

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE RULE 98-131

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. In order to provide consistency, s. Trans 400.07 (1) should be expanded to include a description of environmental assessment (EA) and environmental report (ER) actions, similar to the descriptions provided for environmental impact statement (EIS) and categorical exclusion (CE) actions.

b. Section Trans 400.07 (2) (intro.) states that a CE action “*may* not require any environmental documentation” [Emphasis added.] The rule should provide clear standards to determine under which circumstances environmental documentation is and is not required. It may be clearer to say: “CE actions which ~~shall~~ do not require.”

c. The use of the term “major and significant actions,” in s. Trans 400.07 (2) (a) 1., is problematic because this is not a defined term, although the terms “major action” and “major and significant new proposal” are defined. In addition, is it the intent of the rule that an EIS must be prepared for actions which are, at the same time, both major and significant? Must an EIS be prepared for an action which is major but not significant?

d. It appears that the title to s. Trans 400.07 (2) (a) should include “LEIS,” since that paragraph identifies circumstances in which a legislative environmental impact statement (LEIS) must be prepared.

e. Should s. Trans 400.07 (2) (intro.) include references to system-level environmental evaluations (SEEs) and LEISs since that section identifies circumstances in which those types of environmental documents must be prepared?

f. Section Trans 400.07 (2) (a) (intro.) states that an EIS action is “normally” a major action or a major and significant new proposal. The use of the term “normally” implies that sometimes an action for which an EIS must be prepared is not a major action or a major and significant new proposal. The rule should provide clear standards to determine the situations in which an EIS must be prepared for an action which is not major or a proposal which is not major and significant. This comment also applies to the use of “normally” in pars. (b) and (c).

g. Section Trans 400.08 (1) (a) (intro.) contains citations to federal regulations which identify types of federally funded actions requiring the preparation of an EIS. Should the rule state clearly that these types of actions require the preparation of an EIS by the department? Are the examples provided in subs. (1) to (3) types of actions which are included in the federal regulations cited or are these additional types of actions which require the preparation of an EIS? These points should be clarified. This comment also applies to pars. (b), (c) and (d).

h. Section Trans 400.08 (1) (a) 3. (intro.) should be rewritten to follow grammatically from the introductory material in par. (a) (intro.). In addition, in sub. (1) (a) 3. (intro.), what is the relevance of the fact that the types of actions listed which require the preparation of an EIS result in significant increases of rail traffic? The other subdivisions do not contain similar explanatory material.

i. Section Trans 400.08 (1) (b) (intro.) states that the types of department actions which require preparation of an EA are not limited to those set forth in the rule. The rule should set forth clear standards for determining what other types of department actions require preparation of an EA. This comment also applies to pars. (c) and (d).

j. Section Trans 400.08 (1) (b) 1. should be rewritten to specify that the “actions” referred to are highways and transit actions.

k. In s. Trans 400.08 (1) (b) 2. (intro.), “categories” should be changed to “types” to eliminate any confusion that may be caused by the fact that, in the rest of the rule, “category” refers to the type of environmental documentation which is required for departmental action.

l. In s. Trans 400.08 (1) (b) 2. f., the word “above” should be replaced by a specific numeric cross-reference. [See also sub. (1) (c) 2. i.]

m. In s. Trans 400.08 (1) (b) 2. h., what is meant by “extraordinary circumstances”?

n. In s. Trans 400.08 (1) (b) 4. a., the phrase “type 1 action in the table above” should be replaced with language which corresponds to the changes made by the rule. In addition, that subparagraph should be rewritten to specify the action taken by the department with respect to the financial grant which is subject to the preparation of an EA. It is unclear whether that subparagraph refers to the department’s issuance or acceptance of a grant or to some other action.

o. In s. Trans 400.08 (1) (c) (intro.), the material in the third sentence is merely descriptive and should be rewritten in the form of a directive. Specifically, in the third sentence, “demonstrates” could be changed to “shall demonstrate.”

p. It appears that the information contained in the first sentence of s. Trans 400.08 (1) (c) 1. L. does not pertain to the categorization of department actions but rather specifies circumstances under which the department may acquire land. This material should be relocated to an appropriate portion of the department's administrative rules. In addition, the rule should state what type of environmental documentation is required if the land acquisition referred to does not qualify for an ER. In addition, in the second sentence, what is meant by "shifts in alignment" and how is it determined whether land acquisition "limit[s] the evaluation of alternatives"?

q. In s. Trans 400.08 (1) (c) 2. a., "construction of" should be inserted before "new heliports."

r. In s. Trans 400.08 (1) (c) 4. c., the phrase "the transportation economic assistance" appears to be incomplete. Should "program" be added to the end of that phrase?

s. In s. Trans 400.08 (1) (d) (intro.), the phrase "categorical exclusions" should be replaced with "categorically excluded from the requirement to prepare environmental documentation."

t. In s. Trans 400.08 (1) (d) 1. f., it appears that a right-hand parentheses was inadvertently inserted after "public." In addition, should "public" be changed to "publicly"?

u. In s. Trans 400.08 (1) (d) 2. g., it appears that the phrase "the airport certification" is incomplete. Should "airport" be changed to "airport's"?

v. Section Trans 400.08 (1) (d) 2. h. is confusing and should be rewritten. In addition, in that subparagraph, "per" should be changed to "pursuant to." Finally, a U.S. Code citation should be used for the federal reference, if possible.

w. The phrase "project-level actions," in s. Trans 400.09 (2) (intro.) should be defined.

x. In s. Trans 400.10 (2) (intro.), the use of the phrase "prepared as an integral part of a system plan" implies that there are situations in which a SEE which is prepared does not constitute an integral part of a system plan. If this is the case, the rule should explain whether the information following that introductory material pertains to that type of SEE. If, in the alternative, a SEE must always be prepared as an integral part of a system plan, that requirement should be clearly stated in the rule. Finally, the last sentence states that a SEE "may" address the matters set forth in the paragraphs following the introductory material. The rule should set forth a more meaningful guideline for determining the appropriate contents of a SEE.

y. Section Trans 400.07 (1) states that the designations EIS, EA, ER and CE "shall be used to categorize department actions." The use of the passive verb form fails to specify who has the duty of categorizing department actions. Does the rule purport to categorize all possible types of department actions, without the need for any further determination of appropriate categorization? If so, the phrase "shall be used" should be deleted, because it implies that some person or persons have the duty of categorizing department actions.

4. Adequacy of References to Related Statutes, Rules and Forms

A cross-reference should be added to specify what is meant by the "highway safety plan" referred to in s. Trans 400.08 (1) (d) 1. d.

5. Clarity, Grammar, Punctuation and Use of Plain Language

- a. The first word of s. Trans 400.07 (2) (a) 2. should be “An.”
- b. In s. Trans 400.07 (2) (a) 2., it appears that the material following the first comma should be rewritten to constitute a separate sentence. In par. (b) 2., the word “in” should be inserted after the word “prepared.”
- c. In s. Trans 400.08 (1) (a), to the greatest extent possible, the subparagraphs should be rewritten to follow grammatically the introductory language in par. (a). For example, s. Trans 400.08 (1) (a) 1. a., should be rewritten as follows: “Construction of a new controlled access freeway.”
- d. In the first sentence of s. Trans 400.08 (1) (b) (intro.), “in” should be changed to “for.”
- e. It appears that the introductory material set forth in s. Trans 400.08 (1) (b) 1. and 2. is unnecessary because, by definition, the purpose of an EA is to determine the significance of the action’s environmental effects and whether the action constitutes a major action, thus necessitating the preparation of an EIS.
- f. In s. Trans 400.08 (1) (b) 2. f., “plus” should be changed to “and.” In addition, it appears that either “or” or “and” should be inserted after “dwellings.”
- g. In s. Trans 400.08 (1) (b) 2. h., it appears that “or which involves the effect” should be changed to “or which has an effect.” In addition, in that subparagraph, the material following the last semicolon appears to be incomplete.
- h. In s. Trans 400.08 (1) (c) 1. a., it appears that “lanes for” should be inserted after “including” and “or” should be inserted before “climbing.”
- i. In s. Trans 400.08 (1) (c) 1. h., it appears that “which is” should be inserted before “located.” In addition, should a term more precise than “near” be used to describe the required proximity of a street to a new bus storage or maintenance facility? A similar comment applies to the use of the term “minor” in subd. 1. i.
- j. In s. Trans 400.08 (1) (c) 3., the material following the last comma should be rewritten as follows: “which either substantially increases the capacity of the facility or substantially changes its use.”
- k. In s. Trans 400.08 (1) (d) 1. e., it is unclear what is meant by the phrase “the subsequent action.”
- l. In s. Trans 400.08 (1) (d) 2. b., it appears that “or” should be inserted after the first occurrence of the word “airport.”
- m. What is a “noise compatibility program” referred to in s. Trans 400.08 (1) (d) 2. h.?
- n. In s. Trans 400.08 (1) (d) 4. a., it appears that the word “or” should be inserted after the last comma. Also, subd. 4. c. needs to be rewritten.