



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 08-106

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

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

a. In the enumeration of sections treated, the end of the sentence should read: “an order to amend WEM 1.03 and 1.04 (7) (a) to (j), relating to fees.” In the statement of statutes interpreted and statutory authority, avoid citing a provision “generally”, where a more specific citation is available. The statement of statutes interpreted should read: “Sections 166.20 (5) and (7) and 166.21, Stats.” For statutory authority, s. 166.20 (7) (a), Stats., should be cited.

b. In the plain language analysis and elsewhere in the rule, “(a) – (j)” or “(a) through (j)” should read “(a) to (j).”

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

a. In the explanation of agency authority, and throughout the rule, slashed alternatives should be avoided. [s. 1.01 (9), Manual.] Because s. 166.20 (7) (a), Stats., directs the *division* to establish the two fees by rule, it is suggested that the explanation be rewritten as follows: “Section 166.20 (7) (a), Stats., directs the Department of Military Affairs, through its Division of Emergency Management (WEM), to establish by rule a one-time emergency planning notification fee and an annual inventory form fee. The one-time fee is paid when a facility gives the hazardous materials planning notification required under s. 166.20 (5) (a) 1., Stats., and the inventory form fee is paid annually when the facility submits the emergency and hazardous chemical inventory forms required under s. 166.20 (5) (a) 3., Stats.”

Also in this provision, on line 3, “requirement” should read “required”. “WEM” should replace “The Division of Emergency Management” on line 4. On line 5, “and adopt” is unnecessary.

b. In the entry on related rules or statutes, the first “other” should be deleted.

c. The rule analysis should provide an understandable and objective description of the effect of the rule and contain sufficient detail to enable the reader to understand the content of the rule and any changes made in existing rules. [s. 1.02 (2) (c), Manual.] As currently drafted, the analysis is repetitive, contains editorial comments, and does not state the change being made to current rules until the final paragraph. It is suggested that the analysis be rewritten to more clearly and concisely explain the rule changes being proposed. Note in particular the following:

(1) In the second paragraph, “created and adopted” should be changed to “enacted”. Also, “22 years ago” should be replaced by the year EPCRA was enacted. Do both the local units of government and the local emergency planning committees (LEPCs) play a role? If so, the role of each should be explained. The phrase “the burden of another unfunded mandate to local government” should be avoided. The sentence beginning on line 5, through the remainder of the paragraph, could be rewritten as follows: “To alleviate the costs of such planning on local governments, the legislature in (enter year) enacted a fee collection program for facilities that store hazardous chemicals and extremely hazardous substances. Under the program, WEM is directed to promulgate rules establishing a one-time emergency planning notification fee and an annual inventory form fee. The fees collected fund certain WEM administrative expenses as well as emergency planning grants to LEPCs for assistance in complying with EPCRA and related state laws. The current fees have not been increased since the program’s inception in 1990.”

(2) In the third paragraph, there should be an explanation of why a “significant reduction of money available to fund activities at the county level of emergency management” is anticipated. Have grant program funds been reduced? A brief explanation of the program should be given.

(3) The information in the fourth paragraph should be moved up to where the fee program is explained, as should the proposed fee increase explained in the last paragraph. It is unnecessary to repeat here that the fees have not increased since 1990. Also, since some of the fees are increased by slightly more than 35%, the reference to 35% should be followed by “; rounded up to the nearest \$5”. The sixth paragraph could be the final paragraph, with just the acronym WEM used and “dwindle” changed to “dwindling”.

Finally, this paragraph relates to county government's role in EPCRA compliance, while the previous paragraph refers more generally to "local units of government," which would include levels other than counties. The analysis should clarify which levels of government are intended to be referenced.

d. In the first paragraph of the summary of factual data and analytical methodologies, should "analogies" on line 1 read "analyses"? Also, the second sentence should be restated to indicate that several options were considered to *prevent* the depletion of the fund. In the first bullet point, "certain" could be deleted. Which "fund" is referred to in the second bullet point? In the final paragraph, "it was determined" should be restated as "WEM determined". Also, does the cost of living language just pertain to WEM expenditure levels or also to the grant allocation to counties? The last two sentences repeat information from the analysis and should be deleted here.

e. In the section on types of small businesses affected, an "in" should be inserted after "defined" on line 1 and the "un" on line 2 should be "in". In the section on the impact on small business, what is meant by "will expect an increase..."?

f. Before SECTION 1 of the rule text, the correct name of ch. WEM 1 is "Fees", not "Wisconsin Emergency Management".

g. In SECTION 1, s. WEM 1.03 is amended to increase the emergency planning notification fee. As an additional amendment, it is suggested that the first sentence of s. WEM 1.03 be stricken, because the requirement to submit the designated fee is duplicative of the second sentence and the requirement to do so "no later than 2 months after February 1, 1990" is outdated. Also, the second and third sentences could be combined, so that it is clear that the one-time requirement in the third sentence applies to the fee and notification referenced in the second sentence.

h. In SECTION 2, s. WEM 1.04 (7) is amended to increase the inventory form fee. It is suggested that two amendments to s. WEM 1.04 (1) also be considered. First, the provision contains an outdated reference to a fee statement being due on or before March 1, 1990, which should be stricken. Second, the provision appears to make conflicting statements as to when the fee is due. The first sentence provides that the "inventory form fee statement" (defined in s. WEM 1.02 (8) as the form used to collect the inventory form fee) is due annually on or before March 1, while the second sentence provides that the "appropriate inventory form fee" is due on or before the due date established by the division. Where is that date established? Is it the March 1 date? Or are the statement and fee due at two different times? (It would appear that since the form is used to collect the fee, the form and the fee would be due at the same time. Is this correct?) These two sentences should be reconciled.

It is noted that current s. WEM 1.02 (6) also creates potential confusion in defining "fee remittance form" as the form prepared by WEM to collect the inventory form fee, while s. WEM 1.02 (8) defines "inventory form fee statement" as the form prepared by WEM to collect the

inventory form fee or to claim the exemption from that fee. These provisions should also be reviewed, and reconciled as necessary.

i. In current s. WEM 1.04 (7) (intro.), it is suggested that the word “appropriate” be stricken. If this change is made, the treatment clause to SECTION 2 would read: “WEM 1.04 (7) (intro.) and (a) to (j) are amended to read:”. In s. WEM (7) (a) and (b), the word “pounds” should be inserted after the “100,000”.

j. In the note following the rule, will the receipt of preprinted forms occur only in 2010? If so, that information will become outdated and should not be included in the note. If the preprinted forms will be sent on or around *each* January 1 to facilities that submit statements in the previous year, the note should be restated to reflect that.