

Chapter HFS 15

ASSESSMENT FOR OCCUPIED BEDS IN NURSING HOMES AND INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED

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Note: Chapter HSS 15 was created as an emergency rule effective October 1, 1992. Chapter HSS 15 was renumbered chapter HFS 15 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, April, 1997, No. 496.

HFS 15.01 Authority and purpose. This chapter is promulgated under the authority of s. 50.14 (5) (b), Stats., to establish procedures and other requirements necessary for levying and collecting the monthly assessment imposed under s. 50.14 (2), Stats., on all occupied, licensed beds in intermediate care facilities for the mentally retarded (ICF-MR) and nursing homes, except facilities that are owned and operated by state government or the federal government or located outside the state, or beds occupied by residents whose care is reimbursed in whole or in part by medicare under 42 USC 1395 to 1395ccc.

History: Cr. Register, May, 1993, No. 449, eff. 6-1-93.

HFS 15.02 Definitions. In this chapter:

(1) "Assessment" means a tax that is determined, levied, collected and paid according to this chapter and s. 50.14, Stats., including any applicable interest and penalties.

(2) "Bedhold" means a facility bed is being held for a resident who is temporarily absent from the facility under the conditions described in s. HFS 132.53 (5) or 134.53 (6), whichever applies.

(3) "Department" means the Wisconsin department of health and social services.

(4) "Facility" means an ICF-MR or nursing home.

(5) "ICF-MR" or "intermediate care facility for the mentally retarded" means a facility or distinct part of a facility defined under 42 USC 1396d (d) and regulated under ch. HSS 134.

(6) "Midnight census" means the count of occupied beds in a facility at 12:00 a.m. on any given day.

(7) "Nursing home" has the meaning prescribed under s. 50.01 (3), Stats., except that it does not include an ICF-MR.

(8) "Occupied bed" means a licensed bed in a facility that at the midnight census is being charged or is chargeable to a resident or third party, including a bed under s. HFS 132.53 (5) or 134.53 (6) that is being held for a resident who is temporarily absent from the facility.

History: Cr. Register, May, 1993, No. 449, eff. 6-1-93.

HFS 15.03 Facilities and beds not subject to assessment. (1) **EXEMPT FACILITIES.** The following facilities are excluded from assessments imposed under this chapter and s. 50.14, Stats.:

- (a) State-owned or state-operated facilities;
- (b) Facilities owned or operated by the federal government; and
- (c) Facilities located outside the state.

(2) **EXEMPT BEDS.** Beds for which payment is made in whole or in part by medicare under 42 USC 1395 to 1395ccc are excluded from the calculation under s. HFS 15.04.

History: Cr. Register, May, 1993, No. 449, eff. 6-1-93.

HFS 15.04 Assessment calculation. (1) **ASSESSMENT.** Every facility which is not excluded under s. HFS 15.03 (1) shall pay an assessment per occupied bed as prescribed by s. 50.14, Stats., and as calculated pursuant to this section and s. 50.14, Stats. The amounts of the assessment per occupied bed shall be as specified by s. 50.14, Stats.

(2) **CALCULATION.** (a) The assessment shall be on the average number of occupied, licensed beds of the facility for the calendar month previous to the month of assessment, based on an average daily midnight census computed and reported by the facility and verified by the department. Beds for which payment is made by medicare under 42 USC 1395 to 1395ccc shall be excluded from the calculation. A bed occupied by a person who is eligible for both medicare and medicaid, and for which medicare pays a portion of the room and board for the person, is excluded from the calculation.

(b) In determining the number of occupied, licensed beds, if the number of beds is other than a whole number, the fractional part of the amount shall be disregarded unless it equals 50% or more of a whole number, in which case the amount shall be increased to the next whole number.

(c) In a facility having some beds that are ICF-MR beds and some beds that are nursing home beds, separate calculations shall be performed for the ICF-MR beds and for the nursing home beds. The bed of a person with a developmental disability as defined under s. HFS 132.13 (4) or 134.13 (9) who is a resident of a nursing home shall be assessed at that facility's rate, while the bed of a resident who is not developmentally disabled but who is residing in an ICF-MR shall be assessed at the ICF-MR rate.

History: Cr. Register, May, 1993, No. 449, eff. 6-1-93.

HFS 15.05 Deficiency and refund determinations. The department may conduct office or field audits or both to determine any assessment or refund due. The department and facilities under this chapter have authority and obligations in the same manner described in s. 77.59 (1) to (5), (6) (intro.), (a) and (c) and (7) to (10), Stats.

History: Cr. Register, May, 1993, No. 449, eff. 6-1-93.

HFS 15.06 Interest and penalties. Assessments are subject to interest and penalties in the same manner and amounts described in s. 77.60 (1) to (7), (9) and (10), Stats.

History: Cr. Register, May, 1993, No. 449, eff. 6-1-93.

HFS 15.07 Administration and due dates. (1) A facility shall provide the department with the data necessary for the calculation of the assessment on forms prescribed by the department, shall retain records supporting that data, and shall tender payment for the assessment in accordance with instructions issued by the department. In administering this system, the department and facilities shall have powers and obligations in the same manner described in s. 77.61 (9) and (12) to (14), Stats.

(2) The department shall mail the required assessment forms to each subject facility during the first 5 working days following the assessment month. The completed forms and payment shall be

submitted by the facility on a timely basis. The completed forms and payment shall be considered timely only if the envelope containing them is properly addressed, has postage duly prepaid, is postmarked no later than the last day of the calendar month following the assessment month, and is actually received by the department within 5 calendar days after the last day of the calendar month.

(3) If the department determines that a facility's bed calculation is inaccurate, the department shall notify the facility of any changes in the calculation or assessment and shall send the facility an invoice for the additional amount due or send the facility a refund. Any additional amount due shall be paid by the facility no later than 30 days following the date of the department's notice.

(4) A facility shall notify the department of a change in ownership, transfer of license, change in number of licensed beds, address change and any other information pertinent to the facility's assessment on a form provided by the department. Notification of change shall be included with the first assessment payment made following the change.

History: Cr. Register, May, 1993, No. 449, eff. 6-1-93.

HFS 15.08 Collection of delinquent assessments.

The department may collect delinquent assessment payments in a manner comparable to that described in s. 77.62, Stats.

History: Cr. Register, May, 1993, No. 449, eff. 6-1-93.

HFS 15.09 Appeals. If a facility contests any action of the department under this chapter or s. 50.14, Stats., the facility may submit a request for hearing to the department of administration's division of hearings and appeals. The request for hearing shall be in writing and shall contain a brief and plain statement identifying every matter or issue contested. The request for hearing shall be sent to the department of administration's division of hearings and appeals so that it is received there no later than 30 days after the date of the department's action. A final hearing decision shall be subject to judicial review as the facility of the obligation to pay a disputed assessment within the prescribed deadline.

Note: A request for a hearing should be sent to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707.

History: Cr. Register, May, 1993, No. 449, eff. 6-1-93.

Chapter HFS 18

ENVIRONMENTAL POLICY IMPLEMENTATION

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Note: Chapter HSS 35 was renumbered Chapter HSS 18 under s. 13.93 (2m) (b) 1, Stats., Register, August, 1994, No. 464. Chapter HSS 18 was renumbered chapter HFS 18 under s. 13.93 (2m) (b) 1, Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, April, 1997, No. 496.

HFS 18.01 Authority. This chapter is promulgated under the authority of ss. 1.11 and 227.11 (2), Stats., to implement the Wisconsin environmental policy act, s. 1.11, Stats., insofar as proposed major actions of the department may significantly affect the quality of the environment of human beings. The chapter provides for a process of agency decisionmaking in public which depends on, although it is not necessarily determined by, thorough, objective analysis of the effects of a proposed action on the environment and of alternatives to such an action.

History: Cr. Register, June, 1983, No. 330, eff. 7-1-83.

HFS 18.02 Applicability. The criteria, procedures, and other parts of this chapter apply to all staff of the department and to all proposed actions of the department which may significantly affect the quality of the environment of human beings.

History: Cr. Register, June, 1983, No. 330, eff. 7-1-83.

HFS 18.03 Purpose. These rules are to:

(1) Provide principles, objectives, definitions, criteria, and procedures to be used by the department to implement s. 1.11, Stats. Implementation includes identification and evaluation of proposed actions; study, development, and description of alternatives for those proposed actions that involve unresolved conflicts in the use of available resources; and preparation and review of environmental assessments and environmental impact statements;

(2) Ensure that high-quality environmental information, deriving from sound analysis of the likely consequences for the environment of major actions and from the development of alternatives, is available to department managers and citizens before decisions are made;

(3) Ensure that department staff who make decisions or contribute to decisions understand and consider potential environmental consequences of proposed actions and attempt to minimize the adverse consequences of these actions; and

(4) Facilitate public scrutiny and understanding of proposed actions of the department that may significantly affect the quality of the human environment.

History: Cr. Register, June, 1983, No. 330, eff. 7-1-83.

HFS 18.04 Definitions. As used in this chapter:

(1) "Action" means any activity initiated or otherwise undertaken by the department, including a proposal for legislation, which may affect the quality of the environment of human beings.

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

(3) "DEIS" means draft environmental impact statement.

(4) "Department" means the department of health and family services.

(5) "Environmental assessment" or "EA" means a concise public document prepared by or at the direction of the department which provides sufficient evidence and analysis concerning a proposed type II action to enable the department to determine whether to prepare an environmental impact statement or issue a finding of no significant impact, and it includes the study, development and description of alternatives.

(6) "Environmental impact statement" or "EIS" means a detailed, written analytical report prepared by or at the direction of the department, which describes the anticipated effects on the environment of a proposed major action. An "EIS" is meant to adequately inform department decisionmakers and the public about the environmental consequences of an action in a way that will assist and guide decisionmaking.

(7) "FEIS" means final environmental impact statement.

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

(9) "Human environment" or "environment of human beings" means the natural and physical surroundings of people and their relationship with those surroundings. It includes the economic and social aspects of the surroundings of people only when these are inter-related with the natural and physical aspects of those surroundings.

(10) "Major action" means an action significantly affecting the quality of the human environment. Actions are called "major" when they significantly affect the environment of human beings. "Major" reinforces but does not have a meaning independent of "significantly."

(11) "Program" means a broad area of the department's responsibility, namely, health, adult corrections, juvenile corrections, mental disabilities, social services, economic assistance, or vocational rehabilitation.

(12) "Resource" means water, air, land, plants, animals, energy, historic properties, vistas, wilderness, or that tranquillity which is affected by noise.

(13) "Scoping" means a process conducted at the outset of preparation of an EIS which involves asking for the views of other governmental agencies and the interested public about what should be in the EIS, the issues it should address, and the relatively more significant issues that should be subjected to in-depth analysis.

(14) "Secretary" means the secretary of the Wisconsin department of health and family services.

(15) "Significantly affecting" means, in reference to actions, having considerable and important impacts on the quality of the

environment, either in terms of the breadth of impact or the severity of impact.

(16) "WEPA" means the Wisconsin environmental policy act, s. 1.11, Stats.

History: Cr. Register, June, 1983, No. 330, eff. 7-1-83.

HFS 18.05 Types of actions. The department has grouped its actions into 3 types to facilitate its determination of need for an EIS.

(1) **TYPE I ACTIONS.** A type I action will always require an EIS. Construction of a new residential institution of 65 or more beds at a location where there was not previously a department-operated institution is a type I action.

(2) **TYPE II ACTIONS.** A type II action may or may not require an EIS, depending on the significance of the action. All of these actions shall be evaluated by means of an environmental assessment (EA). In the EA, the department shall study, develop and describe appropriate alternatives to the proposed action.

(a) **Facilities development.** 1. Construction of a new residential institution of fewer than 65 beds at a location where there was not previously a department-operated institution.

2. Construction at an existing department-operated institution of a new or replacement building or other structure or the addition to or change in the exterior physical design of a building or other structure, the cost of which is the same as or more than the limit where approval of the building commission is required pursuant to s. 13.48 (10), Stats.

3. Acquisition or modification of an existing building to serve as a community residential facility for clients.

4. Modification of a building at an existing department-operated institution to serve a different program and population.

5. Changes in land use at institutions operated by the department to include but not be limited to construction of athletic fields, roads, parking facilities, bridges, and walls or fences.

6. Construction of a planned lake or pond development or renewal of an existing pond development.

7. Development of new sanitary land fill and solid waste disposal sites, and closing of existing sites.

8. Sale of an institution.

(b) **Facilities operation.** 1. New construction, enlargement, or other significant modification in electrical, television, communications, heating, gas, or sewer facilities and systems at an institution.

2. Demolition projects to remove structures of 100,000 or more cubic feet.

3. Grant of easements across department property for roads and for above-ground construction of utilities including pipelines and transmission lines.

4. Changed policies on farming and camp operation on department properties.

(c) **Financial assistance.** Establishment of criteria for the award of secondary grants and for allocation of local aids, where employment of the grants or aids will have material impacts on the human environment and the department has substantial discretion in formulating important provisions of the criteria.

(d) **Administrative rules.** Promulgation of non-emergency administrative rules when implementation will have material impacts on the human environment and the department has substantial discretion in formulating important provisions of the rules.

(e) **Plans.** Approval of federal-state plans, that is, state plans prepared as a requirement for federal financial participation in programs administered by the department, when implementation will have material impacts on the human environment and the department has substantial discretion in formulating important provisions of the plans.

(f) **Legislative proposals.** Proposals of the department for state legislation to authorize new programs or major changes in existing programs, the implementation of which would have material effects on the human environment.

(3) **TYPE III ACTIONS.** A type III action normally does not have the potential to cause significant environmental effects and normally does not involve unresolved conflicts in the use of available resources, and therefore, unless the department determines otherwise, an EA or an EIS will not be required for the proposed action.

(a) **Facilities development.** 1. Remodelling entirely within a building at an institution for use by the same program.

2. Institution improvement projects, to include energy conservation and barrier-free access improvements and improvements to outdoor lighting, walkways, signs, shelters, tree plantings, and landscaping.

3. Restoration of a facility to its original condition following damage from fire, accident, disturbance, or natural calamity.

4. Closing of an institution or of part of an institution.

5. Sale of excess lands.

(b) **Facilities operation.** 1. Grant of easements across department property for the purpose of below-ground construction of utilities, including pipelines and transmission lines.

2. Maintenance of buildings, including but not limited to replacement of doors, windows and roofs, and painting, without altering the architectural integrity of the buildings.

3. Maintenance of roads, sidewalks, curbs, and gutters at institutions.

4. Road and parking lot resurfacing on department properties, and expansion without significant extension or relocation.

(c) **Financial assistance.** Forwarding of secondary grants.

(d) **Legislative proposals.** Positions of the department on legislative proposals originating outside the department.

(e) **Research.** Conduct of research understood to mean systematic investigation designed to develop or contribute to generalizable knowledge.

(4) **OTHER ACTIONS.** Every action not fitting into one of the categories in subs. (1) to (3) shall be evaluated for determination of type.

(5) **UPDATING OF TYPE-LIST.** The action type-list shall be updated from time to time by rulemaking to reflect change in department programs or change in the categorization of department actions.

History: Cr. Register, June, 1983, No. 330, eff. 7-1-83.

HFS 18.06 Determination of need for an EIS.

(1) During the early planning of an action, the department shall determine the need or desirability of preparing an EIS on the proposed action, in accordance with ss. HFS 18.05 and 18.07.

(2) The department shall prepare an EIS for all type I actions, and for all type II actions which are found to significantly affect the environment of human beings.

(3) The department may prepare an EIS on any other action at any time to assist planning and decisionmaking for the action.

(4) If the department decides to prepare an EIS, it does not need to prepare an EA.

History: Cr. Register, June, 1983, No. 330, eff. 7-1-83; correction in (1) made under s. 13.93 (2m) (b) 7, Stats., Register, August, 1994, No. 464.

HFS 18.07 Preparation of environmental assessment.

(1) Except as provided in s. HFS 18.06 (4), to determine whether a type II action is major and significantly affects the quality of the natural and physical environment of human beings, and to describe alternatives to that action, the department shall conduct an environmental assessment and shall prepare a reviewable record in the form of a concise report. This shall be done as early as possible in the planning process but, in any event, before contracts are signed if the action involves construction. The report shall include:

(a) A description of the proposed action, to include the purpose of the action and need for the action;

(b) A description of those elements of the environment of human beings which are affected by the proposed action;

(c) Identification and discussion of the most significant effects on the environment that can be reasonably foreseen if the proposed action is carried out. "Effects" are of 2 types:

1. Primary effects are those on water, air, land, plants, animals, energy use, historic properties, wilderness, vistas, and tranquillity which is affected by noise, and on society and economy but only when these are inter-related with the foregoing resources.

2. Secondary effects are, in relation to primary effects, the foreclosure of future options, establishment of precedents, cumulative impacts when actions of the type are repeated, stimulation of indirect (later in time or at a distance) effects, conflicts with official plans of public agencies or with policies of governments at any level, and significant controversy that may be or is generated by the proposed action.

(d) A consideration of reasonable alternatives to the proposed action, including the alternative of no action, and the identification of the significant environmental effects of these alternatives when they differ from the anticipated impacts of the proposed action; and

(e) A list of agencies and persons consulted, with synopses of the comments and other pertinent information provided by these agencies and persons.

(f) A preliminary recommendation on the need for an EIS.

(2) Where proposed actions are likely to be repeated on a recurring basis or where they have relevant 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 EA to the specific action.

(3) (a) The department shall develop a notice that the EA has been prepared and is available for review, which shall include the following information:

1. The title of the proposed action;
2. A brief description of the proposed action, to include the location of any project;
3. The preliminary determination by the department of the need for an EIS;
4. The name of a contact person within the department who can supply copies of the EA and can answer questions about it; and
5. The latest date on which the department will accept and consider comments before making a final decision on the need for an EIS.

(b) The department shall send copies of the notice to all individuals, agencies, and organizations that have requested notification of the EA or of all EAs and, in the case of a project in a particular area of the state, to appropriate news media in the vicinity of the project. The department may also publish the notice in the Wisconsin administrative register.

(c) Following the deadline for receipt of public comment on the EA, the department shall review the EA, consider the comments received on it, make modifications judged necessary, and approve the EA which shall include a finding either of no significant impact or of the need for an EIS.

(4) If a finding is made in the EA of no significant impact, no EIS shall be required, the environmental review is complete and the original EA shall then be filed in the department's offices in Madison, Wisconsin. For a project in a particular area of the state, a copy of the EA shall be filed in a field office of the department in that area.

(5) If a finding is made in the EA that an EIS is required for the proposed action, the department shall proceed with preparation of an EIS.

History: Cr. Register, June, 1983, No. 330, eff. 7-1-83; correction in (1) (intro.) made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1994, No. 464.

HFS 18.08 Preparation of environmental impact statement. (1) SCOPING. (a) As soon as possible after the decision to prepare an EIS, the department shall inform the public and affected or otherwise interested agencies that an EIS will be prepared and that the process of identifying impacts and alternatives to be analyzed in the EIS is beginning.

(b) The scoping process shall include, to the extent possible, affected federal, state and local agencies, any affected Indian tribe, 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.

(c) The department shall use the scoping process to:

1. Determine the parameters of the EIS and the significant issues to be analyzed in depth in the EIS; and

2. Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental impact analyses. This will permit limiting the discussion of these issues in the EIS to a brief presentation about why they are not significant for the human environment or to references to other documents in which these issues are discussed.

(2) **FORMAT OF STATEMENT.** (a) The EIS shall be written in plain language, and shall be concise, clear, and to the point. It should include appropriate graphics to help decisionmakers and citizens understand the implications of the proposed action and alternatives for quality of the human environment.

(b) Parts of the EIS shall be:

1. A cover sheet containing the title of the proposed action, name of the department, designation of the document as the draft or final statement, name and address of the office where more information can be provided, a one-paragraph abstract of the statement and the last date on which comments on the document will be considered.

2. A summary of the statement. It shall briefly describe the proposed action and shall emphasize major conclusions, areas of controversy, and issues to be resolved.

3. A table of contents.

4. A brief specification of the purpose of the action and need for it.

5. A succinct description of the environment which would be affected by the proposed action.

6. In comparative format, an analysis of the impact on the environment of the proposed action and all reasonable alternatives to it, including the alternative of no action.

7. A discussion of the scientific and analytic bases for the environmental consequences identified in subd. 6.

8. A list of preparers of the EIS together with their qualifications.

9. Appendices, if any, relevant to analyses in the EIS or otherwise relevant to the decision to be made.

(c) Other documents and sources of information may be incorporated by reference, provided that they are reasonably accessible to interested persons. "Reasonably accessible" in the case of documents means that the documents are available for public inspection at the central offices of the department in Madison and at a field office of the department in the area of the project if the project is in a particular area of the state.

(3) **CONTENT OF STATEMENT.** (a) When an EIS is required, first a draft EIS and then a final EIS shall be prepared by the department or else be prepared for the department under contract by a consul-

tant with supervision and final editorial review by the department. The EIS shall emphasize significant environmental issues identified during the scoping process. An EIS shall contain, in the appropriate parts specified in sub. (2) (b) 4. to 7.:

1. 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 commenting agencies and the public.

2. An analysis of the probable impact of the proposed action on the environment of human beings, to include identification of positive as well as negative effects of the proposed action and, wherever possible, indirect as well as direct consequences for the environment.

3. 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. If the department has a preferred alternative to the proposed action, that should be identified.

4. A discussion of 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.

5. A discussion of the relationship between short-term use of the environment and the maintenance and enhancement of long-term productivity.

6. Identification of significant irreversible and irretrievable commitments of resources that would be involved in the proposed action, if implemented, with a statement identifying the extent to which the proposed action irreversibly curtails the range of potential uses of the environment.

7. Details of the beneficial aspects of the proposed action, and of the economic advantages and disadvantages of the proposed action.

8. A summary of the scoping process used and of the major issues identified through it for detailed analysis in the EIS.

(b) 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.

(c) An EIS is not a document of justification. On the other hand, disclosure of adverse environmental effects does not necessarily mean that a proposed action should be abandoned.

(d) Where proposed actions are likely to be repeated on a recurring basis or where they have relevant similarities such as common timing, impacts, alternatives, methods of implementation, or subject matter, a generic EIS may be prepared. The department shall, when addressing a single action already covered by a generic EIS, examine the relevance of the generic EIS to the specific action.

History: Cr. Register, June, 1983, No. 330, eff. 7-1-83.

HFS 18.09 Review of the DEIS. (1) SPECIFIED DISTRIBUTION: Copies of the DEIS shall be distributed to:

(a) The governor's office.

(b) The department of natural resources and other state, federal, and local government agencies having special expertise, interest or jurisdiction.

(c) Regional and county planning agencies located within the proposed project or action area.

(d) Regional offices of the department covering the area of the proposed project or action and the department's central office in Madison.

(e) Appropriate public libraries:

1. For proposed actions affecting a local area, the nearest public library.

2. For projects of regional importance, public libraries with a geographic distribution which permits public access without undue travel.

3. For projects having statewide significance, public libraries providing reasonable access for individuals who could be affected by the proposed action.

(f) The county clerk, city clerk or town clerk for proposed actions affecting a local area.

(g) Any individual or group requesting a copy.

(2) **NOTICE OF AVAILABILITY** (a) The department shall publish in local newspapers, or in the official state newspaper, as appropriate, a notice of availability of the DEIS which briefly describes the proposed action and the administrative procedures being followed in review for environmental impact, sets the last date by which comments on the DEIS are to be submitted to the department, indicates locations where copies of the DEIS are available for review, and provides an address from which any interested party may obtain a copy of the DEIS.

(b) The department shall send copies of the notice of availability to:

1. Local and regional news media in the affected area;

2. Groups and individuals known to have an interest in the particular EIS; and

3. All participants in the scoping process who are not covered by subd. 1. or 2.

(c) The notice of availability of the DEIS may be combined with the notice of informational hearing under sub. (4).

(3) **PERIOD FOR COMMENT.** The department shall allow a minimum of 45 days from the date the notice of availability of the DEIS is published, including a minimum of 7 days following the hearing provided for in sub. (4), for receipt of written comments on the DEIS.

(4) **INFORMATIONAL HEARING.** (a) The department shall hold a public hearing on the DEIS. The hearing shall be noticed as follows:

1. At least 30 days prior to the hearing, notice shall be mailed to all known agencies and offices required to grant any permit, license or 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.

2. At least 25 days prior to the hearing, a notice shall be published in a newspaper circulated in the affected area or, for actions of statewide significance, in the official state newspaper.

(b) The hearing shall be held in the affected area. On actions of statewide significance, the hearing may be held in Madison.

(c) The hearing shall be transcribed either stenographically or electronically.

History: Cr. Register, June, 1983, No. 330, eff. 7-1-83.

HFS 18.10 Conversion of DEIS to FEIS. After weighing the testimony received at the public hearing on the DEIS, and undertaking whatever further investigation in response to that testimony seems necessary, the department may convert a DEIS to an FEIS. This may be accomplished by replacing the cover sheet, modifying the statement as judged appropriate to reflect information received at public hearing or while the hearing record was kept open, and by adding an appendix which records and responds to information, concerns, views, arguments, and suggestions received at the hearing and while the hearing record was kept open.

History: Cr. Register, June, 1983, No. 330, eff. 7-1-83.

HFS 18.11 Review of the FEIS. (1) DISTRIBUTION. The FEIS shall be distributed in the same manner as the DEIS in s. HFS 18.09 (1), and shall also be distributed to any person, organization or agency that submitted comments on the DEIS.

(2) NOTICE OF AVAILABILITY. The availability of the FEIS shall be announced through a notice similar to the notice of availability of the DEIS in s. HFS 18.09 (2). That notice shall state whether the department will hold a public hearing on the FEIS, as permitted under sub. (3) (b). The department shall provide a copy of the FEIS to any individual or group requesting a copy.

(3) PERIOD FOR COMMENT. (a) The department shall allow a minimum of 45 days from the date the notice of availability of the FEIS is published, including a minimum of 7 days following a hearing held under par. (b), for receipt of written comments on the FEIS from state and federal agencies and the public.

(b) The department may hold a public hearing on the FEIS. That hearing shall be announced through the notice of availability of the FEIS which shall be published at least 25 days prior to the hearing in a newspaper circulated in the affected area or, for actions of statewide significance, in the official state newspaper.

(4) CONTESTED CASE HEARING OPPORTUNITY. (a) *Request for a hearing.* Any person meeting the qualifications contained in s. 227.42 (1) (a) to (d), Stats., may within 20 days after publication of the notice of availability under sub. (2), or within 20 days after the public hearing under sub. (3) (b), if there is one, file with the department a request for a contested case hearing. The request shall include facts sufficient to establish that the person satisfies the criteria set forth in s. 227.42 (1) (a) to (d), Stats., and a statement of the reasons the person believes that the FEIS does not conform to the requirements of s. 1.11, Stats. Any request received by the department more than 20 days after the date of publication of the notice of availability or more than 20 days after a public hearing under sub. (3) (b) shall be denied.

(b) *Hearing.* 1. If the department grants a request for a contested case hearing, the department shall inform the person making the request about the date, time and place of the hearing.

2. In the event that more than one request for a hearing on the FEIS is granted, the department may consolidate the requests and hold one hearing.

3. The only issue at the hearing shall be whether the FEIS complies with the requirements of s. 1.11, Stats. The persons who requested the hearing shall have the burden of proving to a reasonable certainty by the greater weight of the credible evidence that the FEIS does not comply with the requirements of s. 1.11, Stats.

4. The hearing shall be held in accordance with the department's general procedural rules for hearings or, in the absence of those rules, the conditions and procedures set out in ss. 227.44 to 227.50, Stats., except as otherwise provided in this subsection.

(c) *Evidence, discovery, and disclosure.* 1. The FEIS shall be received into the hearing record as an exception to the hearsay rule and shall be considered by the department in making its decision for whatever probative value the FEIS has.

2. Notwithstanding any other rule of the department, the parties in proceedings under this action shall have the means of discovery, except written interrogatories and depositions on written questions, available to parties through judicial proceedings set forth in ch. 804, Stats.

3. Not less than 10 days before the hearing the parties shall file with the department:

a. The names and addresses of all witnesses, including adverse witnesses, that the party may call to testify at the hearing.

b. A detailed written summary of the testimony to be elicited from each witness identified in subpar. a., including any opinion or conclusion of the witness on any matter relevant to the proceedings and the facts and data underlying that opinion or conclusion. The summary shall be on oath or affirmation.

c. A copy of any document or other writing, except the FEIS, and a copy or detailed description of any demonstrative evidence the party may offer into evidence as exhibits.

4. a. Any witness whose name, address and summary of testimony is not provided as required in subd. 3. a. and b. shall not be permitted to testify at the hearing. No witness may testify on any matter not included in the summary of testimony.

b. No document or other writing or a copy or detailed description of any demonstrative evidence not filed as provided in subd. 3. c. may be made part of the record.

5. Unless objected to by the department, any summary of testimony of a witness for the person who requested the hearing shall be made part of the record in lieu of the testimony of that witness as an exception to the hearsay rule and shall be considered by the department for whatever probative value that testimony has in making its decision. Unless objected to by the person who requests the hearing, any summary of the testimony of a witness for the department shall be made part of the record in lieu of the testimony of such witness as an exception to the hearsay rule and shall be considered by the department for whatever probative value that testimony has in making its decision.

History: Cr. Register, June, 1983, No. 330, eff. 7-1-83; corrections in (1) and (2) made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1994, No. 464.

HFS 18.12 Decision. (1) REVIEW OF COMMENTS. After expiration of the comment period on the FEIS and following any contested case hearing on the adequacy of the FEIS, the department shall carefully review, summarize and weigh the comments received on the FEIS and on the proposed action and the decision following any contested case hearing before making a decision on the action.

(2) RECORD OF DECISION. After carefully reviewing the comments of interested parties on the FEIS, the department shall enter a final decision in writing on the proposed action, which shall be a clear, concise and public statement which discloses and explains the decision, identifies the alternatives considered in reaching it and the alternative or alternatives considered environmentally preferable, and states whether all practicable means to avoid or minimize environmental harm have been adopted and, if not, why not.

History: Cr. Register, June, 1983, No. 330, eff. 7-1-83.

HFS 18.13 Supplements. If it happens that after an FEIS has been prepared, the public comment period has ended, and a decision has been made on the proposed action, but before implementation of the action has proceeded very far, the department substantially changes the proposed action in environmentally significant ways, or if significant new circumstances arise or information is developed relevant to environmental concerns and having a bearing on the proposed action or its impacts, the department shall prepare a supplement to the FEIS which shall be distributed and reviewed in the same manner as the FEIS as provided in s. HFS 18.11.

History: Cr. Register, June, 1983, No. 330, eff. 7-1-83; correction made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1994, No. 464.

HFS 18.14 Equivalent processes. (1) Where another state agency has concurrent responsibility with the department for a proposed type II action, a joint environmental assessment may be prepared with the other agency, or the environmental assessment prepared by the other agency may be accepted by the department provided that the assessment meets the requirements of this chapter, in which case the department's responsibility under WEPA has been met.

(2) Where a proposed action is found to require an EIS and another state agency is involved in the approval or decision, a joint EIS may be prepared with the other agency, or the EIS prepared by the other agency may be accepted by the department provided that the EIS meets the standards for an adequate statement under

this chapter, in which case the department's responsibility under WEPA has been met.

History: Cr. Register, June, 1983, No. 330, eff. 7-1-83.

HFS 18.15 Responsibilities. (1) SINGLE DEPARTMENT OFFICE. (a) The department shall have one office in Madison that other agencies and the public may contact to find out about department procedures implementing WEPA and progress being made in preparation of particular WEPA documents, and to obtain copies of environmental impact statements, environmental assessment reports, the department's action typelist, the department's administrative rules for WEPA implementation, and the final written decision of the department on particular proposed actions for which an environmental impact statement was prepared.

(b) The single office of the department for WEPA-related matters shall also:

1. Maintain this chapter of administrative rules.
2. Arrange for department review and comment, if appropriate, on the environmental impact statements of other agencies.
3. Suggest and approve formats and forms for divisions to use in carrying out their responsibilities under sub. (2).

4. Train, keep updated, and advise appropriate division staff, including managers, about WEPA requirements and department procedures for implementation of WEPA.

5. At the request of the department secretary, review for adequacy or coordinate review for adequacy of any division-proposed environmental assessment report or environmental impact statement.

6. Ensure that copies of this chapter are maintained for public review at each of the department's regional offices and institutions.

(2) DIVISIONS. Responsibilities of divisions of the department in the EIS process are these:

- (a) To decide what are actions for purposes of this chapter;
- (b) To determine type of action, under s. HFS 18.05;
- (c) To conduct environmental assessments, and to prepare and distribute environmental assessment reports;
- (d) To recommend preparation of environmental impact statements;
- (e) To prepare or arrange for preparation of environmental impact statements; and
- (f) To give notice and conduct informational hearings on draft and final environmental impact statements.

History: Cr. Register, June, 1983, No. 330, eff. 7-1-83; correction in (2) (b) made under s. 13.93 (2m) (b) 7, Stats., Register, August, 1994, No. 464.