

Chapter Comm 107

WISCONSIN ENVIRONMENTAL POLICY ACT

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|-------------|-----------------------------------|
| Comm 107.01 | Purpose. |
| Comm 107.02 | Definitions. |
| Comm 107.03 | Department action type list. |
| Comm 107.04 | Determination of need for an EIS. |
| Comm 107.05 | Scoping. |
| Comm 107.06 | Contents of an EIS. |

| | |
|-------------|--|
| Comm 107.07 | Distribution and review of the DEIS and FEIS. |
| Comm 107.08 | Public hearings on the DEIS and FEIS. |
| Comm 107.09 | Record of decision. |
| Comm 107.10 | Interagency procedures on proposed actions involving NEPA or WEPA. |

Note: Chapter DOD 7 was renumbered chapter Comm 107 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, June, 1997, No. 498.

Comm 107.01 Purpose. The purpose of this chapter is to:

(1) Establish a policy to assure departmental consideration of the short- and long-term environmental and economic effects of department actions upon the human environment.

(2) Provide principles, objectives, definitions and criteria to be used by the department in the implementation of s. 1.11, Stats. Implementation includes the evaluation of proposed actions; the study, development and description of alternatives where proposed actions involve unresolved conflicts in the use of available resources; and the preparation and review of environmental impact statements.

(3) Establish a process for the identification of major actions significantly affecting the quality of the human environment and the need for an environmental impact statement.

(4) Provide an opportunity for public input to the decision-making process.

History: Cr. Register, December, 1983, No. 336, eff. 1-1-84.

Comm 107.02 Definitions. (1) "Action" means any activity, initiated by the department or initiated by someone outside state government, which could not have occurred but for the department and which may affect the human environment.

(2) "Alternatives" mean other actions or activities which may be reasonably available to achieve the same or altered purpose of the proposed action, including the alternative of no action.

(3) "Department" means the department of commerce.

(4) "EA" or "environmental assessment" means a documented, brief but comprehensive analysis of a proposed Type II action to determine its environmental impact; to study, develop, and thoroughly describe alternatives; and to determine whether the proposed action constitutes a major state action significantly affecting the quality of the human environment.

(5) "EIS" or "environmental impact statement" means a written report prepared pursuant to s. 1.11, Stats., which contains an analysis of anticipated impacts of a proposed action, and alternatives to the proposed action, upon the human environment. The draft environmental impact statement (DEIS) is a preliminary version of the final environmental impact statement (FEIS).

(6) "DEIS" or "draft environmental impact statement" means a preliminary version of the final environmental impact statement (FEIS).

(7) "FEIS" or "final environmental impact statement" means the completed environmental impact statement that reflects changes made to the draft environmental impact statement (DEIS).

(8) "Finding of no significant impact" means a completed environmental assessment which indicates that the proposed action is not a major action which will significantly affect the quality of the human environment and that no EIS is required.

(9) "Human environment" means the totality of conditions and influences, both natural and artificial, which surround and affect all organisms, including people.

(10) "Major action" means an action which will significantly affect the quality of the human environment.

(11) "Resources" mean financial, cultural and natural matter and forms as well as labor and materials used and affected by a proposed action if permitted.

(12) "Significant effects" mean the considerable and important impacts, beneficial or adverse, of actions on quality of the human environment.

(13) "Cooperating agency" means any state agency, other than the lead agency, which has jurisdiction over the proposed action or, which has special expertise with respect to any environmental impact involved.

(14) "Joint environmental assessment" means an environmental assessment developed by another state or federal agency, in which the department has input sufficient to identify major impacts and alternatives, and ensure that the assessment is in compliance with the substantive and procedural requirements of this chapter. The department must make an independent judgement on the need for an EIS.

(15) "Joint environmental impact statement" means an EIS developed by the department and another state or federal agency, where the department has equal responsibility with the other agency for evaluating environmental impacts and has sufficient control over the EIS process and content of the document to ensure that the provisions of this chapter are met. Either the department or another state or federal agency may be designated the lead agency.

(16) "Lead agency" means the agency with primary concern or responsibility for a given action as determined through inter-agency consultation or written agreement.

(17) "NEPA" means the national environmental policy act (42 USC 4331).

(18) "Review" means the study of, and comment upon, the DEIS or FEIS by cooperating agencies.

(19) "Scoping" means an early and open process for identifying the anticipated range of issues to be addressed by an EIS, the extent to which the identified issues will be addressed, and what are expected to be the significant issues.

(20) "Substantial participation" means full and effective participation by the department, with another state or federal agency, in preparation of a NEPA or WEPA EIS including, but not limited to:

(a) Preparation of portions of the EIS within the department's jurisdiction or expertise;

(b) Appropriate review of the other agency's documents or procedures;

(c) Development of standards of document adequacy;

(d) Determining content of the EIS;

(e) Involvement in public participation activities and hearings; and

(f) Policy development and decision-making.

(21) "WEPA" means the Wisconsin environmental policy act (ch. 274, laws of 1971, as amended by ch. 204, laws of 1973, which includes s. 1.11, Stats.).

History: Cr. Register, December, 1983, No. 336, eff. 1-1-84.

Comm 107.03 Department action type list. The department has categorized its actions into the following type list

which shall determine or aid in the determination of the need for an EIS. Type I actions shall always require an EIS. Type II actions may or may not require an EIS, depending on the significance of the action, or may or may not involve unresolved conflicts in the use of available resources. All Type II actions shall be evaluated by using an EA. Type III actions normally do not have the potential to cause significant environmental effects and normally do not involve unresolved conflicts in the use of available resources. Unless the department determines otherwise, these actions will not require an EA or EIS.

AGENCY ACTION LIST
DEPARTMENT OF DEVELOPMENT

| ACTION TYPE | ACTION IDENTIFICATION | DESCRIPTION/COMMENTS | EIS CATEGORY | | | |
|-------------------------------------|--|--|--|----|-----|--|
| | | | I | II | III | |
| FACILITIES DEVELOPMENT | None | | | | | |
| FINANCIAL ASSISTANCE | 1. Administration of state and federal funds to businesses, local governments, non-profit organizations, regional planning commissions and individuals | a. Requires compliance with federal environmental reviews by applicant/recipient. | | | | |
| | | (1) The department exercises no discretion in administering funds. | | | X | |
| | | (2) The department exercises some discretion in administering funds, but is not the sole decision-maker. The applicant/recipient is required to be in conformance with federal environmental reviews before receiving any funds. | | | X | |
| | | (3) The department exercises some discretion in administering funds and may involve major actions significantly affecting the quality of the environment. | | X | | |
| | | b. No requirement for federal environmental review. | | | | |
| | | (1) Funding for rehabilitation of existing structures. | | | | |
| | | (a) Rehabilitation which involves all or a major portion of an existing property and involves rezoning or requires a conditional use permit. | | X | | |
| | | (b) Rehabilitation which involves all or a portion of an existing property and does not require rezoning or a conditional use permit. | | | X | |
| | | (2) Funding for major new developments. | | X | | |
| | | (3) Funding for planning and related activities. | | | X | |
| STANDARDS REGULATION | 1. Plat Review | Review plats for compliance with ch. 236, Stats., transmit copies to other reviewing agencies (department of industry, labor and human relations, department of transportation and some county planning agencies). | | | X | |
| | | 2. Municipal Incorporation Review | Under s. 66.014 (9), Stats., there are functions prescribed for the department which include holding a public hearing and gathering information to determine if the standards contained in s. 66.016, Stats., are met, and whether the incorporation would be against the public interest as defined by s. 66.021 (11) (c), Stats. The determination by the department is a finding that the standards of the law either are or are not met and is based on existing conditions and short-term (three-year) potential for meeting the standards. | | X | |
| | | 3. Consolidation Review | Under s. 66.02, Stats., the department is directed to undertake functions as prescribed under s. 66.014, Stats., to determine whether a proposed consolidation is in the public interest in accord with the standards contained in s. 66.016, Stats. | | X | |
| POLICY RECOMMENDATIONS | 1. Formulation of major programs, plans, policies and legislation, including budget proposals, directly affecting the economy and the communities of the state for which the dept. of commerce has primary implementation authority. | | | X | | |
| | | 2. Providing technical assistance and advice on projects, plans, policies and legislation related to economic and community development. | | | X | |
| FACILITY AND MAINTENANCE OPERATIONS | None | | | | | |

History: Cr. Register, December, 1983, No. 336, eff. 1-1-84.

Comm 107.04 Determination of need for an EIS.

(1) During the early planning stages, the department shall determine the need for preparing an EIS on its actions. The action type list shall be used to determine the category of the proposed action.

(2) In determining whether a Type II action is a major action that will significantly affect the quality of the human environment, or is a proposed course of action which involves unresolved conflicts concerning alternative uses of available resources, the department shall base its decision on an environmental assessment (EA) which shall contain the following information:

(a) A brief description of the proposed action including maps and graphs if applicable.

(b) A brief description of those factors in the human environment affected by the proposed action.

(c) A brief evaluation of significant primary and secondary environmental effects that would result if the proposal were implemented.

(d) A brief study, development and description of reasonable alternatives to the proposed action and a brief evaluation of the significant environmental or other effects of these alternatives.

(e) A listing of other agencies or groups contacted and the comments of and other pertinent information from these agencies and groups.

(f) An evaluation section which contains brief discussions of the following specific factors:

1. Stimulation of secondary (indirect) effects.
2. Creation of a new environmental effect.
3. Impacts on geographically scarce environmental features.
4. Precedent-setting nature of the action.
5. Significant controversy associated with the action.
6. Conflicts with official agency plans or local, state or national policy.
7. Cumulative impacts of repeated actions of this type.
8. Foreclosure of future options.

(3) Where proposed actions are likely to be repeated or where they have similarities such as common timing, impacts, alternatives, methods of implementation, or subject matter, a generic EA may be prepared. The department shall, when addressing a single action already covered by a generic EA, consider the relevance of the generic environmental assessment to the specific action.

(4) The department shall issue a news release to news media in the vicinity of the proposed action for each EA, including the following information:

(a) A brief description of the project, including location.

(b) A contact person within the department who can provide copies of the EA and answer questions.

(c) A date by which the department will receive and consider comments before making its final decision on the need for an EIS.

(5) Following the deadline for receipt of public comment on the EA, the department shall review the environmental assessment, consider all public comments, make required comments and approve the environmental assessment. A public hearing may be held to receive public input and aid in the review of and decision on the need for an EIS.

(6) If a finding is made in the EA that no EIS is required for a proposed Type II action, the original EA shall then be filed by the department in its Madison, Wisconsin office as a finding of no significant impact. The environmental assessment is a public record which is available for review upon request.

(7) If a finding is made in the EA that an EIS is required for a proposed Type II action, the department shall prepare a DEIS and an FEIS.

(8) When the department determines that a proposed action will require an EIS, and that the proposed action will involve one or more other state or federal agencies, the lead agency shall be determined through interagency consultation. A joint EA may be

used by the department to aid in reaching its independent decision on the need for an EIS. A written agreement may be developed with those agencies which have a major responsibility in, or are significantly affected by the proposed action. The written agreement shall define the responsibility of each agency in the development of a single EIS.

History: Cr. Register, December, 1983, No. 336, eff. 1-1-84.

Comm 107.05 Scoping. (1) As soon as possible after making the decision to prepare an EIS, the department shall inform the public and affected agencies that an EIS will be prepared and that the process of identifying potential major issues, called scoping, is beginning.

(2) The scoping process shall include, to the extent possible, affected and other interested persons. The process may consist of meetings, hearings, workshops, surveys, questionnaires, inter-agency committees, or other appropriate methods or activities, and may be integrated with other public participation requirements.

(3) The department shall use the scoping process to accomplish any of the following:

(a) Determine the scope and the significant issues to be analyzed in depth in the EIS.

(b) Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review. This will narrow the discussion of these issues in the EIS to a brief presentation of why they will not have a significant effect on the human environment or a reference to their coverage elsewhere.

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

History: Cr. Register, December, 1983, No. 336, eff. 1-1-84.

Comm 107.06 Contents of an EIS. (1) When an EIS is required, a DEIS and a FEIS shall be prepared by the department or prepared for the department under contract by a consultant with supervision and final editorial review by the department. The DEIS shall emphasize significant environmental issues identified during the scoping process. The FEIS shall be based in part upon comments received on the DEIS and on information received from other sources. An EIS shall provide analysis of the environmental and economic implications of a proposed action contemplated by the department. An EIS shall include the following:

(a) A description of the proposed action and of the affected environment including the project location, type of facility, time schedules, maps and diagrams deemed relevant, and other pertinent information which will adequately allow an assessment of the potential environmental impact by persons who want to make comments.

(b) The probable impact of the proposed action on the human environment. An evaluation will be made of the positive and negative effects of the proposed action as it relates to the environment. Secondary, as well as primary consequences to the environment, will be included wherever possible.

(c) Alternatives to the proposed action, including a rigorous exploration and objective evaluation of the environmental impacts of all reasonable alternatives, particularly those that might avoid all or some of the adverse environmental effects of the proposed action. Consideration will be given to the economic advantages and disadvantages and energy impacts of each alternative wherever possible.

(d) Probable adverse environmental effects which cannot be avoided should the proposal be implemented. Protective and mitigative measures to be taken as part of the proposed action shall be identified.

(e) The relationship between short-term uses of the environment and the maintenance and enhancement of long-term productivity. The EIS shall describe the extent to which the proposed action involves trade-offs between short-term economic gains at

the expense of long-term environmental productivity or vice versa, and the extent to which the proposed action forecloses future options.

(f) Significant irreversible and irretrievable commitments of resources that would be involved in the proposed action if implemented, including a statement identifying the extent to which the proposed action irreversibly curtails the range of potential uses of the environment.

(g) A summary of the scoping process used and the major issues identified for detailed analysis in the EIS.

(h) The FEIS shall discuss at appropriate points any responsible opposing view not adequately discussed in the DEIS.

(i) If the department makes substantial changes in the proposed action that are relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns that have bearing on the proposed action or its impacts which arise after preparation of the FEIS, but before substantial implementation of the action, the department shall prepare supplements to the FEIS. If a supplement is prepared, it shall be distributed and reviewed in the same manner as a DEIS or FEIS as provided in this chapter.

(2) The EIS shall be an analytical document that enables environmental factors to be considered in the development of a proposed action. It shall be considered by the department in the decision-making process.

(3) The EIS is not a document of justification. Furthermore, disclosure of adverse environmental effects shall not necessarily require that a proposed action be denied or terminated.

(4) Environmental impact statements shall be written in plain language and should use appropriate graphics to aid decision-makers and the public. Where appropriate, an EIS may be combined with other required environmental or planning documents.

History: Cr. Register, December, 1983, No. 336, eff. 1-1-84.

Comm 107.07 Distribution and review of the DEIS and FEIS. (1) DISTRIBUTION AND REVIEW OF THE DEIS. (a) Copies of the DEIS shall be distributed as follows:

1. The governor's office.
2. State, federal and local government agencies having special expertise, interest or jurisdiction.
3. Regional and county planning agencies located within the proposed project or action area.
4. The department of natural resources.
5. Libraries:
 - a. For proposed actions affecting a local area, the nearest library: In addition, the county clerk, town clerk, village clerk or city clerk will be requested to make the document available in the county courthouse, town hall, village hall or in the city hall.
 - b. For projects of regional importance, public libraries with geographic distribution which provides public access without undue travel.
 - c. For projects having state-wide significance, public libraries providing reasonable access by the individuals who would be potentially affected by the proposed action.

(b) *Notice of availability of the DEIS.* 1. An announcement sheet, which provides a brief description of the proposed action, a description of the administrative procedures to be followed, the date by which comments on the DEIS are to be submitted to the department, and the location where copies of the DEIS are available for review, shall be circulated as follows:

- a. All local and regional units of government which have jurisdiction over the area that may be affected by the proposed action. A request will be made for posting the announcement sheet at the place normally used for public notices.
- b. Local and regional news media in the vicinity of the proposed action.

c. Groups or individuals that have demonstrated an interest and have requested receipt of this type of information.

d. All participants in the scoping process not covered in subpar. a. through c.

(c) *Period of time for comment on the DEIS.* 1. A minimum of 45 days from the date the DEIS is mailed shall be allowed for the receipt of comments. Depending upon the length and complexity of the DEIS, the department may establish an initial review period up to a total of 90 days. A reasonable request for extension, up to 15 days beyond the initial review period, may be granted by the department for the review of the DEIS.

2. If the department determines that a review period of less than 45 days will suffice for the DEIS, the department may limit the review period to no less than 20 days. The DEIS, announcement sheet and public notices shall call attention to the reduced review period and shall specify the date by which comments on the DEIS must be submitted to the department if they are to be considered in developing the FEIS.

(d) If other statutory time limits for department action conflict with the comment and review procedure set out in this section, the procedure may be adjusted so long as agency and public input is assured.

(2) DISTRIBUTION AND REVIEW OF THE FEIS. (a) *Distribution.* The FEIS shall be distributed in the same manner as the DEIS, and shall also be distributed to any person, organization or agency that submitted comments on the DEIS.

(b) *Notice of availability.* The availability of the FEIS shall be announced through a notice of public hearing or through an announcement sheet similar to the announcement of the availability of the DEIS.

(c) *Time period for comment.* A period of not less than 30 days and not more than 90 days from the date the FEIS is mailed, depending on the length and complexity of the FEIS, shall be allowed for receipt of comments from state and federal agencies and the public. A reasonable request for an extension, up to 15 days beyond the initial review period, may be granted by the department for the review of the FEIS.

History: Cr. Register, December, 1983, No. 336, eff. 1-1-84.

Comm 107.08 Public hearings on the DEIS and FEIS. (1) PUBLIC HEARINGS PROCEDURES. Whenever a proposed action requires a DEIS and an FEIS, the department shall hold a public hearing on the DEIS, no sooner than 30 days after its issuance, and shall also hold a public hearing on the FEIS, no sooner than 30 days after its issuance and prior to making a final decision. The public hearing on the DEIS shall be an informational hearing, while the public hearing on the FEIS shall be noticed and conducted in the same manner as a contested case proceeding under ch. 227, Stats. The final draft of the EIS issued by the department, and the record of decision provided in this chapter are intended to satisfy the decision requirement of s. 227.10, Stats.

(2) LOCATION OF HEARINGS. The hearings shall be held in the locality affected; on actions of state-wide significance, the hearings may be held in Madison.

(3) The department shall issue a news release to news media in the vicinity of the proposed action for each public hearing on a DEIS or FEIS. Notice shall also be mailed to all known departments and agencies required to grant any approval necessary for the proposal; to any regional planning commission within which the affected area lies; to the governing bodies of all towns, villages, cities and counties within which any part of the proposal lies; to the governing bodies of any towns, villages or cities contiguous to any town, village or city within which any part of the proposal lies; and to interested persons who have requested such notification. Persons, organizations or agencies that attended the DEIS public hearing shall also receive notice of the FEIS public hearing.

(3) The department shall issue a news release to news media in the vicinity of the proposed action for each public hearing on a DEIS or FEIS. Notice shall also be mailed to all known departments and agencies required to grant any approval necessary for the proposal; to any regional planning commission within which the affected area lies; to the governing bodies of all towns, villages, cities and counties within which any part of the proposal lies; to the governing bodies of any towns, villages or cities contiguous to any town, village or city within which any part of the proposal lies; and to interested persons who have requested such notification. Persons, organizations or agencies that attended the DEIS public hearing shall also receive notice of the FEIS public hearing.

(4) RECORD OF FEIS PUBLIC HEARING. After the FEIS public hearing provided in sub. (1), the department shall carefully review the hearing record and summarize the comments received on the DEIS and the FEIS.

History: Cr. Register, December, 1983, No. 336, eff. 1-1-84.

Comm 107.09 Record of decision. Where an EIS is prepared, the department shall also, at the time of its final decision, prepare a record of decision. The record of decision shall identify all alternatives considered in the order of their environmental preference. The record of decision shall state whether for the alternative selected, all practicable means to avoid or minimize environmental harm have been adopted, and if not, why they were not.

History: Cr. Register, December, 1983, No. 336, eff. 1-1-84.

Comm 107.10 Interagency procedures on proposed actions involving NEPA or WEPA. (1) Where another state or federal agency has concurrent responsibility with the department for a proposed Type II action, a joint EA may be prepared with the other agency if the assessment meets the requirements of this chapter. The department shall make an independent judgement on the need for an EIS in accordance with this chapter.

(2) Where a proposed action involves another state or federal agency approval or decision, and it has been determined that an

EIS must be prepared in accordance with NEPA or WEPA, the WEPA requirement for a separate EIS 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 requirements of NEPA and WEPA. The following shall aid in determining the appropriate participation required for waiver of a separate WEPA EIS:

1. Where the department action is immediately related to a major purpose or function of a proposed project with significant environmental

2. Where the department action is not immediately related to a major purpose or function of the proposed project, or where the proposed project does not have significant environmental impacts, the degree of department participation shall be commensurate with the relationship of its action to the proposed project, and the significance of the proposed project's impacts on the department's areas of responsibility.

(3) If the EIS 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.

History: Cr. Register, December, 1983, No. 336, eff. 1-1-84.