

CR 95-051

STATE OF WISCONSIN)
) SS
STATE EMERGENCY RESPONSE BOARD)

I, Leroy E. Conner, Jr., Chair of the State Emergency Response Board and custodian of the official records, certify that the annexed rules, relating to fees for transporters and offerors of hazardous material, were duly approved and adopted by the State Emergency Response Board on March 9, 1995.

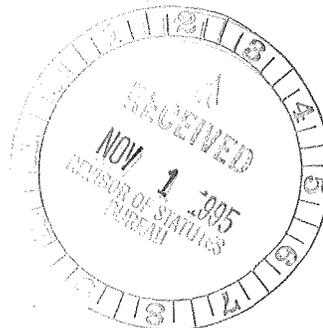
I further certify that this copy has been compared by me with the original on file in this State Emergency Response Board and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I hereunto set my hand and affixed the official seal of the State Emergency Response Board at 2400 Wright Street in the city of Madison, this first day of November, 1995.



LEROY E. CONNER, JR., Chair
State Emergency Response Board

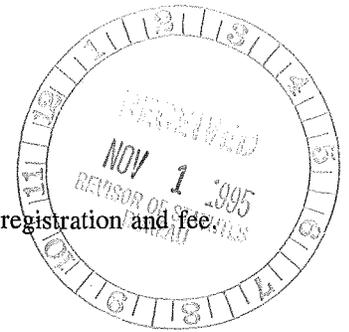
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12-1-95

ORDER OF THE STATE EMERGENCY RESPONSE BOARD

REPEALING AND RECREATING A RULE



The State Emergency Response Board proposes a rule relating to hazardous material transportation registration and fee.

To repeal and recreate chapter ERB 4

Analysis Prepared by the State Emergency Response Board:

The rule establishes registration for the current year and a fee based on hazardous material offered or transported during the reporting period. Registration and fee is to be submitted to the Wisconsin department of transportation pursuant to s. 166.20(7g), Stats., by persons required to file hazardous materials transportation registration statements with the United States Department of Transportation under 49 USC 5101 - 5109 who offer or transport hazardous materials within or through the state of Wisconsin by highway, rail, water or air.

The existing ERB 4 fee structure to be repealed is tiered only within the activities. The proposed fee structure contained in this rule has enhanced tiers and is designed to reflect hazards presented. The American Trucking Association, Inc. brought a class action suit in Dane County Circuit Court Branch 14, seeking to enjoin the State Emergency Response Board (SERB) from collecting an alleged flat annual hazardous materials transportation fee and to declare the fee invalid under the United States Constitution commerce clause. Under Case No. 93-CV-3708, the Court concluded that the hazardous materials transportation fees do not discriminate against interstate commerce and thus, do not violate Article I, Section 8, Clause 3 of the U.S. Constitution. Subsequently, the plaintiffs moved for reconsideration of the Court's Decision and Order of July 28, 1994. The motion for reconsideration was denied and a judgment was entered declaring the provisions of s. 166.20(7g)(d), Stats., and Wis. Admin. Code Ch. SERB 4 constitutional. The Court encouraged the Board to continue its efforts to develop a more equitable fee structure based on hazards presented. The proposed fee structure acknowledges the court's directive.

Pursuant to the authority vested in the State Emergency Response Board by ss. 166.20(2)(b), 166.20(7g) and 227.11(2)(a), 227.24, Stats., the State Emergency Response Board hereby proposes to repeal and recreate a rule interpreting s. 166.20(7g) and s. 166.20(11)(dr) and (e), Stats.

SECTION 1, Ch. ERB 4 is repealed and recreated to read:

CHAPTER ERB 4

HAZARDOUS MATERIAL TRANSPORTATION REGISTRATION & FEE

ERB 4.01 PURPOSE. The purpose of this chapter is to establish a registration and fee program for persons required to file hazardous materials registration statements with the United States department of transportation under 49 USC 5108 - 5109 and s. 166.20(7g), Stats., and doing business in Wisconsin.

ERB 4.02 DEFINITIONS. In this chapter:

- (1) "Activity" means the specific type and quantity of hazardous materials, as specified in 49 USC 5108(1)(a)(A) to (E) and s. ERB 4.03 (1)(a) to (e), for which an offeror function or transporter function or both is performed by a person doing business in Wisconsin.
- (2) "Department" means the Wisconsin department of transportation
- (3) "Hazardous material" has the meaning given in 49 USC 5102(2).

- (4) "Offeror function" means causing a hazardous material to be transported by highway, rail, water or air by such acts as selection of the packaging for a regulated hazardous material, physical transfer of hazardous materials to a carrier, classifying hazardous materials, preparing shipping papers, reviewing shipping papers to verify compliance with the United States department of transportation hazardous material registration program, reviewing shipping papers to verify compliance with the Wisconsin hazardous material transportation registration program, signing hazardous materials certifications on shipping papers, placing hazardous materials markings or placards on vehicles or packages, or providing placards to a carrier.
- (5) "Person" has the meaning given in 49 USC 5102(9).
- (6) "Registration year" means the 12 month period beginning January 1 and ending December 31.
- (7) "Reporting period" means the period from July 1 to June 30 directly preceding the registration year for which fees are being paid.
- (8) "Total Wisconsin hazardous material miles" means the mileage in Wisconsin under which all placarded hazardous materials are transported.
- (9) "Total Wisconsin hazardous material volume" means the total quantity, in pounds, of all placarded hazardous material transported in or through Wisconsin.
- (10) "Transporter function" means any movement of property by highway, rail, water or air and any loading, unloading or storage incidental thereto.

ERB 4.03 HAZARDOUS MATERIALS TRANSPORTATION REGISTRATION.

- (1) Any person doing business in Wisconsin who is required to file hazardous materials transportation registration statements with the United States department of transportation under 49 USC 5101 - 5109 and who participates in one or more of the following activities during the registration year shall file a hazardous materials transportation registration application with the department. Registration is based on participation in the following activities during the current registration year period of January 1 to December 31.
 - (a) Offers or transports in commerce within Wisconsin a highway route-controlled quantity of a class 7, radioactive, material as defined in 49 CFR 173.403;
 - (b) Offers or transports in commerce more than 25 kilograms or 55 pounds of a division 1.1, 1.2 or 1.3 explosive material as under 49 CFR 173.50 in a motor vehicle, rail car or freight container in Wisconsin;
 - (c) Offers or transports in commerce more than one liter or 1.06 quarts per package of a material extremely toxic by inhalation, material poisonous by inhalation,, as defined in 49 USC 171.8, that meets a criteria for hazard zone A, as specified in 49 USC 173.116(a) or 173.133(a);
 - (d) Offers or transports in commerce a hazardous material in a bulk packaging, as specified under 49 CFR 171.8, having a capacity equal to or greater than 13,248 liters or 3,500 gallons for liquids or gases or more than 13.24 cubic meters or 468 cubic feet for solids;
 - (e) Offers or transports in commerce a shipment in other than a bulk packaging of 2,268 kilograms or 5,000 pounds gross weight or more of one class of hazardous materials for which placarding of a vehicle, rail car, or freight container is required for that class as specified under 49 CFR 172.500. The term "shipment" as used in the U. S. department of transportation registration regulations as specified in 49 USC 5101 to 5109 is limited to the hazardous material being offered or loaded at one loading facility.

Multiple shipments within each category do not constitute a separate activity.

- (2) No person doing business in Wisconsin may transport hazardous material, meeting the requirements of an activity, without first obtaining a certificate of registration from the Wisconsin department of transportation. A copy of the transporter's certificate of registration shall be carried at all times in the applicable transport vehicle by persons performing a transporter function and shall be made available upon reasonable request. The original of the certificate of registration shall be retained in the principal place of business.
- (3) No person doing business in Wisconsin may offer for transportation hazardous material, meeting the requirements of an activity, without first obtaining a certificate of registration from the Wisconsin department of transportation. The original of the certificate of registration shall be retained in the principal place of business.
- (4) Persons shall maintain records and source documents supporting fee payments for a period of 3 years to commence on the registration year due date as specified by the department. The record retention period is extended indefinitely by refusal to provide documents.
- (5) The department may audit a person doing business in Wisconsin to determine compliance with this chapter. Audits may be conducted at the principal place of business of the person, provided that location is within the state of Wisconsin. Where the principal place of business is located outside the state of Wisconsin, the person shall submit documentation for audit to the department upon request. Persons shall cooperate with the department in the determination of the proper amount of fees to be paid under this chapter.

ERB 4.04 HAZARDOUS MATERIALS TRANSPORTATION REGISTRATION FEE FOR TRANSPORTERS.

- (1) Except as provided under ss. ERB 4.06, ERB 4.07 and ERB 4.08, any person performing a transporter function and required to file hazardous materials transportation registration statements with the United States department of transportation under 49 USC 5101 - 5109 and who does business in Wisconsin during the registration year shall pay a fee to the department. The calculation of the fee is determined by the number of activities engaged in as specified in s. ERB 4.03 (1)(a) to (e), the total Wisconsin hazardous material miles traveled within or through Wisconsin and the total Wisconsin hazardous material volume in pounds transported within or through Wisconsin during the reporting period. The fee shall be paid on or before January 1 and annually thereafter.
- (2) Except as provided under ss. ERB 4.06, ERB 4.07 and ERB 4.08, the activity fee is calculated by determining the number of activities, as in s. ERB 4.03 (1) (a) to (e), for which a transporter function has been provided during the reporting period and identifying the fee. The mileage fee is calculated by determining the category for total Wisconsin hazardous materials miles and identifying the fee associated with this category. The volume fee is calculated by determining the category for total Wisconsin hazardous material volume, in pounds, of hazardous materials transported within or through Wisconsin and identifying the fee associated with this category. The total fee is calculated by adding together the total activity fee, mileage fee and volume fee.
- (3) Except as provided under ss. ERB 4.06, ERB 4.07 and ERB 4.10 and using the calculation of activity fee, mileage fee and volume fee, the fee required under this section is:

Activity Fee

- (a) For persons engaged in a transporter function within one activity under s. ERB 4.03(1) (a) to (e), \$200; or

For persons engaged in a transporter function within two or more activities under s. ERB 4.03 (1)(a) to (e), \$400;

And, if applicable, supplemental high risk fee for persons engaged in a transporter function under activities under s. ERB 4.03(1)(a) to (c), \$400.

Mileage Fee

Category	Total Wisconsin Hazardous Materials Miles	Fee
1.	1 - 1,000	\$50
2.	1,001 - 5,000	\$100
3.	5,001 - 10,000	\$150
4.	10,001 - 50,000	\$200
5.	50,001 - 100,000	\$250
6.	100,001 and over	\$300

Volume Fee

Category	Total Wisconsin Hazardous Material Volume In Pounds	Fee
7.	1 - 100,000	\$100
8.	100,001 - 300,000	\$200
9.	300,001 - 500,000	\$300
10.	500,001 - 1,000,000	\$400
11.	1,000,001 - 1,500,000	\$500
12.	1,500,001 - 2,000,000	\$600
13.	2,000,001 - 2,500,000	\$700
14.	2,500,001 - 3,000,000	\$800
15.	3,000,001 - 3,500,000	\$900
16.	3,500,001 and more	\$1000

ERB 4.05 HAZARDOUS MATERIALS TRANSPORTATION REGISTRATION FEE FOR OFFERORS.

- (1) Any person performing an offeror function and required to file hazardous materials transportation registration statements with the United States department of transportation under 49 USC 5101 - 5109 and who does business in Wisconsin during the registration year, shall pay a fee to the department. Performing any one of the offeror functions will subject a person to the provisions of this section.
- (2) Except as provided under s. ERB 4.04, s. ERB 4.07, s. ERB 4.08 and s. ERB 4.10 and using the activities under s. ERB 4.03(1)(a) to (e), the fee required under this section is:
 - (a) For persons engaged in one offeror function under s. ERB 4.03(1)(a) to (e), \$600; or
For persons engaged in two or more offeror functions under s. ERB 4.03(1)(a) to (e), \$1200;
And, if applicable, supplemental high risk fee for persons engaged in one or more offeror function under s. ERB 4.03(1)(a) to (c), \$900.

ERB 4.06 HAZARDOUS MATERIAL TRANSPORTATION REGISTRATION CONSOLIDATED FEE.

- (1) Any person required to pay a fee under s. ERB 4.04(1) may elect to submit a consolidated fee in lieu of the fee determined under s. ERB 4.04(1).
- (2) Except as under s. ERB 4.08, the consolidated fee is \$2100.

ERB 4.07 HAZARDOUS MATERIAL TRANSPORTATION FEE FOR PERSONS ENGAGED AS BOTH AN OFFEROR AND TRANSPORTER.

Any person engaged in one or more offeror functions and one or more transporter functions shall submit to the department the greater of the fee calculated under s. ERB 4.04 and s. ERB 4.05 or pay the consolidated fee under s. ERB 4.06.

ERB 4.08 HAZARDOUS MATERIAL TRANSPORTATION REGISTRATION FEE FOR PERSONS DOING NO BUSINESS IN WISCONSIN DURING THE REPORTING PERIOD.

- (1) Any person engaged in a transporter function who did not do business in Wisconsin during the reporting period and is required to register under this chapter for the entire current registration year shall pay the minimum activity fee, minimum mileage fee and minimum volume fee. Such person engaged in a transporter function within activities as under s. ERB 4.03(1)(a) to (e) shall pay the supplemental high risk fee as under s. ERB 4.04(3)(a).
- (2) Any person engaged in an offeror function who did not do business in Wisconsin during the reporting period and is required to register under this chapter for the entire registration year shall pay the minimum activity fee as under s. ERB 4.05(2)(a). Such person engaged in an offeror function within activities as under s. ERB 4.03(1)(a) to (c) shall pay the supplemental high risk fee as under s. ERB 4.05(2)(c).
- (3) Any person who did not do business in Wisconsin during the reporting period in an offeror or transporter function, but who will be doing business in Wisconsin in an offeror or transporter function and who is required to register under this chapter shall pay a prorated fee based on the following calculations:
 - (a) Multiply the number of months of doing business in Wisconsin during the current registration year by \$29.00; or, if applicable
 - (b) For persons engaged in an offeror or transporter function within activities as in ERB 4.03(1)(a) to (c), multiply the number of months of doing business in Wisconsin during the current registration year by \$33.00.

ERB 4.09 HAZARDOUS MATERIAL TRANSPORTATION REGISTRATION FEE ADJUSTMENT.

- (1) The funds as specified in s. 20.395(4)(bh), Stats. and s. 166.21(2)(bm), Stats. and s. 166.215(1) and (2), Stats., shall be collected from persons required to register and pay fees under this chapter.

For the purpose of determining the subsequent year's registration fee, effective August 1, 1996, the department, in consultation with the state emergency response board, shall perform the following calculation:

- (a) Add the appropriations from the transportation fund under s. 20.465(3)(rg)(rk)(rp), Stats., for the current fiscal year for division of emergency government administration as specified in s. 20.395(4)(bh), Stats., regional emergency response teams as specified in s. 166.215(1) and (2) and county-wide level b teams as specified in s. 166.21(2)(bm), Stats.; and

- (b) Compare the total to the actual revenues received in the previous fiscal year; and
 - (c) To the extent actual revenues exceed or are insufficient to fund the total appropriations as calculated under para. (a), adjust the fees by the percent necessary, not to exceed 125% of the previous year's fee, rounded to the nearest \$5.00, to generate revenues equal to the calculation.
2. Effective August 1, 1997 and each August 1 thereafter, the department, in consultation with the state emergency response board, shall perform the following calculation:
- (a) Add the appropriations from the transportation fund under s. 20.465(3)(rg)(rk)(rp), Stats., for the current fiscal year for division of emergency government administration, as specified in s. 20.395(4)(bh), Stats., regional emergency response teams, as specified in s. 166.215(1) and (2), Stats., and county-wide level b teams, as specified in s. 166.21(2)(bm), Stats.; and
 - (b) Add the difference between: prior fiscal year appropriations, less any lapses; and actual revenues received in the prior fiscal year; and
 - (c) Compare the total to the actual revenues received in the previous fiscal year; and
 - (d) To the extent actual revenues exceed or are insufficient to fund the total appropriations as calculated under (a) and (b) in this subsection, adjust the fees by the percent necessary, not to exceed 125% of the previous year's fee, rounded to the nearest \$5.00, to generate revenues equal to the calculation.
3. The department shall notify all registrants of the rate adjustment 45 days prior to the effective date.

ERB 4.10 EXEMPTIONS. If a person is required to pay the fee under s. 166.20(7)(a)(2), Stats., the person shall pay under s. ERB 4.04 the amount by which the fee otherwise payable under s. ERB 4.04 exceeds the fee under s. 166.20(7)(a)(2), Stats., if any. For purposes of the fee exemption in this section, the reporting period shall be the same as s. 166.20(7)(a)(2), Stats. If a person is exempt under this section, the state emergency response board identification number or numbers submitted on form DMA 1004 (R1-93) as specified in s. 166.20, Stats. and Chapter ERB 1 shall be submitted at the time the exemption is submitted to the department.

ERB 4.11 PENALTIES. Any person who violates any provision of this section shall forfeit not more than \$20,000 per day per separate offense as specified under s. 166.20(11)(dr) and (e), Stats.

NOTE. A copy of the hazardous materials transportation registration application may be obtained from the Motor Carrier Registration Section, 4802 Sheboygan Avenue, P. O. Box 7983, Madison, WI 53707-7983.

This rule shall take effect upon publication as specified in s. 227.22(2)(intro.), Stats..

Dated 1 NOV 95

Agency: 
 Leroy E. Conner, Jr. Chair
 State Emergency Response Board