

Trans 400.08 Categorization of department actions.

(1) Based on federal regulations and past experience with analysis of similar actions the following are categorized as EIS, EA, ER or CE:

(a) *EIS – Environmental Impact Statement.* The federal highway administration regulations at 23 CFR 771.115(a) April 1, 1998, federal aviation administration order 5050.4A, chapter 3, paragraph 21, October 8, 1985, identify types of federally funded actions which require the preparation of an environmental impact statement.

Note: The National Environmental Policy Act (NEPA) requires the federal government to prepare environmental documentation for major federal actions. The Wisconsin Department of Transportation prepares the federal environmental documentation for review and approval by the federal government of actions for which federal funds are to be used by the Department. The requirements for federally funded actions are followed by the Department when federal funds are involved. These federally funded actions are also actions of the Department to which the Wisconsin Environmental Policy Act (WEPA) applies. Finally, when the Department pursues an action for which only State funds are involved, NEPA does not apply, but WEPA still applies. The intent of this chapter is to direct the Department to follow NEPA and its implementing regulations for both NEPA and WEPA purposes when federal funds are involved in the proposed action. The intent is to apply WEPA and its implementing rules in this chapter when only State funds are involved in the proposed actions, but to make the WEPA implementing rules track the federal law and federal regulations as closely as possible.

The following are examples of department major actions that require the preparation of an environmental impact statement:

1. Highways and transit.
 - a. Construction of a new controlled access freeway.
 - b. Construction of a new highway project of 4 or more lanes on a new location.
 - c. New construction or extension of fixed rail transit facilities including rapid rail, light rail, commuter rail, and automated guideway transit.
 - d. New construction or extension of a separate roadway for buses or high occupancy vehicles not located within an existing highway facility.
2. Airports.
 - a. First time airport layout plan approval or airport location approval for a commercial service airport located in a standard metropolitan statistical area.
 - b. Federal financial participation in, or airport layout plan approval of, a new runway capable of handling air carrier aircraft at a commercial service airport in a standard metropolitan statistical area.
3. Railroads.
 - a. Construction of a new major railroad.
 - b. Construction of new major facilities to handle freight, maintenance or passengers.

Note: The federal railroad administration regulation at 49 CFR 266.19, October 1, 1997, generally identifies actions that do not require an environmental impact statement.

(b) *EA – Environmental Assessment.* EA procedures apply to actions for which the significance of the environmental impacts is not clearly established and require the preparation of an environmental assessment to make that determination. The federal highway administration regulations at 23 CFR 771.115(c) April 1, 1998, and the federal aviation order 5050.4A, chapter 3, paragraph 22, October 8, 1985 identify the types of federal actions that require the preparation of an environmental assessment. Examples of the department's actions that are required to follow the EA procedure are as follows:

1. Highways and transit. Highways and transit actions that are not EIS or CE actions are required to follow EA procedures. This category requires the preparation of an environmental assessment to determine the appropriate environmental document required, unless it appears an ER would be more appropriate.
2. Airports. An airport layout plan approval of the following types of actions shall be subject to the analysis of an environmental assessment and subsequent decision as to whether to prepare an environmental impact statement or a finding of no significant impact:
 - a. Airport location.
 - b. New runway.
 - c. Major runway extension.

- d. Runway strengthening which would result in a 1.5 Ldn or greater increase in noise over any noise sensitive area located within the 65 Ldn contour.
 - e. Construction or relocation of entrance or service road connections to public roads which adversely affect the capacity of such public roads.
 - f. Land acquisition associated with any of the items in subds. 2.a. to e. and land acquisition which results in relocation of residential units when there is evidence of insufficient comparable replacement dwellings or major disruption of business activities.
 - g. Establishment or relocation of an instrument landing system, or an approach lighting system.
 - h. An airport development action that affects property of state or local historical, architectural, archeological, or cultural significance; requires land acquisition of over 5 acres from a farm operation; affects wetlands, coastal zones, or floodplains; or affects endangered or threatened species.
3. Administrative facilities. Construction of a new or replacement administrative building, including an office building, state patrol academy, driver licensing and testing station, state patrol communications building, or other similar facility, at a new location.
 4. Financial assistance. This provision applies to issuance as well as acceptance of the following grants by the department:
 - a. Financial grant for railroad construction action that may require an EIS.
 - b. Financial grant for construction of new port facilities.
 - c. Financial grant for construction of a new disposal facility for harbor dredge material.
 - d. Financial grant for dredging of material for the purpose of expanding an existing harbor.
 - e. Financial grant for disposal of contaminated harbor dredge material into a new disposal facility.
 5. Policy, contract, standard and specification changes.
 - a. Change in policy for nonhighway use of highway right-of-way or non-railroad use of railroad right-of-way by utility companies, or for access to public roads or private residential or commercial driveways or farm crossings.
 - b. Change in policy for transport of hazardous cargo, such as explosives, hazardous wastes, toxins, radioactive material, or any other similar cargo.
 - c. Change in policy for the maintenance program relating to the use of deicing materials, or to the use of pesticides, herbicides or insecticides within the right-of-way, or to the use of cutback asphalt or creosoted ties, or other similar materials.
 - d. Change in policy for acquisition of scenic easements.
 6. System planning. Publication or adoption of a system plan.
Preparation of a SEE or EA for a system plan is discretionary.

(c) *ER – Environmental Report.* ER procedures apply to actions identified in 23 CFR 771.117(d), April 1, 1998, and federal aviation administration order 5050.4A, chapter 3, paragraph 23a., October 8, 1985. ER actions require documentation with an environmental report. The environmental report shall demonstrate that the action meets the criteria for a categorical exclusion by demonstrating that specific conditions or criteria for the action have been addressed and that significant environmental effects will not result. Examples of ER actions to which ER procedures apply are as follows:

1. Highways and transit.
 - a. Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes, including lanes for parking, weaving, turning or climbing.
 - b. Highway safety or traffic operations improvement projects including the installation of ramp metering control devices and lighting.
 - c. Bridge rehabilitation, reconstruction or replacement or the construction of grade separation to replace existing at-grade railroad crossings.
 - d. Transportation corridor fringe parking facilities.
 - e. Construction of new truck weigh stations or rest areas.
 - f. Approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts.

- g. Approvals for changes in access control.
 - h. Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and which is located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.
 - i. Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users.
 - j. Construction of bus transfer facilities, including an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements, when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic.
 - k. Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and where there is no significant noise impact on the surrounding community.
 - l. Hardship acquisition of land where the acquisition may not limit or impede the evaluation of future alternatives for planned construction projects, due to the investment in land through hardship acquisition, including evaluation of future shifts in alignment of highways.
2. Airports.
3. a. Runway, taxiway, apron, or loading ramp construction or repair work including extension, strengthening, reconstruction, resurfacing, marking, grooving, fillets and jet blast facilities, and construction of new heliports on existing airports, except where such action will create environmental impacts off airport property.
- b. Installation or upgrading of airfield lighting systems, including runway end identification lights, visual approach aids, beacons and electrical distribution systems.
- c. Installation of miscellaneous items including segmented circles, wind or landing direction indicators or measuring devices, or fencing.
- d. Construction or expansion of passenger handling facilities.
- e. Construction, relocation or repair of entrance and service roadways.
- f. Grading or removal of obstructions on airport property and erosion control actions with no off-airport impacts.
- g. Landscaping generally and landscaping or construction of physical barriers to diminish impact of airport blast and noises.
- h. Projects to carry out noise compatibility programs.
- i. Land acquisition and relocation associated with subds. 2. a. to i.
- j. Removal of a displaced threshold.
3. Administrative facilities. Extensive remodeling, expansion or modification of an administrative building, including an office building, state patrol academy, driver licensing and testing station, state patrol communications building, or other similar facility, which either substantially increases the capacity of the facility or substantially changes its use.
4. Financial assistance. This provision applies to issuance as well as acceptance of the following grants by the department.
- a. Financial grant for repair or modification of existing port facilities in locations below the ordinary high-water mark that are not within an area designated by a bulkhead line, a lake bed grant, or a submerged lands lease.
- b. Financial grant for repair of an approved disposal facility for contaminated dredge material.
- c. Financial grant under the transportation economic assistance program for the construction of a local transportation facility.
5. Policy, contract, standard and specification changes.
- a. Change in policy on artificial lighting for highways and airports.
- b. Change in policy for planting and landscaping on transportation corridors.
- c. Processing a contract change for significant changes in design.
- d. Major change in design standards or construction specifications.
- e.

(d) *CE – Categorical Exclusions*. CE actions are categorically excluded from the requirement to prepare environmental documentation pursuant to the rule published by the United States department of transportation in 23 CFR 771.117, April 1, 1998, or its federal aviation administration order 5050.4A, chapter 3, paragraph 23, October 8, 1985. CE actions do not require environmental documentation because, based on past experience with similar actions, they do not involve significant environmental impacts. They are actions which do not induce significant impacts to planned growth or land use for the area, do not require the relocation of significant numbers of people, do not have a significant impact on any natural, cultural, recreational, historic or other resource, do not involve significant air, noise, or water quality impacts, do not have significant impacts on travel patterns, and do not otherwise, either individually or cumulatively, have any significant environmental impacts. Examples of CE actions include the following:

1. Highways and transit.
 - a. Activities which do not involve or lead directly to construction, including planning and technical studies, grants for training and research programs, research activities, approval of a unified work program and any findings required in the planning process, approval of statewide programs, approval of project concepts, engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed.
 - b. Approval of utility installations along or across a transportation facility.
 - c. Construction of bicycle and pedestrian lanes, paths, and facilities.
 - d. Activities included in the state's "highway safety plan" under 23 U.S.C 402.
 - e. Transfer of lands when the subsequent action to be taken on the lands transferred is not a department action.
 - f. The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction.
 - g. Landscaping.
 - h. Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no land acquisition or traffic disruption will occur.
 - i. Emergency repairs.
 - j. Acquisition of scenic easements.
 - k. Improvements to existing rest areas and truck weigh stations.
2. Airports.
 - a. Acquisition of an existing privately owned airport, as long as acquisition only involves change of ownership.
 - b. Acquisition of security equipment required by rule or regulation for the safety or security of personnel and property on the airport, or safety equipment required by rule or regulation for certification of an airport or snow removal equipment.
 - c. Issuance of airport planning grants.
 - d. Airport improvement program actions which are tentative and conditional and clearly taken as a preliminary action to establish a sponsor's eligibility under the program.
 - e. Retirement of the principal of bond or other indebtedness for terminal development.
 - f. Issuance of airport policy and planning documents including the national plan of integrated airport systems, or NPIM, airport improvement program, or AIP, priority system, advisory circulars on planning, design, and development programs which are not intended for direct implementation or which are issued by FAA as administrative and technical guidance to the public.
 - g. Issuance of certificates and related actions under the airport certification program.
 - h. Issuance of grants for preparation of noise exposure maps and noise compatibility programs pursuant to 49 USC 47501 et seq. and 14 CFR part 150.
 - i. Airspace determinations.
3. Administrative facilities. Minor construction or expansion of an airport facility, such as a runway, taxiway, apron, service or entrance road, or passenger handling or parking facility.
4. Financial assistance. This provision applies to issuance as well as acceptance of grants by the department.

- a. Financial grant for repair modification of existing facilities in locations below ordinary high water mark that are within an area designated by a bulkhead line, a lake bed grant, or a submerged lands lease.
 - b. Financial grant for maintenance dredging of navigable waterway.
 - c. Financial grant for disposal of contaminated dredge material at existing approved disposal facilities.
- (2)** In addition, the following actions and activities of the department are categorized as CE actions:
- (a) Activities exempt by statute or approved as categorical exclusions by the United States council on environmental quality pursuant to 40 CFR 1508.4, July 1, 1998.
 - (b) Enforcement activities.
 - (c) Emergency activities to protect public health, safety and the human environment.
 - (d) Ancillary activities which are part of a routine series of related department actions.
 - (e) Actions which individually or cumulatively do not significantly affect the quality of the human environment and do not involve unresolved conflicts in the use of available resources.
 - (f) The budget request of the department as a whole submitted to the department of administration and legislature pursuant to ss. 16.42 and 19.45 (12), Stats.
 - (g) Proposals for enabling or conforming legislation that are required to be enacted to comply with federal law or federal standards as the department is authorized by ss. 20.395 (9) (qx), 84.01 (15), 84.015 and 84.03 (1), Stats., as a matter of federal preemption, but only to the extent so required and no further.
 - (h) Reports or recommendation on proposals for legislation for which the department has performed or caused to be performed a SEE as an integral part of system plans.
 - (i) Budget requests associated with implementation of a system plan for which a SEE has been completed.
 - (j) Reports or recommendations on revenue proposals.
 - (k) Expenditure or appropriation requests involving only an existing department program, except requests that constitute major and significant new proposals.
 - (l) Reports or recommendations on proposals for legislation that have not been initiated by or sponsored by the department.
 - (m) Budgetary proposals submitted in response to a request by the governor, the legislature, legislative committees, or individual legislators.
 - (n) Reports or recommendations on proposals for legislation that relate to the level of transportation aids payments to local units of government, including mass transit aids.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92; r. and recr. (1), am. (2) (intro.) and (a), Register, February, 1999, No. 518, eff. 3-1-99.