

97-117-COMM 1-ENVIRON.
ANALYSIS / REDUCED

201 West Washington Avenue
P.O. Box 7970
Madison, Wisconsin 53707
(608) 266-1018

Tommy G. Thompson, Governor
William J. McCoshen, Secretary

9/9/98

Senate Chief Clerk
Room 402
1 East Main Street
Madison, Wisconsin 53703

Assembly Chief Clerk
Room 402
1 East Main Street
Madison, Wisconsin 53703

Dear Chief Clerks:

**TRANSMITTAL IN FINAL DRAFT FORM OF ADMINISTRATIVE
RULES AND REPORT**

CLEARINGHOUSE RULE NO.: 97-117

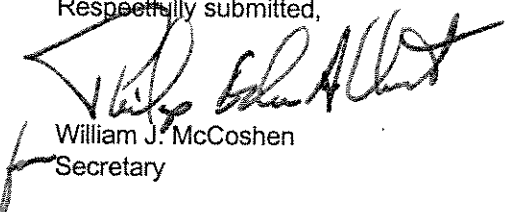
RULE NO.: Chapter Comm 1

RELATING TO: Environmental analysis and review procedures for department actions

Pursuant to section 227.19, Stats., agencies are required to submit, in triplicate, copies of the proposed administrative rules in final draft form together with a rule report and an analysis. The recommendations received from the Legislative Council are also to be submitted.

At this time, this material, together with cover letters to the President of the Senate and the Speaker of the Assembly, is being transmitted for referral to the standing committees for legislative review.

Respectfully submitted,


William J. McCoshen
Secretary

201 West Washington Avenue
P.O. Box 7970
Madison, Wisconsin 53707
(608) 266-1018

Tommy G. Thompson, Governor
William J. McCoshen, Secretary

9/9/98

Senator Fred Risser
President of the Senate
119 Martin L. King Blvd, Rm. 102
Madison, Wisconsin 53702

Representative Scott Jensen
Speaker of the Assembly
211 West, State Capitol
Madison, Wisconsin 53702

Dear Senator Risser and Representative Jensen:

NOTICE OF ADMINISTRATIVE RULES IN FINAL DRAFT FORM

CLEARINGHOUSE RULE NO.: 97-117

RULE NO.: Chapter Comm 1

RELATING TO: Environmental analysis and review procedures for department actions

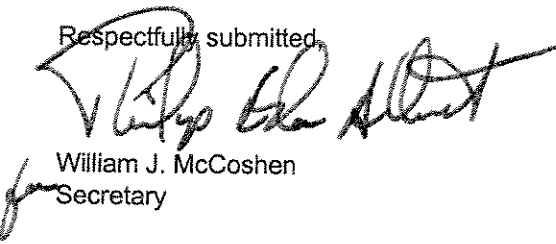
Section 227.19, Stats., requires agencies to submit proposed rules in final draft form to the presiding officer of each house for referral to the appropriate legislative standing committees.

The following information, as required by law, is being submitted to you.

1. Rules in final draft form (in triplicate).
2. Report consisting of:
 - a) Rule Report.
 - b) Public Hearing Attendance Record.
 - c) Public Hearing Comment and Agency Response Form.
 - d) Legislative Council Rules Clearinghouse Report.
 - e) Response to Legislative Council Rules Clearinghouse Report.
 - f) Fiscal Estimate.
 - g) Final Regulatory Flexibility Analysis.

If you have any questions regarding this matter, please do not hesitate to contact us.

Respectfully submitted,


William J. McCoshen
Secretary

FISCAL ESTIMATE WORKSHEET
Detailed Estimate of Annual Fiscal Effect
DOA-2047(R02/97)

ORIGINAL
 CORRECTED
 UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No. ch. Comm 1
Amendment No.

Subject

Environmental analysis and review procedures for department actions

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

II. Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
A. State Costs By Category		
State Operations - Salaries and Fringes	\$ 0	\$ -0
(FTE Position Changes)	(0 FTE)	(- 0 FTE)
State Operations - Other Costs	0	-0
Local Assistance	0	-0
Aids to Individuals or Organizations	0	-0
TOTAL State Costs By Category	\$ 0	\$ -0
B. State Costs By Source of Funds		
GPR	\$ 0	\$ -
FED	0	-0
PRO/PRS	0	-0
SEG/SEG-S	0	-0
III. State Revenues- Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)		
GPR Taxes	\$ 0	\$ -0
GPR Earned	0	-0
FED	0	-0
PRO/PRS	0	-0
SEG/SEG-S	0	-0
TOTAL State Revenues	\$ 0	\$ -0

NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
NET CHANGE IN COSTS	\$ 0	\$ 0
NET CHANGE IN REVENUES	\$ 0	\$ 0

Agency/Prepared by: (Name & Phone No.)
Commerce/Jean MacCubbin
(608)266-0955

Authorized Signature/Telephone No.

JBC 6-8476

Date

8/22/97

FISCAL ESTIMATE
DOA-2048 (R02/97)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
ch Comm 1
Amendment No. if Applicable

Subject

Environmental analysis and review procedures for department actions

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

- Increase Existing Appropriation Increase Existing Revenues
- Decrease Existing Appropriation Decrease Existing Revenues
- Create New Appropriation

- Increase Costs - May be Possible to Absorb Within Agency's Budget Yes No
- Decrease Costs

Local: No local government costs

- 1. Increase Costs
 Permissive Mandatory
- 2. Decrease Costs
 Permissive Mandatory

- 3. Increase Revenues
 Permissive Mandatory
- 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:

- Towns Villages Cities
- Counties Others _____
- School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

None.

Assumptions Used in Arriving at Fiscal Estimate

Commerce has in its employ staff for both rule making, and research, reporting and processing of EAVEIS to meet the requirements of the rule.

No new procedures are required above the requirements of those currently existing in chs. DOD 7 and ILHR 1.

Long-Range Fiscal Implications

None identified.

Agency/Prepared by: (Name & Phone No.)
Commerce/Jean M. MacCubbin
(608) 266-0955

Authorized Signature/Telephone No.

Jean M. MacCubbin 6-8976

Date

8/22/97

PUBLIC HEARING COMMENT AND AGENCY RESPONSE DEPARTMENT OF COMMERCE

DIVISION OF SAFETY AND BUILDINGS

Rule Number: Ch. Comm 1, WEPA
 Relating To: Environmental Analysis & Review Procedures

Hearing Location: Mail-in Exhibits
 Hearing Date: October 6, 1997

Commenting		Presenter, Group Represented, City, State	Exh. No.	Comments/Recommendations	Agency Response
In Sup.	For Opp. Info.				
		James D. Pardee Environmental Assessment Coordinator, WDNR Box 7921 Madison WI 53707-7921	1	<ul style="list-style-type: none"> The proposed rule needs more specifics—type list, EA content and process, EIS content. No Type I actions are listed in Table 1.11, unlike previous chapters ILHR 1 and DOD 7. Suggests a reference to s. 1.12, Stats., be added to the Analysis of Rules and s. Comm 1.01 The reference under s. Comm 1.02(1) should be to the Wisconsin Environmental Policy Act. Suggests that s. Comm 1.04(4) reference s. 1.11, Stats. Concerned about how WEPA compliance is handled for financial aid projects, s. Comm 1.10(7); i.e., lack WEPA responsibility in aid and promotion of grant-funded projects (examples given). Section Comm 1.11(2)(a) is unclear; and assumes the exemptions are WEPA review. Suggests that Table 1.11 include code reference labels. Believes that Table 1.11 is inconsistent as to the categorization of the various policy issues as to the type of actions, II versus III; example HVAC vs. Mines, Pits, and Quarries. (see subsequent comments.) 	<ul style="list-style-type: none"> The proposed rules reflect NEPA parameters. Chapters ILHR 1 and DOD 7 listed only one Type I action that was based on statutory provisions which sunset in 1987. There is no specific cross reference between ss. 1.11 and 1.12, Stats., therefore, no reference is needed. The reference will be corrected. The reference would not be appropriate within the definition and would not add any more clarity than that covered under the PURPOSE of s. Comm 1.01. An additional action type list similar to that in DOD 7 has been incorporated. Will reword to provide needed clarification. Using code references would necessitate having to make cross-referencing revisions in ch. Comm 1 every time another code is renumbered without making ch. Comm 1 obsolete; the categorization by object type (jurisdiction) and activity is preferred. The categorization of the actions reflect the nature and scope of the department's rules, oversight and statutory authority that in most cases does not involve environmental concerns.

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In	For Info.				
Sup.	Opp.				
				<ul style="list-style-type: none"> Noted that the services, plan review, evaluation, permits to operate and financial aid, for specific projects are categorized as WEPA Type III Actions and believes that an environmental evaluation may be needed for some specific projects at a service process. Relative to Table 1.11, believes that WEPA review is critical for those policies that control what kind of and where construction projects can occur. 	<ul style="list-style-type: none"> The appropriate environmental evaluation will occur at the corresponding policy action (rule-making). A 1981 State Supreme Court decision indicated that the department did not have to undertake an environmental evaluation for each "compliance" determination service, e.g. plan review. The assumption that department's policies control what kinds of construction projects can occur and where they can occur is erroneous in that the department does not have such statutory authority. Such control rests with municipalities typically under zoning powers. The amusement rides policies relate to user and operator safety concerns only. The anhydrous ammonia policies relate only to the safety concerns of frequenters and employees of such facilities. No response necessary. The electrical policies relate to only to safety concerns for the installation and use of electrical systems. The policies for the third objective relate to consumer protection issues for petroleum product specifications. No response necessary. The mine, pits and quarries policies relate only the safety concerns of frequenters and employees of such facilities and the activities
				<ul style="list-style-type: none"> Believes amusement rides policies, etc. should be Type II actions because of erosion, water quality, landscape aesthetics, land use and safety concerns. Believes anhydrous ammonia policies should be Type II actions because of wastewater, water quality, air quality and safety concerns. Agrees that building standard policies are categorized as Type II actions. Believes electrical policies should be Type II actions because of erosion, water quality, landscape aesthetics, land use and safety concerns. Believes all 3 objectives under fuel and fuel tank systems, not just the first two, could be Type II actions because of erosion, water quality, air quality, landscape aesthetics, land use and safety concerns. Agrees that HVAC standard policies are categorized as Type II actions. Believes mines, pits, and quarries policies should be Type II actions because of water quality, air quality, agricultural land loss, landscape aesthetics, reclamation, 	<ul style="list-style-type: none"> The amusement rides policies relate to user and operator safety concerns only. The anhydrous ammonia policies relate only to the safety concerns of frequenters and employees of such facilities. No response necessary. The electrical policies relate to only to safety concerns for the installation and use of electrical systems. The policies for the third objective relate to consumer protection issues for petroleum product specifications. No response necessary. The mine, pits and quarries policies relate only the safety concerns of frequenters and employees of such facilities and the activities

**PUBLIC HEARING COMMENT AND AGENCY RESPONSE
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DIVISION OF SAFETY AND BUILDINGS

Commenting In Sup.	For Opp. Info.	Exh. No.	Presenter, Group Represented, City, State	Comments/Recommendations	Agency Response
				<p>land use and safety concerns.</p> <ul style="list-style-type: none"> Believes Table 1.11 should address what kind of systems can be approved in what locations under what conditions relative to private onsite wastewater treatment policies. Believes refrigeration policies should be Type II actions because of air quality, energy and noise concerns. Believes swimming pool policies should be Type II actions because of wastewater, land use and safety concerns. Believes some administrative process policies should be Type II actions for those specific projects with potential environmental concerns. 	<p>undertaken there.</p> <ul style="list-style-type: none"> The suggestion appears to be a matter of "compliance" to another set of rules and would attempt to predict "compliance", rather than clarifying the categorization of the policy action. The refrigeration policies relate only the safety concerns of frequenters and employees exposed to such equipment and systems. The swimming policies relate only the safety concerns of users of such facilities Typical administrative process policies deal with submittal requirements such as the type of documentation or accompanying fees and do not relate to environmental concerns. A 1981 State Supreme Court decision indicated that the department did not have to undertake an environmental evaluation for each "compliance" determination service, e.g. plan review. The cited activities are basically "compliance" determinations by the department. A 1981 State Supreme Court decision indicated that the department did not have to undertake an environmental evaluation for each "compliance" determination service, e.g. plan review. The appropriate environmental evaluation will be undertaken at the corresponding policy (rule-making) activity. See previous response.
				<ul style="list-style-type: none"> Relative to the activities of plan review, evaluation, permits to operate and financial aid, believes some "jurisdictions", e.g. amusement rides, anhydrous ammonia, etc., listed in Table 1.11 are those that can have environmental consequences and may need to be categorized as Type II actions. 	
				<ul style="list-style-type: none"> Suggests the department develop thresholds for each jurisdiction to differentiate activities that are likely Type II and III actions. Suggests that plan review, evaluation services, permits to operate and financial aid decisions related to siting, 	<ul style="list-style-type: none"> See previous response.

PUBLIC HEARING COMMENT AND AGENCY RESPONSE DEPARTMENT OF COMMERCE

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Relating To: Environmental Analysis & Review Procedures	Hearing Date: October 6, 1997

DIVISION OF SAFETY AND BUILDINGS

Commenting	Presenter, Group Represented, City, State	Comments/Recommendations	Agency Response
		construction and land use should be Type II actions. • Suggests that public notices under s. Comm 1.20(1) include a "date by which public comment will be received". • Define both "preliminary EA" and "final EA". • Contends the use of "significant environmental issues" in s. Comm 1.21(2)(a) is confusing since such actions should be analyzed in an EIS, not EA. • Suggests under s. Comm 1.21(2)(b)3. that the EA description include an analysis of primary, secondary and cumulative impacts as well as associated environmental risks. • Contends pursuant to s. 1.12, Stats., that the EA under s. Comm 1.21(2)(b) should include analysis of energy resources. • Believes that a description of "gaps in environmental information" and how the department will deal with information gaps needs to be addressed in ss. Comm 1.21(2)(b) and 1.22(3)(b). • Suggests defining "draft EIS", "final EIS", and "scoping".	• Each notice will specify a date by which public comment will be received by the Department; the length of the public comment period will be established relative to the breadth and scope of a particular issue. • The term "environment assessment" is already defined by the rules and the terms "preliminary" and "final" are defined by the dictionary. No explanation is given as to the need for further clarification. • The terminology cited is not used within the definition of "EIS", and other definitions refer to "significant impacts". • The present wording of s. Comm 1.21(2)(b)3 would cover any significant impact. • Furthermore, the purpose of the EA is to serve as a decision tool of whether an EIS is warranted, not to be an abbreviated version of an EIS. • Department believes that under s. 1.12, Stats., there is no direct link to requirements under s. 1.11, Stats. • The rules reflect the NEPA guidelines for the required contents of an EA and EIS. • The term "environmental impact statement" is already defined by the rules and the terms "draft" and "final" are defined by the dictionary. The rules under s. Comm 1.22(2) delineate the purpose and the steps for the scoping process. No explanation is given as to the need for further clarification. • The rule will be clarified.
		• Suggests the clarification that scoping requirements are for a	•

**PUBLIC HEARING COMMENT AND AGENCY RESPONSE
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Hearing Location: Mail-in Exhibits
Hearing Date: October 6, 1997

DIVISION OF SAFETY AND BUILDINGS

Rule Number: Ch. Comm 1, WEPA
Relating To: Environmental Analysis & Review Procedures

Commenting		Exh. No.	Presenter, Group Represented, City, State	Comments/Recommendations	Agency Response
In Sup.	For Opp.				
				<ul style="list-style-type: none"> draft EIS in s. Comm 1.22(2). Believes that s. Comm 1.11(2)(b)3. is vague; which would allow a scoping meeting to substitute for an EIS hearing. Suggests under s. Comm 1.22(2)(b)3. that the EIS description include an analysis of primary, secondary and cumulative impacts as well as associated environmental risks. Contends pursuant to s. 1.12, Stats., that the EIS under s. Comm 1.21(3)(b) should include analysis of energy resources. Believes that the EIS under s. Comm 1.22(3)(b) should include a description of environmental information gaps. Suggests that s. Comm 1.22(6) should allow 15 days after the public hearing for of public comment. Sections Comm 1.22(10)(c)2. and 1.22(10)(c)7. are redundant. 	<ul style="list-style-type: none"> It is assumed that this comment is relative to s. Comm 1.22(2)(b)3. The rule reflects NEPA parameters, and as worded does not eliminate other notice or hearing requirements. The present wording of s. Comm 1.21(2)(b)3 would cover any and all significant impacts. Department believes that under s. 1.12, Stats., there is no direct link to requirements under s. 1.11, Stats. The rules reflect the NEPA guidelines for the required contents of an EA and EIS. The rule establishes a minimum comment period. Each notice will specify a date by which public comment will be received, the length of the public comment period will be established by the Department relative to the breathe and scope of a particular issue. Agreed, will revise.

RULES in FINAL DRAFT FORM

Rule No.: Chapter Comm 1

Relating to: Environmental analysis and review procedures for department actions

Clearinghouse Rule No.: 97-117

The Wisconsin Department of Commerce proposes an order to repeal ch. Comm 107; and to create ch. Comm 1, relating to environmental analysis and review procedures for department actions.

ANALYSIS OF RULES

Statutory authority: ss. 101.02 (1), 560.01 and 560.02.

Statutes interpreted: s. 1.11.

Pursuant to s. 1.11, Stats., all state agencies are required to prepare for all major actions significantly affecting the quality of the human environment a detailed statement describing the environmental impacts of and alternatives to proposed actions.

The proposed rules under ch. Comm 1 establish policies and procedures to be used by the Department of Commerce in the implementation of s. 1.11, Stats., including a classification of departmental actions with regard to their need for an environmental impact statement, the establishment of processes and procedures for creating environmental documents, and an opportunity for public input. The proposed rules follow the guidelines issued by the U.S. Council on Environmental Quality.

The proposed rules reflect the actions undertaken by the Department of Commerce. The Department of Commerce was created in 1996 with the enactment of 1995 Wisconsin Act 27 which combined portions of the then Department of Development and the Department of Industry, Labor and Human Relations. The current rules addressing the department's responsibilities for analyzing environmental impacts can be found within chapters Comm 107 and ILHR 1. Chapter ILHR 1 will be eventually revised, and possibly replaced, when the Department of Workforce Development completes its review of the rules relative to the programs and actions under its authority.

SECTION 1. Chapter Comm 1 is created to read:

Chapter Comm 1
Environmental Analysis and Review Procedures for Department Actions

Comm 1.01 PURPOSE. The purpose of this chapter is to establish policies and procedures to be used by the department in the implementation of s. 1.11, Stats. This chapter:

- (1) Establishes a policy to ensure departmental consideration of the environmental impacts of its policies, plans and programs upon the human environment;
- (2) Establishes a classification of departmental actions with regard to their need for an environmental impact statement;
- (3) Establishes a process and procedures for creating environmental documents;
- (4) Provides an opportunity for public input on environmental documents; and
- (5) Provides procedures to guide inter-agency interactions in the development of environmental documents.

Comm 1.02 POLICY. (1) The department acknowledges the Wisconsin environmental policy act, s. 1.11, Stats., as a legal obligation to evaluate and consider potential environmental impacts of its proposed actions. This obligation is shared by all divisions of the department.

(2) In carrying out its responsibility under s. 1.11, Stats., the department shall substantially follow the guidelines issued as rules by the United States council on environmental quality at 40 CFR Parts 1500 through 1508 (1987), as amended July 1, 1990, and its addenda.

(3) The department will implement procedures that will make the environmental analysis process useful to decision makers and the public. Environmental impact statements shall be concise, clear, and to the point. The statements shall emphasize major environmental issues relating to the proposed action and identify alternatives as necessary to inform department decision makers and the public.

(4) Public involvement, interagency coordination and consultation, and a systematic interdisciplinary approach to analysis of the issues shall be essential parts of the process of evaluating and considering environmental impacts.

(5) The department's decisions on proposed actions shall consider the findings of environmental documents.

Comm 1.03 APPLICABILITY. This chapter shall apply to an action initiated or undertaken by the department under its statutory authority which may significantly and adversely affect the quality of the human environment.

Comm 1.04 DEFINITIONS. In this chapter:

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

(2) "Environmental assessment" means a concise document which provides sufficient evidence and analysis to determine whether to prepare an environmental impact statement or a finding of no significant impact.

(3) "Environmental document" means an environmental assessment, a finding of no significant impact, an environmental impact statement, notice of intent, or record of decision.

(4) "Environmental impact statement" means a detailed written report which describes the need for the action, the alternatives to be considered, the affected environment and the environmental impact.

(5) "Finding of no significant impact" means a document briefly presenting the reasons why an action not categorically excluded will not have a significant adverse impact on the human environment.

(6) "Human environment" means the natural and physical surroundings and the relationship of people to those surroundings.

(7) "Impact" means a reasonable and foreseeable effect relative to the human environment, including ecological, aesthetic, historic, cultural, economic, social or health effects.

(8) "Secretary" means the secretary of the department of commerce.

(9) "Significant impact" means considerable and important adverse effect on the human environment.

Comm 1.05 ADMINISTRATION. (1) (a) Except as provided in par. (b), before undertaking an action specified in Tables 1.11-1 and 1.11-2 the department shall determine the need for preparing an environmental assessment or environmental impact statement.

(b) An environmental assessment, environmental impact statement or any other type of environmental analysis is not required to be prepared for rule-making actions initiated under s. 227.24, Stats.

(c) The process to analyze or determine environmental impacts, if required under s. Comm 1.11 for actions specified in s. Comm 1.10 (2) to (9), shall be undertaken at the time of rule-making that establishes or revises the procedures or process for the particular action.

(2) The department may:

(a) Prepare an environmental assessment or environmental impact statement itself;

(b) Prepare an environmental assessment or environmental impact statement jointly with other agencies which may have concurrent authority; or

(c) Adopt an environmental assessment or environmental impact statement or any portion of an environmental assessment or environmental impact statement prepared by others after reviewing and determining that the environmental assessment or environmental impact statement meets the requirements of this chapter with respect to content and public participation.

Comm 1.10 ACTION CATEGORIES. For the purpose of this chapter, the department shall undertake or initiate the following actions relating to the activities listed in Tables 1.11-1 and 1.11-2:

(1) Policy development and implementation which includes proposing legislation or proposing and adopting administrative rules that implement policy, principles and objectives which set limits for the actions or the results of actions of others.

(2) Credentialing which authorizes individuals or businesses to undertake specific actions dependent upon the individuals' or businesses' qualifications or registrations.

(3) Plan review which involves the evaluation of plan documents, reports or data, including petitions for variance, to determine compliance with department policies, principles and objectives.

(4) Evaluation services which involves the assessment of products or methods and their intended functions or results and the determination that the function or results comply with department policies, principles and objectives.

(5) Permits to operate which recognize or authorize individuals or businesses to use equipment or devices contingent upon compliance with department policies, principles and objectives.

(6) Consultation and training which involves providing information and advice through various mediums to enable individuals or businesses to comply with department policies, principles and objectives.

(7) Financial aid which involves providing funding or reimbursement to eligible individuals, groups, businesses or communities.

(8) Investigation which involves the evaluation of objects, the actions of others or the results of the actions of others and determining whether the object, action or results comply with department policies, principles and objectives.

(9) Auditing which involves reviewing the use of financial aid or evaluating the actions of others charged with the responsibility of administering or enforcing department policies, principles and objectives.

Comm 1.11 ACTION TYPES. (1) (a) Except as provided in sub. (2), Tables 1.11-1 and 1.11-2 specify the environmental action type for actions undertaken by the department.

(b) 1. An environmental type I action shall normally require the preparation of an environmental impact statement in accordance with s. Comm 1.22.

2. An environmental type II action indicates that an action cannot be categorized as either a environmental type I or type III action without additional information and shall normally require the preparation of an environment assessment in accordance with s. Comm 1.21.

3. An environmental type III action shall normally:

- a. Not require the preparation of an environmental impact statement or environmental assessment;
- b. Not require the need for additional environmental analysis; and
- c. Require a record of decision indicating a categorical exclusion.

(2) No environmental analysis shall be undertaken by the department for any of the following:

- (a) Actions exempted by statute.
- (b) Emergency actions, including those under s. 227.24, Stats., to protect public health, safety, or welfare.
- (c) Ancillary activities which are part of a routine series of related department actions.

(3) A proposed action to be undertaken by the department which is not described under s. Comm 1.10, Table 1.11-1 or Table 1.11-2 shall be evaluated as to its environmental type and treated accordingly.

Table 1.11-1

Department Activities	Jurisdiction	Objectives	Environmental Action Type
Policy Development and Implementation	Amusement rides, tramways, lifts and tows	Establish design, construction, erection, operation and maintenance standards for public safety.	III
	Anhydrous ammonia systems	Establish design, construction, operation and maintenance standards for public safety.	III
	Buildings	Establish design, construction and maintenance standards for public safety and health.	III
		Establish soil erosion design, operation and maintenance standards for public health.	II
		Establish energy usage standards for future health and comfort relative to buildings.	II
		Establish sanitation design and usage standards for public health and comfort.	III
		Establish accessible/usage standards for the physically disabled.	III
	Electrical systems	Establish design and installation standards for public safety.	III
		Establish design and illumination usage standards for public safety.	III
	Elevators	Establish design, construction, erection, operation and maintenance standards for public safety.	III
		Establish accessible/usage standards for the physically disabled.	III

Table 1.11-1 cont'd

Department Activities	Jurisdiction	Objectives	Environmental Action Type
Policy Development and Implementation	Fuels and fuel tank systems	Establish design, construction, operation and maintenance standards for public safety.	III
		Establish cleanup operation standards for public health, and groundwater and surface water protection.	II
		Establish product quality standards for consumer protection.	III
	HVAC systems	Establish construction, installation, operation and maintenance standards for public safety, health and comfort.	II
		Establish energy efficiency standards for future health and comfort relative to equipment.	II
	Mines, pits, quarries and explosives	Establish operation and maintenance standards for public safety.	III
		Establish noise operation standards for public safety and comfort.	II
	Plumbing systems	Establish design, installation, operation and maintenance standards for public safety and health relative to drain systems, vent systems and water supply systems.	II
		Establishment wastewater recycling standards for public health relative to private onsite wastewater treatment systems.	II
	Pressure vessels	Establish construction, installation, operation and maintenance standards for public safety.	III
	Public employe safety	Establish operational process and procedure standards for public employe safety and health.	III
	Refrigeration systems	Establish construction, installation, operation and maintenance standards for public safety.	II

Table 1.11-1 cont'd

Department Activities	Jurisdiction	Objectives	Environmental Action Type
Policy Development and Implementation	Swimming pools	Establish design, construction, operation and maintenance standards for public safety and health.	III
	Individuals	Establish knowledge, skills and experience qualification standards for public safety and health relative to obtaining trade and occupational credentials.	III
	Businesses	Establish qualification or eligibility standards for obtaining credentials.	III
	Administrative processes	Establish service delivery procedures and processes for credentialing, plan review, evaluation services, permits to operate, financial aid, inspection and consultation and training.	III
		Establish eligibility standards for obtaining financial aid relative to fuel tank systems and private onsite wastewater treatment systems.	II
Credentialing	Individuals and businesses	Evaluate applications documenting and communicating compliance or deficiencies relative to established qualification or registration standards.	III
Plan Review	Amusement rides, tramways, lifts and tows, Anhydrous ammonia systems, Buildings, Electrical systems, Elevators, Fuel tank systems, HVAC systems, Plumbing systems, Pressure vessels, Swimming pools	Evaluate proposed projects documenting and communicating compliance, discrepancies, deficiencies or inconsistencies relative to established design, construction, installation, operation, maintenance and usage standards.	III

Table 1.11-1 cont'd

Department Activities	Jurisdiction	Objectives	Environmental Action Type
Evaluation Services	Amusement rides, tramways, lifts and tows, Anhydrous ammonia systems, Buildings, Electrical systems, Elevators, Fuels, Fuel tank systems, HVAC systems, Plumbing systems, Pressure vessels, Swimming pools	Evaluate proposed products documenting and communicating compliance, discrepancies, deficiencies or inconsistencies relative to established design, manufacturing and operation standards.	III
Permits to Operate	Amusement rides, tramways, lifts and tows, Anhydrous ammonia systems, Buildings, Electrical systems, Elevators, Fuel tank systems, HVAC systems, Plumbing systems, Pressure tanks, Swimming pools	Evaluate applications documenting and communicating compliance or deficiencies relative to established qualification standards.	III

Table 1.11-1 cont'd

Department Activities	Jurisdiction	Objectives	Environmental Action Type
Consultation and Training	Amusement rides, tramways, lifts and tows, Anhydrous ammonia systems, Buildings, Electrical systems, Elevators, Employee safety, Fuels, Fuel tank systems, HVAC systems, Mines, pit, quarries and explosives, Plumbing systems, Pressure vessels, Swimming pools, Credentialing, Plan review, Evaluation services, Permits to operate, Consulting and training, Financial aid, Investigations, Auditing	Provide or respond to inquires relative to standards or administrative processes.	III
Financial Aid	Private onsite wastewater treatment systems, Fuel tank systems	Evaluate applications documenting and communicating compliance or deficiencies relative to established qualification standards.	III

Table 1.11-1 cont'd

Department Activities	Jurisdiction	Objectives	Environmental Action Type
Investigation	Individuals and businesses	Evaluate the activities and actions of individuals or businesses documenting and communicating compliance, discrepancies, deficiencies or inconsistencies relative to established credentialing standards or statutes.	III
	Amusement rides, tramways, lifts and tows, Anhydrous ammonia systems, Buildings, Electrical systems, Elevators, Employee safety, Fuels, Fuel tank systems, HVAC systems, Mines, pits, quarries and explosives, Plumbing systems, Pressure vessels, Swimming pools	Evaluate objects and sites documenting and communicating compliance, discrepancies, deficiencies or inconsistencies relative to established design, construction, installation, operation, maintenance and usage standards.	III
Auditing	Credentialing, Plan review, Evaluation services, Permits to operate, Consulting and training, Financial aid, Investigations	Evaluate the efficiency and effectiveness of the service delivery procedures and processes provided by the department's partners and of the use of financial aid funds.	III

Table 1.11-2

Department Activities	Action Identification	Description	Environmental Action Type
Facilities Development	(none)		
Facility and Maintenance Operations	(none)		
Financial Assistance	Administration of state and federal funds to businesses, local governments, non-profit organizations, regional planning commissions and individuals. (Other than the Financial Aid activities described in Table 1.11-1.)	<ul style="list-style-type: none"> • Requires compliance with federal environmental review by applicant or recipient: <ul style="list-style-type: none"> ▪ The department exercises no discretion in administering funds. III ▪ The department exercises some discretion in administering funds but is not the sole decision-maker. III ▪ The department exercises some discretion in administering funds and may involve a major action. II 	
		<ul style="list-style-type: none"> • No requirement for federal environmental review: <ul style="list-style-type: none"> ▪ Funding for rehabilitation of existing structures: <ul style="list-style-type: none"> – Rehabilitation involves all or a major portion of an existing properties and involves rezoning or a conditional use permit. II – Rehabilitation involves all or a major portion of an existing properties and does not require rezoning or a conditional use permit. III ▪ Funding for new development and may involve a major action. II ▪ Funding for planning and related activities. III 	

Table 1.11-2 cont'd

Department Activities	Action Identification	Description	Environmental Action Type
Policy Recommendations	Formulation of major programs, plans, policies and legislation, including budget proposals, directly affecting the economy and communities for which the department has primary implementation authority. (Other than the Policy Development and Implementation activities described in Table 1.11-1.)		II
	Provide technical assistance and advice on projects, plans, policies and legislation related to economic and community development.		III

Comm 1.20 PUBLIC NOTICE. (1) The department shall provide public notice when the following environmental documents are available for public review:

- (a) A preliminary environmental assessment;
- (b) A final environmental assessment, except as provided under s. Comm 1.21 (1) (c).
- (c) A notice of intent to prepare an environmental impact statement;
- (d) A draft environmental impact statement;
- (e) A final environmental impact statement; and
- (f) A record of decision relative to an environmental assessment or environmental impact statement.

(2) The public notice of the availability of an environmental document shall include at least the following:

- (a) The type of environmental document;
- (b) The date the document will be available to the public;
- (c) The name of the proposed action;
- (d) A brief description of the proposed action; and
- (e) The name and address of a contact within the department who can receive comments and respond to questions relative to the environmental document.

(3) The department shall provide public notice when a public hearing is to be held on an environmental impact statement under s. Comm 1.22 (8).

(4) Public notice of the availability of environmental documents or a public hearing for an environmental impact statement may be combined with public notice of other required public participation activities related to the proposed action.

(5) Public notice of the availability of environmental documents and the public hearing for an environmental impact statement shall be published as a class 1 notice under ch. 985, Stats., in:

- (a) The official state newspaper for a proposed action which has a statewide impact; and
- (b) A newspaper covering the affected area for a proposed action which does not have a statewide impact.

Comm 1.21 ENVIRONMENTAL ASSESSMENTS. (1) GENERAL. (a) An environmental assessment shall be prepared in two steps, consisting of a preliminary environmental assessment and a final environmental assessment.

(b) If, during the preparation of a preliminary or final environmental assessment, the department determines that a proposed action would have a significant impact on the human environment, the department shall discontinue preparing the environmental assessment and issue a notice of intent to prepare an environmental impact statement.

(c) The department shall consider a preliminary environmental assessment as a final environmental assessment without further public notice under s. Comm 1.20, provided there are no revisions or supplements made to the preliminary environmental assessment.

(2) CONTENTS. (a) An environmental assessment shall address the significant environmental issues relevant to a proposed action.

(b) An environmental assessment shall address all of the following:

1. A description of the proposed action, including the purpose or need for the action.
2. A description of reasonable alternative actions to the proposed action, including the alternative of taking no action.
3. A description of the possible environmental impacts of the proposed action and alternatives.
4. Identification of persons and agencies consulted relative to the preparation of the environmental assessment.
5. A preliminary recommendation on whether the proposed action warrants the preparation of an environmental impact statement.

(3) RECORD OF DECISION. (a) The department shall decide whether the evidence in an environmental assessment indicates that a proposed action may have a significant impact on the human environment.

(b) 1. If the department determines that the action will have no significant impact on the human environment, the department shall prepare a finding of no significant impact.

2. A finding of no significant impact shall include a summary of the reasons for the finding.
3. A finding of no significant impact shall be filed with the secretary or his or her designee and shall be accompanied by:
 - a. A copy of the environmental assessment; and
 - b. A summary of public comments received, if any, relative to the environmental assessment.

(c) If the department determines that the action may have a significant impact on the human environment, the department shall provide public notice of intent to prepare an environmental impact statement in accordance with s. Comm 1.20.

Comm 1.22 ENVIRONMENTAL IMPACT STATEMENTS. (1) PROCESS. The preparation of an environmental impact statement shall involve at least all of the following.

- (a) Public notice of intent to prepare an environmental impact statement.
- (b) A scoping process.
- (c) A draft environmental impact statement and a final environmental impact statement.
- (d) Public notice of the availability of environmental documents in accordance with s. Comm 1.20.
- (e) At least one public hearing.

(2) SCOPING. (a) Before preparing an environmental impact statement the department shall use a scoping process to determine all of the following.

- 1. The environmental issues to be addressed in depth in the environmental impact statement.
- 2. Environmental issues which are not significant or which have been covered in previous environmental analyses.
- 3. A timeline for the preparation of the statement and for public comment.

(b) 1. The scoping process shall include, to the extent possible, other affected or interested individuals and agencies.

2. The department may utilize meetings, hearings, workshops, surveys, questionnaires, committees, or other methods or activities to gather public input for the scoping process.

3. The department may integrate any or all of the scoping process activities with other required public participation activities related to the proposed action.

(3) CONTENTS. (a) An environmental impact statement shall describe the proposed action and identify the environmental consequences of the action.

(b) An environmental impact statement shall address all of the following:

- 1. A description of the proposed action, including the purpose or need for the action.
- 2. A description of reasonable alternative actions to the proposed action, including the alternative of taking no action.

3. A description of the possible environmental impacts of the proposed action and alternatives.

4. An identification of any adverse environmental effects which cannot be avoided should the action be undertaken.

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

6. An identification of any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

7. An identification of any beneficial aspects of the proposed action.

8. An identification of any economic advantages and disadvantages of the proposed action.

(4) **FORMAT.** The department shall prepare an environmental impact statement in a format which facilitates good analysis and clear presentation.

(5) **DISTRIBUTION.** The department shall provide a copy of an environmental impact statement to at least all of the following:

(a) The office of the governor.

(b) The secretary of the department of natural resources.

(c) Any individual or organization that has requested a copy.

(6) **PUBLIC COMMENT PERIOD.** (a) The department shall establish a public comment period for a draft environmental impact statement.

(b) The public comment period for a draft environmental impact statement shall extend not less than 30 days from the document availability date under s. Comm 1.20. (2) (b)

(7) **PUBLIC HEARING.** (a) The department shall hold at least one public hearing on each draft environmental impact statement.

(b) The department shall provide public notice in accordance with s. Comm 1.20 (5) at least 30 days prior to the date of the first public hearing to be held for a draft environmental impact statement.

(c) The department shall conduct the public hearing for a draft environmental impact statement in accordance with s. 227.18, Stats.

(8) **COMMENT REVIEW.** (a) After the public hearing and comment period for a draft environmental impact statement, the department shall summarize the comments received.

(b) The department shall prepare a written response to the summarized comments received on the draft environmental impact statement.

(9) REVISION PROCEDURES. Before issuing a record of decision under sub. (10) (b), the department may revise, including the use of a supplement or addendum, all or part of the draft or final environmental impact statement.

(10) RECORD OF DECISION. (a) After a final environmental impact statement has been completed, the department shall prepare and file a written record of decision on a proposed action.

(b) The written record of decision following the completion of an environmental impact statement shall include all of the following.

1. A statement of the decision.
2. The identification of all alternatives considered.
3. The reason for choosing an alternative action.

(c) Upon completion of a final environmental impact statement, the department shall file in the office of the secretary a copy of all of the following.

1. The written record of decision.
2. The final version of the environmental impact statement.
3. The notice of public hearing for the draft environmental impact statement.
4. The summary of public hearing comments, if any.
5. The department's response to the public hearing comments.
6. The draft environmental impact statement.

SECTION 2. Chapter Comm 107 is repealed.

(End)

EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro.), Stats., these rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register.

RULE REPORT

Department of Commerce

Rule No.: Chapter Comm 1

Relating to: Environmental analysis and review procedures for department actions

Agency contact person for substantive questions:

Name Jim Quast

Title Program Manager

Telephone Number (608) 266-9292

Agency contact person for internal processing:

Name Jean M. MacCubbin

Title Environmental Code Consultant

Telephone Number (608) 266-0955

1. Agency statutory authority under which the agency intends to promulgate the rule(s).
Sections 101.02(1), 560.01 and 560.02, Stats. in implementing s. 1.11, Stats.
2. Citation of federal regulations which require adoption or which are relevant to the proposed rule(s).
The proposed rules follow the guidelines issued by the U.S. Council on Environmental Quality (CEQ); 40 CFR parts 1500 through 1508 (1987), as amended July 1, 1990.
3. Citation of court decisions which are applicable to the proposed rule(s).
None known.

4. Description of the proposed rule(s).

Pursuant to s. 1.11, Stats., all state agencies are required to prepare for all major actions significantly affecting the quality of the human environment a detailed statement describing the environmental impacts of and alternatives to proposed actions.

The proposed rules under ch. Comm 1 establish policies and procedures to be used by the Department of Commerce in the implementation of s. 1.11, Stats., including a classification of departmental actions with regard to their need for an environmental impact statement, the establishment of processes and procedures for creating environmental documents, and an opportunity for public input.

5. Reason for the proposed rule(s).

The proposed rules reflect the actions undertaken by the Department of Commerce. The Department of Commerce was created in 1996 with the enactment of 1995 Wisconsin Act 27 which combined portions of the then Department of Development and the Department of Industry, Labor and Human Relations. The current rules addressing the department's responsibilities for analyzing environmental impacts can be found within chapters DOD 7 and ILHR 1. Chapter ILHR 1 will be eventually revised, and possibly replaced, when the Department of Workforce Development completes its review of the rules relative to the programs and actions under its authority.

FINAL REGULATORY FLEXIBILITY ANALYSIS

Department of Commerce

CLEARINGHOUSE RULE NO.: 97-117

RULE NO.: Chapter Comm 1

RELATING TO: Environmental analysis and review procedures for department actions

Final regulatory flexibility analysis not required. (Statement of determination required.)

1. Reason for including or failing to include the following methods for reducing impact of the rule on small businesses: Less stringent compliance or reporting requirements; less stringent schedules or deadlines for compliance or reporting requirements; simplification of compliance or reporting requirements; establishment of performance standards to replace design or operational standards; exemption from any or all requirements.

Rule does not affect small business; rule pertains to internal policies and procedures in assessing and analyzing environmental impacts to department actions.

2. Issues raised by small businesses during hearings, changes in proposed rules as a result of comments by small businesses and reasons for rejecting any alternatives suggested by small businesses.

None.

(Continued on reverse side)

3. Nature and estimated cost of preparation of any reports by small businesses.

None.

4. Nature and estimated cost of other measures and investments required of small businesses.

None.

5. Additional cost to agency of administering or enforcing a rule which includes any of the methods in 1. for reducing impact on small businesses.

Not applicable.

6. Impact on public health, safety and welfare caused by including any of the methods in 1. for reducing impact on small businesses.

Not applicable.

RESPONSE TO LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT

Department of Commerce

CLEARINGHOUSE RULE NO.: 97-117

RULE NO.: Chapter Comm 1

RELATING TO: Environmental analysis and review procedures for department actions

Agency contact person for substantive questions.

Name: Jim Quast

Title: Program Manager

Telephone No. 608-266-9292

Legislative Council report recommendations accepted in whole.

Yes

No

1. Review of statutory authority (s.227.15(2)(a))
 - a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached

2. Review of rules for form, style and placement in administrative code (s.227.15(2)(c))
 - a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached

(Continued on reverse side)

3. Review rules for conflict with or duplication of existing rules (s.227.15(2)(d))

- a. Accepted
- b. Accepted in part
- c. Rejected
- d. Comments attached

4. Review rules for adequate references to related statutes, rules and forms (s.227.15(2)(e))

- a. Accepted
- b. Accepted in part
- c. Rejected
- d. Comments attached

5. Review language of rules for clarity, grammar, punctuation and plainness (s.227.15(2)(f))

- a. Accepted
- b. Accepted in part
- c. Rejected
- d. Comments attached

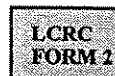
6. Review rules for potential conflicts with, and comparability to, related federal regulations (s.227.15(2)(g))

- a. Accepted
- b. Accepted in part
- c. Rejected
- d. Comments attached

7. Review rules for permit action deadline (s.227.15(2)(h))

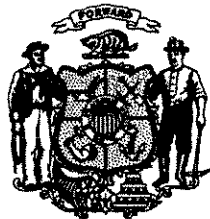
- a. Accepted
- b. Accepted in part
- c. Rejected
- d. Comments attached

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 97-117

AN ORDER to repeal chapter DOD 7; and to create chapter Comm 1, relating to environmental analysis and review procedures for department actions.

Submitted by **DEPARTMENT OF COMMERCE**

09-02-97 RECEIVED BY LEGISLATIVE COUNCIL.

09-22-97 REPORT SENT TO AGENCY.

RS:DF;jt;kjf

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

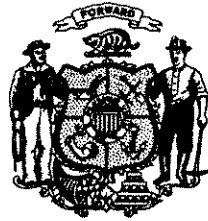
Comment Attached YES NO

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CLEARINGHOUSE RULE 97-117

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 October 1994.]

2. Form, Style and Placement in Administrative Code

a. In s. Comm 1.02 (1) and (2), the phrases "Environmental Protection Act" and "Council on Environmental Quality" should be shown all in lower case.

b. In s. Comm 1.02 (2), the Department of Commerce is required to substantially follow guidelines issued as rules by the U.S. Council on Environmental Quality at 40 C.F.R. Parts 1500 through 1508 (1987), as amended July 1, 1990. This requirement is imposed by s. 1.11 (2) (c) (intro.), Stats. However, the statutory requirement is not limited by a particular date. Consequently, the department should ensure that the rules it follows are the rules most recently promulgated by the U.S. Council on Environmental Quality.

c. In s. Comm 1.05 (1) (a), substitute "specified" for "as described"; and in par. (1) (c), substitute "specified" for "described."

d. In s. Comm 1.05 (1) (b), the phrase "shall not be required to be prepared" should be replaced by the phrase "is not required."

e. In s. Comm 1.10 (intro.), substitute "shall undertake" for "undertakes or initiates."

f. In s. Comm 1.11 (1) (a), substitute "specifies" for "shall delineate."

g. In s. Comm 1.11 (1) (b) 1., 2. and 3. (intro.), delete "normally." The use of the word "normally" is vague and gives no guidance.

- h. In s. Comm 1.11 (2) (intro.), the word “shall” should be replaced by the word “may.”
- i. In s. Comm 1.21 (2) (b) 5., delete “or not”; and in sub. (3) (b) 3., after “or” insert “his or her.”
- j. In s. Comm 1.22 (5) (intro.), the phrase “all of” should be inserted before the phrase “the following.”
- k. In s. Comm 1.22 (9), delete “a portion of or the entire” and substitute “all or part of the.”

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

- a. In s. Comm 1.02 (2), insert a comma after “(1987).”
- b. In s. Comm 1.05 (1) (c), delete the comma after “s. Comm 1.11” and insert a comma after “s. Comm 1.10 (2) to (10).”
- c. In s. Comm 1.10 (intro.), it would appear that the “following actions” enumerated in subs. (1) to (9) are not, in fact, “delineated” in Table 1.11. Therefore, some other language should be substituted for the term “as delineated.” For example, the words “in connection with the activities specified” could be substituted.
- d. In s. Comm 1.10 (8), the meaning of the words “object” and “objects” is unclear and should be clarified. Perhaps these words could be defined in s. Comm 1.04 or would the words “goal” and “goals” be more accurate?
- e. Section Comm 1.11 (1) (b) 1. should conclude with a period.
- f. In s. Comm 1.11 (1) (b) 3. c., delete “Result in” and substitute “Require.”
- g. Section Comm 1.11 (2) (c) does not adequately describe the types of “ancillary activities” that do not require an environmental analysis. The rule should include some examples of these types of departmental actions.
- h. In s. Comm 1.22 (1) (b) and (2), the meaning of the term “scoping process” is unclear and should not be used without further clarification. Perhaps the term could be defined in s. Comm 1.04, or some other term, such as “investigation and fact finding process,” could be substituted.