

(12) In those cases where a person is seeking permission to proceed with an action, the department shall make its determination on the need for an EIS within 45 days after the department has received all information necessary for that determination. If the department determines that an EIS will be prepared, the person seeking permission shall be notified of this determination by letter from the department. The letter shall include estimated time schedules and other pertinent information relating to the EIS process. Such notification may occur as part of a scoping process under s. NR 150.06.

(13) When the department determines that a proposed action will require an EIS and that the proposed action will involve one or more state or federal agencies, the lead agency will be determined through inter-agency consultation. A joint environmental assessment may be used by the department to aid in reaching its independent decision on the need for a EIS in accord with s. NR 150.10. 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 will define the responsibility of each agency in the development of a single EIS on the proposed action and will outline the procedures to be used in the regulatory process.

(14) An application or request for permission shall not be considered complete until s. 1.11, Stats., has been fully complied with.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79; am., Register, February, 1981, No. 302, eff. 3-1-81; am. (2), (3), (5), (6) (intro.) and (a), (7), (8) (a) (intro.) and (c), (10) and (13), renum. (6) (d) to (f) to be (6) (e) to (g), cr. (6) (d), Register, February, 1984, No. 333, eff. 3-1-84; cr. (8m), Register, March, 1986, No. 363, eff. 4-1-86.

NR 150.045 Compliance with s. 1.11 (2) (e), Stats. (1) For any department action which involves unresolved conflicts concerning alternative uses of available resources, the department shall study, develop and describe appropriate alternatives to recommend courses of action through one or more of the following mechanisms:

(a) For Type I actions, preparation of a EIS in accord with s. NR 150.07.

(b) For Type II actions, preparation of an EA in accord with s. NR 150.04 (6) or an EIS if the department determines an EIS is necessary.

(c) For all department actions, holding an informational meeting or hearing under another statute or rule in which conflicting uses of resources are aired and in which participants have the opportunity to discuss alternative courses of action and where the department considers the hearing testimony or meeting results in its decision.

(2) Unless the department determines otherwise, department actions listed in s. NR 150.03 (3) are not of sufficient magnitude to require compliance with s. 1.11 (2) (e), Stats.

History: Cr. Register, Register, February, 1984, No. 333, eff. 3-1-84.

NR 150.05 Contents and departmental acceptance of an EIR. (1) When the department requests an EIR from a person seeking permission for a proposed action, it shall provide a letter of instruction which will include instructions on format, required content, level of detail and number of copies to be submitted. As a person seeking permission provides more information about the proposal or makes modifications in the proposal,

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the letter of instruction is revised to insure the potential environmental effects can be identified in the department's EA or EIS.

(2) The primary purpose of an EIR is to provide a detailed, comprehensive description of the proposed action, the present environmental conditions in the area which would be impacted by the proposed action and the alternatives to the proposed action which the person seeking permission has considered throughout the proposal formulation process. Predictive models, bioassays and other analysis that can be subject to reasonable scientific verification may be also required. The department's instructions to the applicant on EIR content and detail will emphasize these elements of disclosure rather than the applicant's judgments and conclusions concerning the significance of the probable impacts associated with the proposed action.

(2m) The letter of instruction may require that certain laboratory tests be performed by a laboratory certified, registered, or approved under ch. NR 149, HSS 157, or HSS 165.

Note: The requirement in this section to submit data from a certified or registered laboratory is effective on August 28, 1986.

(3) Upon submission of the EIR by the person seeking permission, the department shall review the report to determine if it complies with the request in the letter of instruction. The department shall make this determination and shall notify the person seeking permission in writing within 60 days after receipt of the EIR. The department shall make this determination and notify the person seeking permission within 120 days after receipt if the EIR exceeds 1000 pages in length including appendices or, in the department's judgment, will require a substantial commitment of staff time to determine if it complies with the letter of instruction due to complexity, detail, organization or scope. If the department finds that the EIR does not contain reasonable information to form a definitive picture of the proposed action and its environmental effects, additional information will be requested from the person seeking permission.

(4) If original data concerning existing environmental conditions collected or processed by a person or their agents seeking permission is to be used by the department in its EA or EIS, and that data relates to impacts essential to a reasoned choice among significant alternatives to the proposed action, the data shall be accepted if it meets the requirements outlined in the department's letter of instruction and one or more of the following conditions:

(a) The department, its consultant or cooperating state and federal agencies collects sufficient data to perform a limited statistical comparison with EIR data and can demonstrate that the data sets are statistically similar within a reasonable confidence limit, or;

(b) The data are determined to be within the range of expected results in the professional judgment of a department expert, an expert consultant to the department or expert within a cooperating state or federal agency based on general knowledge and experience in the subject area, relevant literature and published scientific data, or familiarity with the environmental feature being described by the data, or;

(c) The department or its consultant or other cooperating state or federal agencies witness actual collection and analysis to a sufficient extent to verify the methodology as scientifically and technically adequate for

the tests being performed. Analysis performed by a laboratory certified for that purpose by a state or federal agency shall be accepted by the department as verified.

1. The department need not verify all original data provided by a person seeking permission in order to accept all data is accurate. If random data sets or data points are independently verified by the department in accord with this subsection, the remainder of the data may be accepted as accurate by the department and utilized in the department's analysis for inclusion in the EA or DEIS and FEIS. The degree of inaccuracy observed by the department in its verification efforts will determine, in part, the extent of verification to be performed. If the data collected by a person seeking permission are determined to be generally inaccurate or to have been derived through the use of questionable methods, the EIR shall be deemed inadequate until adequately verified data are provided by the person seeking permission.

2. The department will, when it has sufficient knowledge of the applicant's proposal and when the state of the applicant's planning permits, generally identify for the applicant the verification procedures it intends to utilize and request the applicant's cooperation when such cooperation is necessary for department verification of the applicant's data.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79; am. Register, February, 1984, No. 338, eff. 3-1-84; cr. (2m), Register, April, 1986, No. 364, eff. 8-28-86.

NR 150.06 Scoping. (1) As soon as possible after 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 (scoping) is beginning.

(2) The scoping process shall include, to the extent possible, affected federal, state and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons. The 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.

(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) Allocate assignments for preparation of the EIS among the lead and cooperating agencies.

(d) Set page limits on environmental documents.

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

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79; r. and recr., Register, February, 1981, No. 302, eff. 3-1-81.

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NR 150.07 Contents of an EIS. (1) When an EIS is required, a DEIS and 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 or EIR and on information received from other sources. An EIS shall substantially follow the regulations issued by the president's council on environmental quality, 40 CFR 1500-1508, and shall provide analysis of the environmental and economic implications of a proposed action contemplated by the department. While the format may vary, the EIS shall include:

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

(b) 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. The EIS should describe, where appropriate, proposed preventative and mitigating measures.

(c) The probable environmental consequences of the proposed action. An evaluation will be made of the positive and negative effects of the proposed action as it relates to the physical, biological and socioeconomic environment. The discussion shall include adverse environmental effects which cannot be avoided should the proposal be implemented, the economic advantages and disadvantages, the relationship between short-term uses of the environment and the maintenance and enhancement of long-term productivity, and any irreversible and irretrievable commitments of resources which would be involved. Where condemnation authority will be sought by the department or project sponsor under s. 32.095, Stats., the evaluation shall conform to rules, or guidelines of the department of agriculture, trade, and consumer protection for the evaluation of agricultural impacts. Secondary as well as primary consequences to the environment will be included wherever possible. This section shall also include an evaluation of the archeological, architectural and historical significance of the site and structures and of the visual impacts of the proposed action. An analysis shall also be made of the energy impacts of the proposed action.

(d) 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.

(d) Any other related analysis required under another rule, statute or federal regulation or law which does not conflict with the purpose of the EIS.

(e) A summary of comments submitted by the public or any other state, federal or local agency or tribal government on the proposed action or the department's environmental analysis.

(2) The FEIS shall be an analysis document that enables environmental and economic factors to be considered in the development of a pro-

posed action. It shall be considered by the department in the decision-making process.

(3) An 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) EIS's 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. The text of FEIS's shall normally be less than 150 pages and shall normally be less than 300 pages for proposed actions of unusual magnitude or complexity.

(5) 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.

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