adverse environmental effects, if any, which cannot be avoided should the proposed action be implemented.

c. The relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity.

d. The significant irreversible or irretrievable commitments of resources, if any, which would be involved should the proposed action be implemented.

e. The beneficial aspects of the proposed action, both short and long term.

f. The economic advantages and disadvantages of the proposed action.

6. A discussion of the measures being considered to minimize the harm or enhance the beneficial environmental effects of the proposed action. The discussion may include alternative designs or construction methods, alternative management actions, or other alternatives such as replacement, restoration or compensation.

7. The names and qualifications of the persons primarily responsible for preparing the document or significant supporting background papers, including basic components of the DEIS and FEIS.

(b) In addition to the contents required under par. (a), the DEIS shall also include the identification of the preferred alternative, if any.

(c) In addition to the contents required under par. (a), the FEIS shall also include the following:

1. Identification of the preferred alternative if one was not included in the DEIS.

2. A discussion of substantive comments received on the DEIS and responses thereto, including the identification of efforts to resolve the issue.

3. A summary of public involvement.

4. A description of mitigation measures that are to be incorporated into the proposed action.

(4) EA AND FONSI CONTENT. (a) The EA and FONSI may be completed on screening sheets developed by the department, and shall include all of the following:

1g. The content requirements for an ER under sub. (5).

1r. Stimulation of indirect environmental effects.

2. Creation of a new environmental effect.

3. Impacts on geographically scarce resources.

4. Precedent-setting nature of the proposed action.

5. The degree of controversy on environmental grounds associated with the proposed action.

6. Conflicts with official agency plans or local, state, or national policies, including conflicts resulting from potential effects of transportation on land use and land use on transportation demand.

7. Cumulative environmental impacts of repeated actions of the type proposed.

8. Foreclosure of future options.

9. Direct or indirect impacts on ethnic or cultural groups.

(b) In addition to the contents required under par. (a), the FONSI shall also include the following:

1. A specific finding that the proposed action is not a major action.

2. Documentation showing permit or coordinating agency approval when the FONSI serves as the vehicle for such approval.

(5) ER AND CE CONTENT. The ER and CE may be completed on screening sheets developed by the department. The ER and CE shall reflect compliance with the applicable laws and regulations of other agencies, and shall include all of the following:

(a) A description of the proposed action.

(b) The purpose and need of the proposed action.

(c) A brief description of the preferred alternative and the other alternatives under consideration.

(d) The reasons for eliminating any of the alternatives from further consideration.

(e) A summary of the status and results of agency coordination and public involvement.

(f) A brief summarization of environmental, social and economic issues relevant to the proposed action including the use of prescribed construction-related methods or special contract provisions or land acquisitions that would be used to ensure that no significant adverse environmental effects or controversies developed.

History: Cr Register, April, 1992, No. 436, eff. 5-1-92; am. (2) (intro.), Register, February, 1999, No. 518, eff. 3-1-99; CR 16-069: r. and recr. (3) (c), renun. (4) (a) 1. to (4) (a) 1r. and am., cr. (4) (a) 1g., am. (4) (a) 5., (5) (intro.) Register October 2019 No. 766, eff. 11-1-19.

Trans 400.11 Distribution and review of environmental documents. (1) SEE. (a) *Public availability of SEE.* When required, a SEE shall be prepared as an integral element of system plans. The system plan and SEE shall be made available for public inspection at the department's central office, appropriate department region offices, and depository libraries.

(b) *Notice of availability of a SEE.* A notice of availability of a system plan and its SEE shall be published as provided in sub. (8).

(c) *Public hearing.* A public hearing on a system plan and its SEE shall be held by the department, except there is no requirement for a two-step, draft and final SEE because the planning process contemplates that if the plan recommendations are implemented, there will be subsequent project or site-specific environmental reviews.

(2) LEIS. In the case of a departmental report or recommendation on a department-initiated proposal for legislation that contains major and significant new proposals that are not within the scope of any categorical exclusion, the department shall prepare a LEIS substantially following the guidelines of the United States council on environmental quality in 40 CFR 1506.8. This includes transmission of the LEIS to the legislature concurrent with or within 30 days after the legislative proposal is submitted to the legislature, provided that the LEIS must be available in time for legislative hearings and deliberations, and 5 days in advance. There is no scoping requirement and the statement shall be prepared in the same manner as a DEIS, but shall be considered the detailed statement required by s. 1.11 (2) (c), Stats. Any comments on the LEIS shall be given to the department which shall forward them along with its own responses to the legislative committees with jurisdiction.

(3) DEIS. (a) *Printing and distribution of DEIS.* Printing of the DEIS shall be the responsibility of the preparer. Sufficient quantities of the DEIS shall be printed to meet distribution requirements. The DEIS shall be distributed to the following:

1. The office of the governor.

2. Local, state and federal governmental agencies having special expertise, interest or jurisdiction.

3. Regional and county planning agencies within the area of the proposed action.

4. Public officials, interest groups and members of the public having the potential to be directly affected by the proposed action and requesting a copy of the DEIS. A charge may be assessed to cover reproduction and handling costs.

5. Offices of the department located in the vicinity of the proposed action and at the department's central office.

6. Public libraries:

a. For proposals having local importance, the nearest public library. In addition, a request shall be made to an appropriate public official to make the document available in a public place.

b. For proposals having regional importance, public libraries with a geographic distribution which provides public access without undue travel.

c. For proposals having statewide interest, public libraries providing reasonable access for members of the public who would be potentially affected by such proposals.

(b) *Notice of availability of DEIS.* A notice of availability of the DEIS shall be published as provided in sub. (8).

(4) **COMBINED FEIS/ROD.** The combined FEIS/ROD shall be printed and distributed, and a notice of availability of the combined FEIS/ROD shall be published, in the same manner as provided for a DEIS under sub. (3). If separate FEIS and ROD documents are necessary under s. Trans 400.13 (1) (am), the decision to proceed with the proposed action and to sign the ROD shall not be made sooner than 30 days after the date of publication of the notice of availability of the FEIS or 90 days after the date of publication of the notice of availability of the DEIS.

(5) **EA.** (a) *Public availability of EA.* The EA shall be made available for public inspection at the department's central office, the appropriate department region office, public libraries as identified under sub. (3) (a) 6., and the office of the local unit of government having requested the proposed action. A charge may be assessed to cover reproduction and handling costs for requested copies of the EA or portions thereof.

(b) *Notice of availability of EA.* A notice of availability of the EA shall be published as provided in sub. (8).

(c) *Notice of opportunity to request a public hearing on EA.* If the department affords the opportunity for a public hearing on an EA under s. Trans 400.12 (4) (a), a notice of opportunity to request a public hearing shall be published when the EA is completed and made available for inspection as provided for under par. (a). Publication of the notice shall be in the appropriate official local newspaper or in a newspaper of general circulation within the area affected by the proposed action. Publication shall also be in the official state newspaper if the proposed action is of statewide interest. The notice shall invite submission of requests for a public hearing on the EA within 30 days after the date of publication of the notice. The notice shall include a description of the procedure for requesting a public hearing.

(6) **FONSI.** The FONSI shall be made available by the department to participating local units of government and to the public upon request. A notice of availability shall not be required for a FONSI. A charge may be assessed to cover reproduction and handling costs for requested copies of the FONSI or portions thereof.

(7) **ER.** (a) The ER shall upon request be made available for inspection at the department's central office, the appropriate department region office, and the office of the local unit of government having requested the proposed action. Subject to par. (b), a notice of availability shall not be required for an ER. A charge may be assessed to cover reproduction and handling costs for requested copies of the ER.

(b) If the department determines to hold, or afford the opportunity for, a public hearing on an ER action under s. Trans 400.12 (4) (b), the department shall make the ER publicly available and

provide notice of public availability under sub. (5) as if the ER were an EA.

(8) **NOTICE OF AVAILABILITY.** (a) When an environmental document listed under par. (c) is made available to the public by the department, a notice of availability shall be published in the appropriate official local newspaper or in a newspaper of general circulation within the area affected by the proposed action. If the proposed action is of statewide interest, the notice shall also be published in the official state newspaper. The notice shall include all of the following:

1. Briefly describe the proposed action.
2. Announce the completion and availability of the environmental document.
3. List the locations where the environmental document may be inspected.

4. Except in the case of a ROD or a combined FEIS/ROD document, invite the public to furnish written comments on the proposed action; indicate where comments are to be sent; and indicate the date that such comments must be submitted to the department as determined under par. (b).

(b) The comment period for specific environmental documents shall be as follows:

1. For a DEIS, the comment period may not be less, nor without cause longer than, 45 days after the date of the publication of the notice of availability.

2. If the department determines a separate FEIS and ROD are necessary under s. Trans 400.13 (1) (am), the comment period for the FEIS may not be less, nor without cause longer than, 30 days after the date of publication of the notice of availability.

3. For an EA, and for an ER if the department determines it will hold or afford the opportunity for a public hearing under s. Trans 400.12 (4) (b), the comment period may not be less, nor without cause longer than, 30 days after the date of publication of the notice of availability.

(c) A notice of availability shall be published for the following environmental documents:

1. SEE.
2. DEIS.
3. FEIS and ROD, or a combined FEIS/ROD.
4. EA.
5. ER, if the department determines that it will hold or afford the opportunity for a public hearing under s. Trans 400.12 (4) (b).

(d) The notice of availability of the environmental document may be combined with other public notices required under this chapter.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92; corrections in (1) (a), (5) (a), (7) made under s. 13.92 (4) (b) 6., Stats., Register February 2013 No. 686; CR 16-069; renum. (1) (b) (intro.) to (1) (b) and am., r. (1) (b) 1. to 4., am. (2), renum. (3) (b) (intro.) to (3) (b) and am., r. (3) (b) 1. to 4., am. (4), (5) (a), renum. (5) (b) (intro.) to (5) (b) and am., r. (5) (b) 1. to 5., am. (5) (c), renum. (7) to (7) (a) and am., cr. (7) (b), (8) Register October 2019 No. 766, eff. 11-1-19.

Trans 400.12 Public hearings. (1) **PUBLIC HEARING ON SEE.** The department shall hold a public hearing on a system plan and its SEE no sooner than 15 days after its notice of public hearing. The public hearing shall be held after announcement of the public hearing and the identity of the system plan and its SEE shall be referenced in the public hearing announcement.

(2) **NO PUBLIC HEARING ON LEIS.** As provided in s. 1.11 (2) (d), Stats., no public hearing is required on environmental impact statements on reports or recommendations on proposals for legislation.

(3) **PUBLIC HEARING ON DEIS.** (a) Whenever a proposed action requires an EIS, the department shall hold a public hearing on the DEIS no sooner than 15 days after its notice of availability is published. The hearing shall be held prior to the selection of the final course of action for the proposal, or the department may present a preferred alternative.

(b) A notice of public hearing shall be published, at least 15 days prior to the hearing, in the appropriate official local newspaper or in a newspaper of general circulation within the area affected by the proposed action. If the proposed action is of statewide interest, such notice shall also be published in the official state newspaper and any other newspapers as appropriate to obtain comprehensive coverage. Copies of the notice shall be mailed to appropriate local, state and federal agencies and to others having an interest in the proceedings of the proposed action. The notice of public hearing shall include:

1. Identification of the DEIS.
2. Date, time and place of the hearing.
3. A brief description of the proposed action.
4. A brief description of the scope and purpose of the hearing.
5. The address to which questions may be sent prior to the hearing and locations where additional information may be obtained.
6. Provision for submitting written statements in place of, or in addition to, testimony presented at the public hearing.
7. The locations where the DEIS may be obtained or reviewed.

(c) The public hearing may be combined with other hearings and notices of hearings required for departmental actions, provided the requirements under pars. (a) and (b) are met.

(4) PUBLIC HEARING, OR OPPORTUNITY FOR PUBLIC HEARING, ON EA OR ER. (a) Unless EA procedures indicate the action is an EIS action, the department shall hold, or afford the opportunity for, a public hearing on an EA action prior to the issuance of a FONSI. A public hearing on an EA may be held by the department at the department's discretion and shall be held if a request for such a hearing is received by the department within the time specified in the notice of opportunity to request a public hearing under s. Trans 400.11 (5) (c). Whenever the department holds a public hearing or approves a timely request for a public hearing under this subsection, the department shall proceed in the same manner as provided for a public hearing on a DEIS under sub. (3), except that the public hearing shall be held no sooner than 15 days after publication of the public hearing notice and the identity of the EA or ER shall be referenced in the public hearing notice.

(b) The department may determine to hold a public hearing or afford the opportunity for a public hearing for ER actions. If the department determines to afford the opportunity for a public hearing for an ER action, the department shall follow EA procedures under par. (a).

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92; CR 16-069; am. (3) (a), (4) (title), renum. (4) to (4) (a) and am., cr. (4) (b) Register October 2019 No. 766, eff. 11-1-19.

Trans 400.13 Decision on proposed action.

(1) FEIS; RECORD OF DECISION. (am) The department shall develop a single document that consists of a combined FEIS/ROD, unless any of the following applies:

1. The FEIS makes substantial changes to the proposed action that are relevant to environmental or safety concerns.
2. There are significant new circumstances or information relevant to environmental concerns and that bear on the proposed action or the impacts of the proposed action.

(b) The record of decision, whether issued in combination with an FEIS or separately, shall contain the following information:

1. A statement of the decision.
2. Identification of all alternatives considered by the department in reaching its decision, specifying which one is considered environmentally preferable.
3. A statement indicating that all practicable means to avoid or mitigate environmental harm have been adopted, and if not so adopted, a statement specifying the reasons for not adopting all such means.

(2) EA; FINDING OF NO SIGNIFICANT IMPACT. (a) The decision to revise an EA to constitute a FONSI shall not be made until after the end of the comment period specified in the notice of availability of the EA provided for under s. Trans 400.11 (8).

(b) If potentially significant impacts have not been identified, the department shall revise the EA as appropriate and shall attach a summary of the public hearing, if a hearing was held, and a summary of any comments received and responses thereto. These items, along with a statement of no significant impact, shall constitute the FONSI and the record of decision.

(c) If, at any point in the EA process, the department determines that the proposed action may have a significant impact on the quality of the human environment, an EIS shall be prepared.

(3) ER. (a) Unless the department determines to hold, or affords the opportunity for, a public hearing under s. Trans 400.12 (4) (b), an approved ER document constitutes the department's final decision on a proposed action.

(b) When the department holds, or affords the opportunity for, a public hearing on an ER, the decision to revise an ER to constitute a final decision on a proposed action shall not be made until after the end of the comment period specified in the notice of availability of the ER provided for under s. Trans 400.11 (8).

(c) If potentially significant impacts have not been identified during the ER availability period, the department shall revise the ER as appropriate and shall attach a summary of the public hearing, if a hearing was held, and a summary of any comments received and responses thereto. These items, along with a statement of no significant impact, shall constitute the final action determination document and the record of decision.

(d) If, at any point in the ER process, the department determines that the proposed action may have a significant impact on the quality of the human environment, an EIS shall be prepared before proceeding with the proposed action.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92; CR 16-069; r. (1) (a), cr. (1) (am), am. (1) (b) (intro.), (2) (a), cr. (3) Register October 2019 No. 766, eff. 11-1-19.

Trans 400.14 DEIS and FEIS reevaluation and supplement.

(1) DEIS. (a) A reevaluation of a DEIS shall be prepared if 3 years have elapsed before the date of publication of the notice of availability of the FEIS or combined FEIS/ROD provided for under s. Trans 400.11 (4). A reevaluation of a DEIS shall also be prepared any time prior to the date of publication of the notice of availability of the FEIS or combined FEIS/ROD if, in the judgment of the department, there have been significant changes in the proposed action, the affected human environment, the anticipated environmental impacts or the proposed mitigation measures. If in either case the reevaluation indicates or confirms any such significant changes, a new environmental document or supplemental DEIS shall be prepared prior to proceeding with the proposed action. The supplemental DEIS shall be prepared and processed in the same manner as a DEIS under this chapter. Preparation of the supplemental DEIS shall not require withdrawal of previous approvals for those aspects of the proposed action not directly affected by the changed condition or new information.

(b) An EA may be used to assess the need to prepare a supplemental DEIS if it is uncertain that significant changes in the proposed action, the affected human environment, the anticipated environmental impacts or proposed mitigation measures will result in significant environmental impacts which could not be identified from preparing a reevaluation of the DEIS. The EA shall be prepared and processed in accordance with the requirements of this chapter. Preparation of the EA shall not require withdrawal of previous approvals for those aspects of the proposed action not directly affected by the changed condition or new information.

(2) FEIS. (a) A reevaluation of a FEIS shall be prepared any time there have been, in the judgment of the department, significant changes in the proposed action, the affected human environment, the anticipated environmental impacts or the proposed miti-

gation measures. If the reevaluation confirms any such significant changes, a new environmental document or supplemental FEIS shall be prepared prior to proceeding with the proposed action. The supplemental FEIS shall be prepared and processed in the same manner as a FEIS under this chapter. Preparation of the supplemental FEIS shall not require withdrawal of previous approvals for those aspects of the proposed action not directly affected by the changed condition or new information.

(b) An EA may be used to assess the need to prepare a supplemental FEIS if it is uncertain that significant changes in the proposed action, the affected human environment, the anticipated environmental impacts or proposed mitigation measures will result in significant environmental impacts which could not be identified from preparing a reevaluation of the FEIS. The EA shall be prepared and processed in accordance with the requirements of this chapter. Preparation of the EA shall not require withdrawal of previous approvals for those aspects of the proposed action not

directly affected by the changed condition or new information.

(3) REVISION OF FINAL ACTION DOCUMENT. (a) The department may revise a final action document, including a ROD, FONSI, ER, or CE, in order to do any of the following:

1. Select a different alternative, if the new selected alternative is fully evaluated in the FEIS, EA, ER, or CE to the same degree as the originally selected alternative.

2. Make substantial changes to mitigation measures or findings discussed in the final agency action.

(b) If the department revises a final action document under par. (a), those agencies that reviewed the FEIS, EA, ER, or CE shall be given an opportunity to review and comment on the revised final action document. To the extent practicable, the approved revised final action document shall be provided to all persons, organizations, and agencies that received the FEIS, EA, ER, or CE.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92; CR 16-069; am. (1) (a), (2) (a), cr. (3) Register October 2019 No. 766, eff. 11-1-19.