



STATE OF WISCONSIN

DEPARTMENT OF MILITARY AFFAIRS

PROPOSED ORDER AMENDING PERMANENT RULE

The Wisconsin Emergency Management Division of the Department of Military Affairs proposes an order to: repeal [WEM 1.07\(3\) \(Note\)](#); amend WEM [1.03](#), [1.04 \(1\)](#), [\(2\)](#), [\(7\) \(a\) to \(j\)](#), and [1.07 \(3\)](#); repeal and recreate [WEM 1.04 \(Note\)](#) and [1.07 \(5\) Note](#); and create WEM 1.08, relating to emergency planning notification and hazardous chemical inventory reports and fees and affecting small businesses.

Analysis Prepared by the Department of Military Affairs

1. Statutes Interpreted:

Section 323.60, Stats.

2. Statutory Authority:

Sections 323.60 (2) (b) and (7) (a), Stats.

3. Explanation of Agency Authority:

Section 323.60, Stats., provides agency authority to promulgate rules to implement the federal Emergency Planning and Community Right-to-Know Act (EPRCA), 42 USC §§ 11000 to 11050, and impose and collect fees. Specifically, s. 323.60. provides as follows:

(1) Definitions. In this subchapter:

(a) "Federal act" means [42 USC 11000 to 11050](#).

...

(2) Duties of the division. The division shall, do all of the following:

...

(b) Promulgate rules necessary for the implementation of the federal act.

...

(7) Facility fees.

(a) The division shall establish, by rule, the following fees at levels designed to fund the division's administrative expenses and the grants under s. [323.61](#):

1. An emergency planning notification fee to be paid when a facility makes the emergency planning notification required under sub. [\(5\)\(a\)](#).
2. An inventory form fee to be paid annually when a facility submits the emergency and hazardous chemical inventory forms required under sub. [\(5\)\(c\)](#).

4. Related Statutes or Rules:

[Section 323.61, Stats.](#), and [42 USC 11000 to 11050](#).

5. Plain Language Analysis:

Under [§ 323.60](#), the Wisconsin Emergency Management Division (WEM) is required to promulgate rules necessary to implement EPCRA and to set fees at levels designed to fund WEM's administrative expenses and grants awarded pursuant to [s. 323.61, Stats.](#) WEM promulgated Chapter [WEM 1](#) to fulfill its obligations. WEM now proposes to amend the rule to increase the amount of fees imposed to ensure that WEM can fund its statutorily required functions, as well as clarify the deadline for payment of fees, expand the way required forms may be submitted, and remove references to repealed statutes and update terminology to reflect current statutory language. Specifically, the proposed amendments to Chapter [WEM 1](#) would do the following:

- a. Expand how facility owners can submit required completed forms.

The proposed rule would clarify that facilities may submit required forms on paper or electronically.

- b. Clarify the deadline for payment of annual inventory fees.

Chapter [WEM 1](#) establishes a March 1 deadline to submit annual fee payments to WEM and EPCRA sets the deadline for filing a one-time fee. Recently, a facility took the position that its submission of the fees was timely because it put the fee, along with the required report, in the mail on or before the submission deadline. The rule intended that the fee and report would be in the hands of WEM on or before the deadline. The proposed rule would make clear when fees and reports are deemed submitted.

- c. Amount of notification and inventory fees.

Section [323.60](#), Stats., requires facilities that store hazardous chemicals at or above legal threshold quantities to report to the state the types and quantities of chemicals stored and to engage in planning activities. The statute also requires facilities to pay

emergency planning notification fees and fees based on the number and quantities of the chemicals in their inventory. WEM collects the fees, which are then used to support the implementation of the EPCRA program at the state level and to fund grants to counties to assist with their required planning as authorized by s. [323.61](#), Stats.

The current amounts of the emergency planning notification and inventory form fees are listed in Chapter [WEM 1](#). They were established in 2010. Inflation since 2010 has reached nearly 30% according to the US Bureau of Labor Statistics. Projections based on historic expenses for completing the statutorily-required tasks in s. [323.60\(2\)](#) shows the fees collected are insufficient to continue funding the statewide program and grants to counties beyond the state fiscal year 2024. The departmental tasks articulated in s. [323.60\(2\)](#) are as follows:

- Serve as the state emergency response commission under EPCRA.
- Promulgate rules necessary for the implementation of EPCRA.
- Promulgate rules establishing an amount not to exceed \$6,000 that may be an eligible cost for computers in an emergency planning grant under s. [323.61\(2\)\(br\)](#).
- Oversee the implementation of local emergency response plans by committees established by counties and assist the committees in executing their duties.
- Administer the grant program established by s. [323.61](#), Stats.
- At least annually, submit a report to the governor indicating whether each county has a committee and whether the composition of each committee conforms to EPCRA.
- If the composition of a county's committee does not conform to [42 USC 11001\(c\)](#), inform the county board of that fact and of the county board's duty to create a committee as specified in EPCRA.

The objective of the proposed rule change is to increase facility fees to account for inflation since 2010 and to set a mechanism to recalculate fees annually going forward so the state EPCRA program and grants to counties will be funded at sustainable levels and continue to meet the requirements of ss. [323.60](#) and [323.61](#), Stats.

- d. Remove references to repealed statutes and update terminology to reflect current applicable statutes

Section 166.20(1)(gm), Stats., was repealed and some of the language was incorporated into s. [323.60\(7\)\(dm\)](#), Stats. The proposed rule would replace the reference to s. 166.20(1)(gm), Stats., with the current definition of petroleum-related facilities that are exempt from certain fees as set forth in s. [323.60\(7\)\(dm\)](#), Stats.

6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:

The Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 was authorized by Title III of the Superfund Amendments and Reauthorization Act to help communities plan for chemical emergencies. It requires industry to report on the storage, use, and releases of certain chemicals to federal, state, tribal, territorial, and/or local governments. It also requires these reports to be used to prepare for and protect their communities from potential risks. Wisconsin Statutes 323.60 provides the mechanisms through which the State of Wisconsin maintains compliance with the federal EPCRA regulation. The federal regulation does not require fees to be charged. The alternative would be to use general purpose revenue to implement the requirements of the regulation.

7. If Held, Summary of Comments Received During Preliminary Comment Period and at Public Hearing on the Statement of Scope:

No such hearing was held.

8. Comparison with Similar Rules in Adjacent States:

Illinois – Illinois requires facilities to use an online filing system for submitting information regarding hazardous chemicals required by EPCRA to be submitted. There are no statutes requiring fees for submitting reports. WEM, as noted, is statutorily required to impose fees.

Iowa – Iowa only accepts EPCRA-required information electronically. Iowa does not currently collect fees for the submittal of EPCRA-required information.

Michigan – Michigan requires facilities to use an online filing system for submission of EPCRA-required information. There are no fees for submitting reports.

Minnesota – Minnesota accepts EPCRA-required information electronically or in hard copy submissions using a Minnesota state-specific form. Minnesota charges fees based on the number of hazardous chemicals the facility has. Minnesota also charges facilities that have releases of chemicals. The fee is based on the amount of material released during the calendar year. Minnesota also charges an annual fee to facilities that store extremely hazardous substances.

9. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen:

WEM Fiscal Services staff track the administrative budget for the EPCRA program each year. They create projections based on previous years' actual expenditures. They have brought to the attention of WEM's EPCRA staff and management that, with the current

fee structure, it is unlikely WEM will receive the revenue needed to support the administration of the EPCRA program beyond 2024. They also determined that simply amending the rule to provide for a one-time increase that does not account for future inflation would create the need for additional rule changes approximately every four to five years.

10. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report:

The proposed rule changes would not increase regulatory compliance burdens on small businesses and would not have a significant economic impact on a substantial number of small businesses in the state for the following reasons. Only about 8,923 businesses in Wisconsin are required to file reports under Wis. Stat. § 323.60. Approximately 23.4% of those businesses have fewer than ten employees and are exempt from all fees otherwise required by WEM 1, including the annual Tier II fees. As a result, approximately only 6,832 businesses will be affected by the small increase in fees set forth in the proposed rule. It is unknown how many employees those 6,832 businesses have so WEM is unable to determine the precise number of small businesses, as defined in Wis. Stat. § 227.114, but presumably, not all are. Even if they were, that number is still not a large one. Fees will only be increasing 30% in the year the proposed rule changes are adopted and thereafter increases would be tied to inflation, likely resulting in much smaller increases.

As can be seen in the chart below, approximately 94% of the businesses that are required to pay the annual Tier II fees have between one and 10 types of chemicals, with 46% having just one and 48% having between two and ten. Assuming a 30% increase, the maximum increase for the annual Tier II fees for the 46% would be \$75/year and the maximum increase for the 48% would be \$145/year. Fee increases going forward will likely be less as the fees will be adjusted for inflation on a biennial basis. There is only one business that currently is in the highest fee range and the 30% increase would result in a maximum of a \$450 increase. In sum, WEM believes the proposed increases are small and would not have a significant impact on a substantial number of small businesses.

Tier II* Fees	Under 100,000 lbs. Cumulative				Over 100,000 lbs. Cumulative				Projected Increase in Revenue
	Current	Proposed	# of Facilities 2022		Current	Proposed	# of Facilities 2022		
			Paid	Exempt			Paid	Exempt	
1	\$205	\$265	2,395	749	\$245	\$320	1,159	579	\$230,625
2-10	\$405	\$525	2,384	392	\$485	\$630	588	353	\$371,340
11-100	\$610	\$790	189	15	\$730	\$965	56	0	\$47,180
101-200	\$745	\$965	11	0	\$890	\$1,150	1	0	\$2,680
201-300	\$880	\$1,140	0	0	\$1,055	\$1,365	0	0	\$0

301-400	\$1,015	\$1,310	1	0	\$1,215	\$1,570	0	0	\$295
401-500	\$1,150	\$1,485	1	0	\$1,375	\$1,775	0	0	\$335
500+	\$1,285	\$1,660	0	0	\$1,540	\$1,990	0	0	\$0

Other Tier II* Fees	Current	Proposed	# of Facilities 2022		Projected Increase in Revenue
			Paid	Exempt	
Temp Construction	\$27	\$35	17	2	\$136
Batch Plants	\$27	\$35	30	1	\$240

11. Effect on Small Business:

Please see Section 10, above. Additional support is in the fiscal estimate and economic impact statement being submitted by WEM.

12. Agency Contact Person:

Meg Vergeront
 General Counsel
 608-242-3072
meg.vergeront@widma.gov

13. Place where comments are to be submitted and deadline for submission:

Written comments may be submitted at the public hearings or by mail or email to:

Department of Military Affairs
 ATTN: Katie Sommers
 2400 Wright Street
 Madison, WI 53704
katie.sommers@widma.gov

Comments may be submitted ahead of the public hearing on the proposed rule by mail or email until the deadline given in the upcoming notice of the hearing. The notice of public hearing and the deadline for submitting comments will also be published on WEM’s website: <https://wem.wi.gov/epcra/>.

RULE TEXT

SECTION 1. Section WEM 1.03 is amended to read:

WEM 1.03 Emergency planning notification fee. Except as provided in s. WEM 1.06, an owner or operator shall timely submit a one-time fee of \$1,080 per facility

with the one-time emergency planning notification required under s. 323.60 (5) (a), Stats. To be considered timely, the required documentation and fees must be received physically or electronically by the division within 60 days of acquiring extremely hazardous materials.

SECTION 2. Sections 1.04 (1), (2), and (7) (a) to (j) are amended to read:

WEM 1.04 Hazardous chemical inventory reporting and inventory form fee.

- (1) An owner or operator of a facility required to timely submit an inventory form under s. 323.60 (5) (c), Stats., shall submit a Tier II inventory form, a site plan, inventory form fee statement and the appropriate inventory form fee annually. To be considered timely, the required documentation and fees must be received physically or electronically by the division on or before March 1.
- (2) An owner or operator of a facility that has submitted an inventory form pursuant to s. 323.60 (5) (c), Stats., for the previous reporting period and which is no longer subject to the inventory form reporting requirements for the current reporting period shall ~~return~~ timely submit any inventory form fee statement received from the division stating why the facility is no longer subject to the inventory form reporting requirements. To be considered timely, the required document must be received physically or electronically by the division on or before March 1.

...

- (7)
- (a) For facilities submitting an inventory form listing one hazardous chemical subject to inventory form fee calculations and a maximum daily amount of less than 100,000 pounds, ~~\$205~~275. Facilities with an actual maximum daily amount of 100,000 pounds or more, ~~\$245~~330.
- (b) For facilities submitting an inventory form listing 2 to 10 hazardous chemicals subject to inventory form fee calculations and a cumulative actual maximum daily amount of less than 100,000 pounds, ~~\$405~~550. Facilities with an actual maximum daily amount of 100,000 pounds or more, ~~\$485~~655.
- (c) For facilities submitting an inventory form listing 11 to 100 hazardous chemicals subject to inventory form fee calculations and a cumulative actual maximum daily amount of less than 100,000 pounds, ~~\$610~~825. Facilities with a cumulative actual maximum daily amount of 100,000 pounds or more, ~~\$730~~990.

- (d) For facilities submitting an inventory form listing 101 to 200 hazardous chemicals subject to inventory form fee calculations and a cumulative actual maximum daily amount of less than 100,000 pounds, ~~\$745~~1,010. Facilities with a cumulative actual maximum daily amount of 100,000 pounds or more, ~~\$890~~1,210.
- (e) For facilities submitting an inventory form listing 201 to 300 hazardous chemicals subject to inventory form fee calculations and a cumulative actual maximum daily amount of less than 100,000 pounds, ~~\$880~~1,195. Facilities with a cumulative actual maximum daily amount of 100,000 pounds or more, ~~\$1055~~1,430.
- (f) For facilities submitting an inventory form listing 301 to 400 hazardous chemicals subject to inventory form fee calculations and a cumulative actual maximum daily amount of less than 100,000 pounds, ~~\$1015~~1,380. Facilities with a cumulative actual maximum daily amount of 100,000 pounds or more, ~~\$1215~~1,650.
- (g) For facilities submitting an inventory form listing 401 to 500 hazardous chemicals subject to inventory form fee calculations and a cumulative actual maximum daily amount of less than 100,000 pounds, ~~\$1150~~1,560. Facilities with a cumulative actual maximum daily amount of 100,000 pounds or more, ~~\$1375~~1,870.
- (h) For facilities submitting an inventory form listing over 500 hazardous chemicals subject to inventory form fee calculations and a cumulative actual maximum daily amount of less than 100,000 pounds, ~~\$1285~~1,745. Facilities with a cumulative actual maximum daily amount of 100,000 pounds or more, ~~\$1540~~2,090.
- (i) For temporary construction facilities, ~~\$27~~35.
- (j) For batch plants, ~~\$27~~35.

SECTION 3. WEM 1.04 (Note) is repealed and recreated to read:

Note: Instructions for reporting and submitting fees can be found on the division's website: <https://wem.wi.gov/epcra/>. ~~Facilities that have submitted Tier II and Inventory Fee Statements in the previous year will receive preprinted forms in the mail annually on or around each January 1. These forms can also be obtained through the Wisconsin Emergency Management website at emergencymanagement@wisconsin.gov or call 608-242-3221.~~

SECTION 4. WEM 1.07 (3) is amended to read:

WEM 1.07

(3) The facility is a ~~petroleum marketing~~ facility pursuant to ~~s. 166.20 (1) (gm), Stats.~~ at which petroleum products are received by tank truck, tank trailer, or railroad tank car and stored for resale, and the fee is for gasoline or diesel fuel.

SECTION 5. WEM 1.07(3) (Note) is repealed.

SECTION 6. WEM 1.07(5) (Note) is repealed.

SECTION 7. WEM 1.08 is created to read:

WEM 1.08 Biennial fee adjustments.

On July 1, 2025, and thereafter biennially on July 1 of odd years, WEM shall adjust all fees specified in s. WEM 1 for inflation. This adjustment shall be applicable to all inventory forms received on or after the effective date of the change. WEM shall calculate inflation using the US Bureau of Labor Statistics Consumer Price Index Inflation Calculator. WEM shall round adjusted fees to the nearest five dollars. The division will post on its website the fee amounts in effect prior to a biennial adjustment and the adjusted fees.

SECTION 8. EFFECTIVE DATE. This rule shall take effect on the first day of the first month commencing after the date of publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

Dated at Madison, Wisconsin _____, 2023.

STATE OF WISCONSIN
DEPARTMENT OF MILITARY AFFAIRS

BY _____
PAUL E. KNAPP
Maj Gen, WI Department of Military Affairs
The Adjutant General