

RULES CERTIFICATE

Department of Commerce

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Brenda J. Blanchard, Secretary of the Department of Commerce,

and custodian of the official records of said department, do hereby certify that the annexed rule(s) relating to

environmental analysis and review procedures for department actions

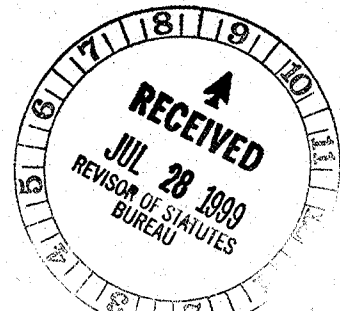
(Subject)

were duly approved and adopted by this department.

I further certify that said copy has been compared by me with the original on file in the department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set
my hand at 201 West Washington Avenue
in the city of Madison, this 26th
day of July A.D. 1999

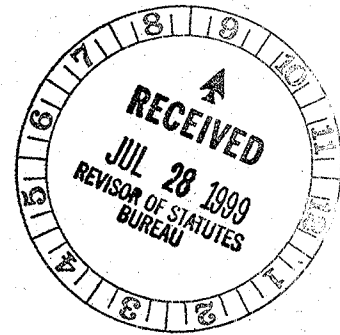
Brenda J. Blanchard
Secretary





State of Wisconsin \ Department of Commerce

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. |
| | 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.

7/26/99

Gary Poulson
Assistant Revisor of Statutes
Suite 800
131 West Wilson Street
Madison, Wisconsin 53703-3233

Douglas LaFollette
Secretary of State
10th Floor
30 West Mifflin Street
Madison, Wisconsin 53703

Dear Messrs. Poulson and LaFollette:

TRANSMITTAL OF RULE ADOPTION

CLEARINGHOUSE RULE NO.: 97-117

RULE NO.: Chapter Comm 1

RELATING TO: Environmental analysis and review procedures for department actions


Pursuant to section 227.20, Stats., agencies are required to file a certified copy of every rule adopted by the agency with the offices of the Secretary of State and the Revisor of Statutes.

At this time, the following material is being submitted to you:

1. Order of Adoption.
2. Rules Certificate Form.
3. Rules in Final Draft Form.

Pursuant to section 227.114, Stats., a summary of the final regulatory flexibility analysis is also included.

Respectfully submitted,


Brenda J. Blanchard
Secretary

