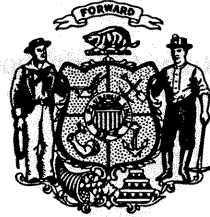


WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC  
FORM 2

**RULES CLEARINGHOUSE**

**Ronald Sklansky**  
Director  
(608) 266-1946



**David J. Stute, Director**  
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**CLEARINGHOUSE REPORT TO AGENCY**

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[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 99-017**

AN ORDER to create ERB 1.04 (8), relating to inventory reporting for petroleum marketing facilities.

Submitted by **DEPARTMENT OF MILITARY AFFAIRS**

02-05-99 RECEIVED BY LEGISLATIVE COUNCIL.

03-01-99 REPORT SENT TO AGENCY.

RS:RJC;jal;ksm

**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)]

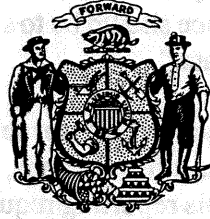
Comment Attached      YES       NO

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## RULES CLEARINGHOUSE

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## CLEARINGHOUSE RULE 99-017

### 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.]**

#### 2. Form, Style and Placement in Administrative Code

a. Current s. ERB 1.07 contains a note which advises readers where a tier two form may be obtained. A similar note should be added to s. ERB 1.04.

b. In s. ERB 1.04 (8), the introduction should be rewritten to grammatically lead into the following subunits. The introduction could be rewritten to read:

An owner or operator of a petroleum marketing facility shall submit a tier two inventory form, a site plan and an inventory form fee statement annually on or before March 1 and an appropriate inventory form fee on or before the due date established by the division if any of the following apply:

c. The effective date provision should include language providing that the rule takes effect "on the first day of the month after publication in the Wisconsin administrative register." [See s. 1.02 (4) (a), Manual.]

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

a. In both the statutory authority and statutes interpreted provisions of the rule, reference is made to "s. 166.20 (5) 3." The reference should be to s. 166.20 (5) (a) 3. In addition, the citations should be followed by the notation "Stats."

b. The plain language summary refers to submission of "section 311-312 reporting information." It is not apparent what this information is, or what "section" is being referred to. The summary needs to more fully identify this reporting requirement and the legal source of the section being referred to.

c. Section ERB 1.04 (8) (intro.) requires a certain fee to be submitted on or before a "due date established by the division." When is that date and how are those required to report notified of the date? This information should be included in the rule or a note to the rule. Also, the term "division" needs to be defined, perhaps in s. ERB 1.02. It is not clear which division is being referred to.

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

a. In the rule's plain language summary, the summary indicates that the rule will maintain reporting thresholds "as they currently exist." Where do they currently exist? Also, if they already exist, why is the rule needed? These issues should be more fully explained in the summary.

b. Section ERB 1.04 (8) (b) and (c) refer to "the 10,000 pound reporting threshold." What is this threshold? Can a cross-reference to the threshold be provided? How does one meet or exceed it? Is it met by storing, selling or doing something else with the fuel? The rule needs to be clarified.

**ORDER OF WISCONSIN EMERGENCY MANAGEMENT  
(FORMERLY STATE EMERGENCY RESPONSE BOARD)**

To create s. ERB 1.04(8)

**ANALYSIS PREPARED BY WISCONSIN EMERGENCY MANAGEMENT**

Statutory Authority: 166.20(2)(a), 166.20(2)(b), 166.20(5)3, 227.11(2)(a)  
Statutes Interpreted: 166.20(5)3

Plain Language Summary

Wisconsin Emergency Management proposes an order to create ERB 1.04 (8) relating to inventory reporting for petroleum marketing facilities.

This rule specifies that reporting thresholds for all hazardous substances at retail gas stations be 10,000 pounds. This will maintain reporting thresholds as they currently exist. Hazardous materials information, including information pertaining to gasoline and diesel fuel in amounts of 10,000 pounds or more, will continue to be provided to local fire departments, the Local Emergency Planning Committee, and to Wisconsin Emergency Management. This will also insure the opportunity for the continued orderly submission of section 311-312 reporting information in 1999.

SECTION 1. ERB 1.04(8) is created to read:

ERB 1.04 (8) An owner or operator of a petroleum marketing facility shall submit a tier two inventory form, a site plan, and inventory form fee statement annually on or before March 1 if any of the following apply. The appropriate inventory form fee shall be due on or before the due date established by the division.

- (a) The facility is required to submit an inventory form under s. 166.20 (5) (a) 3, Stats.
- (b) The facility meets or exceeds the 10,000 pound reporting threshold for gasoline.
- (c) The facility meets or exceeds the 10,000 pound reporting threshold for diesel fuel.

to 1.04(8) tells  
where tier 2  
form for  
low tier 1, no  
show 1.04(8)  
after 1.04(8)

where?

↳ what is this?

how to allow  
know when to  
is.

where is the  
federal law?

↳ how far we need to extend  
by storing, dumping, what?

*Handwritten notes at the top of the page, including "W. H. Adams" and "D. J. ...".*

This rule shall take effect as provided in s. 227.22(2)(intro) Stats.

Dated: 2.4.99 Agency: Steven D. Sell  
Steven D. Sell, Administrator

*[The following text is extremely faint and appears to be bleed-through from the reverse side of the page. It is largely illegible.]*

## Initial Regulatory Flexibility Analysis

ERB 1.04(8) will not change reporting requirements for small business as defined in s. 227.114(1). ERB 1.04(8) will maintain existing reporting thresholds for gasoline and diesel fuel when located in underground storage tanks at retail gas stations. The proposed rule does not impose any fees on small business. Petroleum Marketing facilities are exempt from paying EPCRA inventory reporting fees for gasoline and diesel fuel. Additionally, facilities with fewer than 10 full-time equivalent employees are exempt from paying EPCRA inventory reporting fees in Wisconsin.



State of Wisconsin \

DEPARTMENT OF MILITARY AFFAIRS  
Wisconsin Emergency Management

2400 WRIGHT STREET  
P.O. BOX 7865  
MADISON, WISCONSIN 53707-7865  
TELEPHONE: (608) 242-3232  
FACSIMILE: (608) 242-3247  
24-HOUR EMERGENCY HOTLINE:  
1-800-943-0003

January 20, 1999

Mr. Gary Poulson  
Deputy Revisor  
131 West Wilson Street, Room 800  
Madison, WI 53703-3233

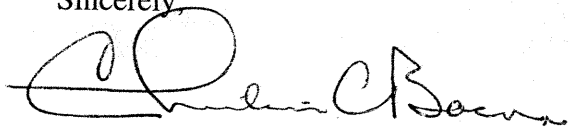
Dear Mr. Poulson:

Attached for processing is a copy of the emergency rule for the creation of ERB 1.04(8). In addition to the text of the emergency rule, also enclosed is the statement of the finding of emergency, the plain language analysis, and the fiscal estimate.

It is the agency's intention to promulgate ERB 1.04(8) as a permanent rule. Enclosed please find the statement of scope for the permanent rule.

Any substantive questions regarding the emergency rule or statement of scope should be directed to William Clare, at 242-3220. This is also the person responsible for the internal processing of the rule.

Sincerely,

  
Steven D. Sell, Administrator for

Attachments

c Chief Clerk of Senate  
Chief Clerk of Assembly  
Wisconsin Legislative Members



**ORDER OF WISCONSIN EMERGENCY MANAGEMENT/  
STATE EMERGENCY RESPONSE BOARD**

**ADOPTING EMERGENCY RULE**

**s. ERB 1.04(8)**

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**ANALYSIS PREPARED BY WISCONSIN EMERGENCY MANAGEMENT/  
STATE EMERGENCY RESPONSE BOARD**

Statutory Authority: 166.20(2)(a), 166.20(2)(b), 166.20(5)3, 227.11(2)(a)  
Statutes Interpreted: 166.20(5)3

Plain Language Summary

Wisconsin Emergency Management proposes an order to adopt ERB 1.04 (8) relating to inventory reporting for petroleum marketing facilities. This rule specifies that reporting thresholds for all hazardous substances at retail gas stations be 10,000 pounds. This will maintain reporting thresholds as they currently exist. Hazardous materials information, including information pertaining to gasoline and diesel fuel in amounts of 10,000 pounds or more, will continue to be provided to local fire departments, the Local Emergency Planning Committee, and to WEM. This will also insure the opportunity for the orderly submission of section 311-312 reporting information in 1999. It is the intent of the agency to promulgate a permanent rule that will maintain the current reporting thresholds.

SECTION 1. ERB 1.04(8) is created to read:

ERB 1.04 (8) An owner or operator of a petroleum marketing facility shall submit a tier two inventory form, a site plan, and inventory form fee statement annually on or before March 1 if any of the following apply. The appropriate inventory form fee shall be due on or before the due date established by the division.

- (a) The facility is required to submit an inventory form under s. 166.20 (5) (a) 3, Stats.
- (b) The facility meets or exceeds the 10,000 pound reporting threshold for gasoline.

(c) The facility meets or exceeds the 10,000 pound reporting threshold for diesel fuel.

This rule shall take effect on January 20, 1999.

Dated: 1.15.99 Agency: Steven D. Sell  
Steven D. Sell,  
WEM Administrator/SERB Chair

*Department of Military Affairs*

**(Wisconsin Division of Emergency Management/State Emergency Response Board)**

Rules adopted revising chs. ERB 1 sec 1.04, relating to reporting requirements for gasoline and diesel fuel present at 10,000 pounds or more at retail gas stations.

**Finding of Emergency and Rule Analysis**

The Wisconsin Division of Emergency Management finds that an emergency exists and that adoption of this rule is necessary for the immediate preservation of public health, safety, and welfare. The facts constituting the emergency are as follows:

The U.S. Environmental Protection Agency has stated in writing, its intent to implement a rule change effective March 1, 1999. The rule change will increase the 42 USC 11021 and 11022 reporting threshold for gasoline to 75,000 gallons and for diesel fuel to 100,000 gallons, when stored in below ground tanks at retail gas stations. This change will have the effect of exempting most gasoline stations from EPCRA reporting requirements. It will also mean that gasoline and diesel fuel that is present in 10,000 pounds or more will not be uniformly reported under EPCRA. If implemented, this rule change will occur during a reporting period and will take effect on the deadline for submission of 1999 reporting information, which applies to chemicals that were present in 1998. This will create a situation where facilities reporting prior to the rule change would be reporting under one requirement and those reporting after the March 1, 1999 deadline would be reporting under a different requirement. It is not clear which requirement would affect those facilities that submit documentation prior to the intended rule change, that is, by the reporting deadline, and whether these facilities would have to amend their submissions to be in compliance with the law.

The most commonly spilled substances in Wisconsin are petroleum products, gasoline and diesel fuel. This information is important to fire departments as well as Local Emergency Planning Committees as an emergency response planning tool. The Tier Two chemical information is provided to the local fire department with jurisdiction over the facility and to the appropriate Local Emergency Planning Committee. This is the only comprehensive list of hazardous materials that is available to fire departments and Local Emergency Planning Committees.

Further, in Wisconsin, individual preprinted forms are printed in mid December and mailed out by the first week of January to assist facilities in meeting reporting requirements. This is well before the time when U.S. EPA has stated that they intend to implement a rule change. Because EPA intends to implement the change on the March 1, 1999 reporting deadline, it is not possible to mail forms out at that time and have facilities make the necessary submissions by the March 1, 1999 deadline. Wisconsin facilities have come to expect that inventory reporting materials will be mailed out in a time frame

that will allow adequate time for the facility to meet the March 1, 1999 reporting deadline. Facilities that fail to submit the necessary reporting materials by the March 1, 1999 reporting deadline would be in non-compliance with federal and state EPCRA reporting requirements.

Individual states do not have the authority to implement requirements under EPCRA which are less stringent than the federal requirements. This emergency rule would maintain the existing reporting requirements that have been in place since the inception of the program in 1986. Specifically, this rule states that the reporting thresholds for gasoline and diesel fuel would be maintained at 10,000 pounds for retail gas stations. This emergency rule will allow Wisconsin Emergency Management the ability to distribute reporting materials in a timely manner and will permit the facilities to submit the necessary paperwork prior to the March 1, 1999 deadline. By allowing facilities sufficient time prior to the March 1, 1999 deadline, they will have the opportunity to make the necessary submissions under EPCRA and to remain in compliance with federal and state law. This will also insure that all gasoline and diesel fuel stored in amounts of 10,000 pounds or more in the state is reported under EPCRA. This in turn will insure that all fire departments and Local Emergency Planning Committees will continue to have access to a comprehensive listing of hazardous materials under the Emergency Planning and Community Right-to-Know Act.

**Publication Date:** January 20, 1999

**Effective Date:** January 20, 1999

**Expiration Date:** June 19, 1999

**Hearing Date:** To be held in conjunction with the permanent rule hearing

FISCAL ESTIMATE

DOA-2048 N(R10/98)

-X ORIGINAL

UPDATED

- CORRECTED

- SUPPLEMENTAL

Subject

ERB 1 Administrative Rule relating to inventory reporting for gasoline and diesel fuel.

Fiscal Effect

State: -X 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

N/A

- Decrease Costs

Local: -X No local government costs

1. Increase Costs - Permissive - Mandatory

3. Increase Revenues - Permissive - Mandatory

5. Types of Local Governmental Units Affected:

2. Decrease Costs - Permissive - Mandatory

4. Decrease Revenues - Permissive - Mandatory

- Towns - Villages - Cities

- Counties - Others

- School Districts - WTCS Districts

Fund Sources Affected

- GPR - FED - PRO - PRS - SEG - SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

Since 1992 (for reports due March 1, 1992 for chemicals present in 1991) petroleum marketing facilities have been exempt from paying fees on gasoline and diesel fuel. This rule change maintains the EPCRA reporting requirements as they currently exist and will not change inventory reporting fees in any way. This rule change will not have a fiscal effect on the regulated community or small business.

Long-Range Fiscal Implications

None

Agency/Prepared by: (Name & Phone No.)

William Clare (608) 242-3220

Authorized Signature/telephone No.

*William Clare*

242-3155

Date

12/21/98

# FISCAL ESTIMATE WORKSHEET

1999 Session

Detailed Estimate of Annual Fiscal Effect	<input type="checkbox"/> ORIGINAL	<input type="checkbox"/> UPDATED	LRB or Bill No./Adm. Rule No.	Amendment No.
DOA-2047 (R10/94)	<input type="checkbox"/> CORRECTED	<input type="checkbox"/> SUPPLEMENTAL		

Subject

**I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):**

**II. Annualized Costs:**

	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
<b>A. State Costs by Category</b>	\$	\$ -
State Operations – Salaries and Fringes		
(FTE Position Changes)	( FTE)	(- FTE)
State Operations – Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
<b>TOTAL State Costs by Category</b>	\$	\$ -
<b>B. State Costs by Source of Funds</b>	Increased Costs	Decreased Costs
GPR	\$	\$ -
FED		-
PRO/PRS		-
SEG/SEG-S		-
<b>III. State Revenues –</b>	Increased Rev.	Decreased Rev.
Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)		
GPR Taxes	\$	\$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
<b>TOTAL State Revenues</b>	\$	\$ -

**NET ANNUALIZED FISCAL IMPACT**

	STATE	LOCAL
NET CHANGE IN COSTS	\$ _____	\$ _____
NET CHANGE IN REVENUES	\$ _____	\$ _____

Agency/Prepared by: (Name & Phone No.)	Authorized Signature/Telephone No.	Date
--	------------------------------------	------