



LCRC
FORM 2

WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

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 02-106

AN ORDER to repeal chapter WEM 4; to renumber WEM 6.05 (4) (a), (b) and (c) and 6.13 (1), (2), (3), (4) and (5); to amend WEM 6.02 (1), (2) and (12), 6.04 (1), (2) and (3), 6.12 and 6.13 (Note); and to create WEM 6.04 (4), 6.05 (4) (a) and (5) (g) and 6.13 (1) (intro.) and (2), relating to the hazardous materials transportation program and to reimbursement procedures for regional and local emergency response teams.

Submitted by **DEPARTMENT OF MILITARY AFFAIRS**

07-17-2002 RECEIVED BY LEGISLATIVE COUNCIL.

08-07-2002 REPORT SENT TO AGENCY.

RNS:PS

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 ☒



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 02-106

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 September 1998.]

1. Statutory Authority

Section 166.20 (2) (bs), Stats., is one of the statutes cited as statutory authority for this rule. That provision, created in 2001 Wisconsin Act 16, requires the division to promulgate rules establishing the procedures that a regional emergency response team must follow to determine if an emergency requiring the team’s response exists as the result of a Level A release or potential release and that a local emergency response team must follow to determine if an emergency requiring the team’s response exists as the result of a release or potential release of a hazardous substance. It is unclear where those procedures are in this rule. Is the hazardous materials incident response matrix intended to be “the procedures”? If so, this should be clarified in the analysis. If the procedures are not included in this rule, s. 166.20 (2) (bs), Stats., should not be cited as statutory authority or in the list of statutes interpreted.

4. Adequacy of References to Related Statutes, Rules and Forms

In s. WEM 6.04 (4) (a), the citation “s. 6.04 (4) (b)” should be changed to “par. (b)”. See s. 1.07 (2), Manual, for rules on citing internal references.

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

a. In the bold order language, “create WEM 6” sounds like the entire chapter is being created. The phrase “provisions of” could be inserted after “create” to avoid this impression.

b. In the listing of statutes interpreted, commas should be inserted after the "(f)," "(fm)," "(ge)," and "(k)"; "and" should be inserted after "(gi)" and in place of the comma following "(k)."

c. The proposed order should read:

The Wisconsin Division of Emergency Management proposes an order to repeal chapter WEM 4; to renumber WEM 6.05 (4) (a), (b) and (c) and 6.13 (1), (2), (3), (4) and (5); to amend WEM 6.02 (1), (2) and (12), 6.04 (1), (2) and (3), 6.12 and 6.13 (Note); and to create WEM 6.04 (4), 6.05 (4) (a) and (5) (g) and 6.13 (1) (intro.) and (2) relating to the hazardous materials transportation program and to reimbursement procedures for regional and local emergency response teams.

d. In the plain language summary, in addition to clarifying whether the procedures required by s. 166.20 (2) (bs), Stats., are included in this rule (see the statutory authority comment above), the analysis should note that a responsible party appeals process is created in the rule. Also, a comma should be inserted after the "(dr)" on the last line.

e. In s. WEM 6.02 (2), is "county" on line 3 still the appropriate term, given the change in reference on line 1 from "county" to "local" response team, pursuant to the statutory change to s. 166.21 (2m) (e), Stats.? Also, on line 1, "local" should follow "county."

f. In s. WEM 6.02 (12), the first word on line 2 should be "Stats."

g. In the treatment clause to SECTION 3, an "and" should be inserted after the second comma. In the treatment clause to SECTION 5, an "and" should be inserted before the first "(c)" and the "(d)."

h. To flow from the language in s. WEM 6.04 (intro.), s. WEM 6.04 (4) should begin with the phrase: "The following administrative costs . . ." and the period following the word "party" should be changed to a colon.

i. In s. WEM 6.12, a comma should be inserted after the "(dr)" on the last line.

j. In the treatment language to SECTION 10, "to read" should be changed to "WEM" and the colon at the end should be changed to a period.

k. In s. WEM 6.13 (2) (a), "s." should be inserted before the statutory citation and "Stats." should follow it. In sub. (2) (b), the phrase "that exceed \$500" should be moved to follow "costs" on line 1.

ORDER OF WISCONSIN EMERGENCY MANAGEMENT

To repeal WEM 4

To renumber, amend and create WEM 6

*Sounds like
a letter
WEM 6
could say
"various provisions
of WEM 4"*

ANALYSIS PREPARED BY WISCONSIN EMERGENCY MANAGEMENT

Statutory Authority: 166.20 (2) (a), (b), (bm) and (bs), and 227.11 (2) (a), Stats.

Statutes Interpreted: 166.20 (1) (f) (fm) (g), (ge) (gi) (k), (2) (bm) and (bs), 166.215 (2) and (3), and 166.22, Stats. *and 2nd*

Wisconsin Emergency Management proposes an order to repeal Chapter WEM 4; to renumber WEM 6.05 (4) (a), (b) and (c) and 6.13 (1), (2), (3), (4) and (5); to amend WEM 6.02 (1), (2), (12), 6.04 (1), (2), (3), 6.12, and 6.13 (note); to create WEM 6.04 (4), 6.05 (4) (a) and (5) (g) and 6.13 (1) (intro), and (2). *#5*

Plain Language Summary

*are
'2012)(65)
proceed
12 m*

The statutory authority for WEM 4, relating to a hazardous materials transportation registration program, no longer exists, and this proposal repeals WEM 4 in its entirety. The proposal to amend WEM 6 would modify reimbursement procedures to reflect a change in statutory language allowing reimbursement for potential releases of hazardous materials as well as to actual releases. It would also require regional and local response teams to utilize an agency-approved hazardous materials incident response matrix to be eligible for reimbursement under WEM 6 and would establish limits for reimbursement of potential releases. The proposed change would also clarify that administrative costs are eligible for reimbursement and that costs recovered from responsible parties would be placed in the emergency response supplement under s. 20.465 (3)(dr) Stats. *see 15*

SECTION 1. Chapter WEM 4 is repealed.

SECTION 2. WEM 6.02 (1), (2) and (12) are amended to read:

WEM 6.02 (1) "Authorized level A response team" means a regional emergency response team, a member of such team and a local agency that contracts with the division for the provision of regional response team services pursuant to a designation under s. 166.215 (1), Stats. *ment d. 9 resp. party
appeals
Proc. M
SEC 11*

WEM 6.02 (2) "Authorized level B response team" means a local-county emergency response team, a member of such a team, and the city, county, village or town that contracts to provide the emergency response team to the county pursuant to a designation under s. 166.21 (2m) (e), Stats. *Still accurate?*

*changed
Ref. from
(i) to local*

215 (3) + 22 (4)
not 16
WEM 6.02 (12) "Responsible party" means any person, as defined in s. 299.01(10), Stat. or 42 USC 9607(a), who possesses or controls a hazardous substance that is released or discharged or who causes the release or discharge of a hazardous substance is responsible for the emergency involving a release or potential release of a hazardous substance under s. 166.215 (3) or 166.22 (4), Stats. or a person who is found to have abandoned containers, as defined under s. 292.41 (1), Stats., that are releasing or discharging a hazardous substance to which a response team was called to respond.

SECTION 3. WEM 6.04 (1), (2), (3) are amended to read:

WEM 6.04 (1) Reimbursement for vehicles and apparatus at uniform rates established in the contracts for regional hazardous material response team services or the rate established by the reviewing entity for the authorized level B response Team. *keep same*

WEM 6.04 (2) Response team personnel expenses which may reflect replacement personnel costs and indirect charges and costs for wage, fringe, death and duty disability retirement benefits; and. *keep same - no*

WEM 6.04 (3) Necessary and reasonable emergency expenses related to response team services rendered based on actual expenditures. *keep same, add "and"*

SECTION 4. WEM 6.04 (4) is created to read:

WEM 6.04 (4) Administrative costs incurred to collect response costs from a responsible party: *the following*

- (a) For a level B response to an emergency in which there is a potential release of a hazardous substance, the maximum eligible reimbursement cost may not exceed \$500 for the initial response assessment except as provided under s. 6.04 (4) (b). *par*
- (b) Costs that exceed \$500 for a level B response to an emergency, in which there is a potential release of a hazardous substance and for which a hazardous substance is present, shall be justified and documented.
- (c) Response teams are not eligible for reimbursement costs that exceed \$500 for level B responses where the bill of lading or manifest indicate that a hazardous substance is not present and for which the bill of lading or manifest is readily accessible to the response team during the emergency response.

SECTION 5. WEM 6.05 (4) (a), (b), (c) are renumbered WEM 6.05 (4) (b), (c), (d).

SECTION 6. WEM 6.05 (4) (a) is created to read:

WEM 6.05 (4) (a) The hazardous materials incident response matrix used by a regional or local response team to determine the initial response to an emergency.

SECTION 7. WEM 6.05 (5) (g) is created to read:

WEM 6.05 (5) (g) The hazardous materials incident response matrix was used by the regional or local emergency response team to determine the appropriate initial response to the emergency.

SECTION 8. WEM 6.12 is amended to read:

If costs subsequently are recovered from responsible parties or other sources after the response team has received reimbursement from the division, the response team shall return the recovered costs to the division, for deposit into the state transportation fund emergency response supplement under s. 20.465 (3) (dr) Stats.

SECTION 9. WEM 6.13 (1) (intro) is created to read:

WEM 6.13 (1) (intro) The regional and local response team appeals process is as follows:

SECTION 10. WEM 6.13 (1) to (5) are renumbered to read 6.13 (1) (a) to (e):

SECTION 11. WEM 6.13 (2) is created to read:

WEM 6.13 (2) The responsible party appeals process is as follows:

- (a) A responsible party shall have 30 days after a final determination by the reviewing entity under 166.22 (5) (c) in which to file an appeal with the division.
- (b) A responsible party may appeal emergency response costs of a potential release of a hazardous substance for which a hazardous substance is present that exceed \$500.
- (c) Following an appeal to the division, a responsible party may then request a problem resolution process in which the adjutant general of the department of military affairs reviews the response team claim and issues a decision based on those materials or meets with the parties to negotiate an acceptable resolution.

SECTION 12. WEM 6.13 (note) is amended to read:

Note: A claim for reimbursement form, DMA Form 96 (4/97) and, an expedited reimbursement claim form, DMA Form 59 (4/97), and a Hazardous Materials Incident Response Matrix, DMA Form 1060, can be obtained by contacting the Hazardous Materials Safety/Transportation Coordinator, Wisconsin Emergency Management, 2400 Wright Street,

Web?

Room 213, P.O. Box 7865, Madison, WI 53707-7865, telephone 608-242-3228. The completed reimbursement claim, Hazardous Materials Incident Response Matrix, and supporting documentations shall be mailed to the Hazardous Materials Safety/Transportation coordinator, Wisconsin Emergency Management, 2400 Wright Street, Room 213, P.O. Box 7865, Madison, WI 53707-7865.

This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

Dated:

7/17/02

Agency:

Edward J. Gleason

Edward J. Gleason, Administrator
Wisconsin Emergency Management



Hazardous Materials Incident Response Matrix

Response Matrix for Incident Number/Name _____

SITUATION STATUS		Value
What is the size, severity, and immediacy of the threat?		
Release and/or fire in progress	Assign a value of 3	
Container/vehicle has been damaged or failure likely	Assign a value of 2	
Conditions are stable	Assign a value of 1	
Minimal or no threat detected	Assign a value of 0	
What type of container/vehicle is involved?		
Railcar, road transport tanker, or bulk storage	Assign a value of 3	
Totes, drums, small medium tanks	Assign a value of 2	
Small packages, bottles or containers	Assign a value of 1	
Package is not damaged	Assign a value of 0	
What is the location of the Incident?		
Outside	Assign a value of 3	
Confined inside facility	Assign a value of 2	
Confined to room/area of facility	Assign a value of 1	
No release	Assign a value of 0	
QUANTITY AT RISK		
To what degree is the quantity a threat?		
>55 gallons, 500 pounds, 200 cubic feet	Assign a value of 3	
>20 gallons but <56 gallons, 500 lbs, 200 cubic feet	Assign a value of 2	
<21 gallons, 50 lbs, 20 cubic feet	Assign a value of 1	
De minimis quantity	Assign a value of 0	
PHYSICAL and TOXICOLOGICAL HAZARDS		
What Hazard does the Material present to personnel?		
Inhalation, eye/sight hazard, skin absorbent,	Assign a value of 3	
Inhalation, skin contact, eye/sight irritant	Assign a value of 2	
Chronic long term exposure > 30 minutes	Assign a value of 1	
No known physical concerns	Assign a value of 0	
CHEMICAL HAZARDS		
What Hazard does the material present?		
Radioactive, air or moisture reactive, ability to polymerize, explosive, poisonous gas	Assign a value of 3	
Cryogenic, corrosive, combustible/flammable	Assign a value of 2	
Small amounts of above	Assign a value of 1	
Stable product	Assign a value of 0	
LOCAL RESOURCES		
Exceeds local level B or county-wide response capabilities	Assign a value of 3	
Local responders can handle with limited outside assistance	Assign a value of 2	
No on site assistance needed. Phone or radio assistance only	Assign a value of 1	
No assistance needed by local responders	Assign a value of 0	
TOTAL ALL BOXES TO ESTABLISH APPROPRIATE RESPONSE		
14 - 21 Full response by regional team		
8 - 13 County team with optional regional CAT team assistance		
0 - 7 Local fire department / county or regional team phone advice		
TOTAL		

INITIAL REGULATORY FLEXIBILITY ANALYSIS

The statutory authority for WEM 4 has been repealed. The previous version of WEM 4 was determined to be unconstitutional by the Wisconsin Court of Appeals and the current version has not been enforced since that time. The repeal of WEM 4 will have no effect on small business.

The amendments to WEM 6 allow for the State of Wisconsin and local and regional emergency response teams to collect emergency response costs from the responsible party in the event of a potential release of a hazardous material. A responsible party is currently responsible for costs associated with the emergency response to a release of a hazardous material. This rule clarifies that necessary response costs include the potential release of a hazardous material. It is estimated that costs to respond to a potential release would typically be \$500 or less. To date there have not been more than 3 such incidents annually. This rule change will not have a significant economic impact on a substantial number of small businesses.

Fiscal Estimate — 2001 Session

☒ Original ☐ Updated
☐ Corrected ☐ Supplemental

LRB Number

Amendment Number if Applicable

Bill Number

Administrative Rule Number
WEM 4 and WEM 6

Subject

Repeal of WEM 4 and amendments to WEM 6

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 Chapter 20 Appropriations
20.465 (3) (dr)

Assumptions Used in Arriving at Fiscal Estimate

The statutory authority for WEM 4 has been repealed. The previous version of WEM 4 was determined to be unconstitutional by the Wisconsin Court of Appeals and the current version has not been enforced since that time. There are no costs associated with the repeal of WEM 4.

The amendments to WEM 6 allow for the State of Wisconsin and local and regional emergency response teams to collect emergency response costs from the responsible party in the event of a potential release of a hazardous material. A responsible party is currently responsible for costs associated with the emergency response to a release of a hazardous material. This rule clarifies that necessary response costs include the potential release of a hazardous material. Money collected by the State of Wisconsin under this rule will be deposited into the emergency response supplement. Money collected by response teams would be used to offset their costs. There are several such incidents annually and the ability to collect these costs means that they would be paid by the responsible party if identified and able to pay. It is estimated that costs to respond to a potential release would typically be \$500 or less. This could mean a decrease in payments from the emergency response supplement.

Long-Range Fiscal Implications

None

Prepared By:

William Clare

Authorized Signature

Telephone No.

608-242-3220

Telephone No.

242-3156

Agency

Department of Military Affairs

Date (mm/dd/ccyy)

7/12/02



STATE OF WISCONSIN \ DEPARTMENT OF MILITARY AFFAIRS
WISCONSIN EMERGENCY MANAGEMENT

2400 WRIGHT STREET
P.O. BOX 7865
MADISON, WISCONSIN 53707-7865

NOTICE OF HEARING

Wisconsin Emergency Management

WEM Chapter WEM 4 and WEM 6

Wisconsin Emergency Management is proposing to repeal WEM 4, relating to the hazardous materials transportation registration program and to amend WEM 6 relating reimbursement procedures for regional and local emergency response teams.

This public hearing is being held in order to comply with administrative rule procedures which require a public hearing to be held on proposed rules. Therefore,

NOTICE IS HEREBY GIVEN that pursuant to ss. 166.20 (2) (a), (b), (bm) and (bs), and 227.11 (2) (a), Stats., and interpreting ss. 166.20 (1) (f) (fm) (g), (ge) (gi) (k), (2) (bm) and (bs), 166.215 (2) and (3) and 166.22, Stats., Wisconsin Emergency Management will hold a public hearing to consider the repeal of Chapter WEM 4 relating to the hazardous materials transportation program and to consider amendments to Chapter WEM 6 relating to reimbursement procedures for regional and local emergency response teams. The public hearing is scheduled as follows:

Date:	Location:	Time:
August 27, 2002	Department of Military Affairs Auditorium 2400 Wright Street Madison, Wisconsin	Beginning: 10:00 a.m.

Persons making oral statements are requested to submit their comments in writing either at the time of the hearing or no later than August 30, 2002. Persons unable to make an oral statement may submit written comments which will have the same weight and effect as oral statements presented at the hearings. All written comments should be submitted to William Clare, Wisconsin Emergency Management, 2400 Wright Street, P.O. Box 7865, Madison, WI 53707-7865 and must be received no later than August 30, 2002. Persons with questions regarding this proposed rule may contact William Clare at the above address or phone 608-242-3220.

The hearing site is fully accessible to people with disabilities.



STATE OF WISCONSIN \ DEPARTMENT OF MILITARY AFFAIRS
WISCONSIN EMERGENCY MANAGEMENT

2400 WRIGHT STREET
P.O. BOX 7865
MADISON, WISCONSIN 53707-7865

July 17, 2002

Mr. Ronald Sklansky, Director
Wisconsin Legislative Council
Rules Clearinghouse
One E. Main St., Suite 401
P.O. Box 2536
Madison, WI 53701-2536

Dear Mr. Sklansky:

Attached for staff review, analysis, and recommendation is a copy of the proposed repeal of WEM 4 and the proposed amendment to WEM 6. The initial regulatory flexibility analysis and fiscal estimate are also attached. Wisconsin Emergency Management proposes an order to repeal WEM 4 relating to the hazardous materials transportation program and to amend WEM 6 relating to reimbursement procedures for regional and local emergency response teams.

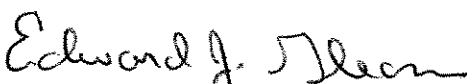
Wisconsin Emergency Management intends to adopt the proposed rule under the authority of ss. 166.20 (2) (a), (b), (bm) and (bs), and 227.11 (2) (a), Stats.

The proposed rule interprets ss. 166.20 (1) (f) (fm) (g), (ge) (gi) (k), (2) (bm) and (bs), 166.215 (2) and (3) and 166.22, Stats.

If you have any substantive questions regarding the proposed rule, please contact William Clare at 242-3220, at Wisconsin Emergency Management. This is also the person responsible for the internal processing of the rule.

This rule will take effect pursuant to s. 227.22 (2) (intro.), Stats.

Sincerely,


Edward J. Gleason,
Administrator

Encl.