

# STATEMENT OF SCOPE

## Department of Military Affairs

**Rule No.:** Chapter WEM 1 Fees

**Relating to:** Establishment of a fee payment structure for owners or operators of facilities with hazardous chemicals present, as directed by s. [323.60 \(7\)](#), Stats.

**Rule Type:** Permanent

### 1. Detailed description of the objective of the proposed rule.

- a. 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. The Wisconsin Emergency Management Division (WEM) collects the fees, which are then used to support implementation of the Emergency Planning and Community Right-to-Know Act (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 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) show the fees collected are insufficient to continue funding the statewide program and grants to counties beyond 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 proposed rule change aims 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.

b. Deadline for payment of annual inventory fees.

Section 323.61, Stats., establishes a March 1 deadline to submit annual fee payments to WEM. Recently, a facility took the position that the submission is timely if it puts the fee and the report in the mail on or before the submission deadline. The intent of the rule was 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. Expand the ways in which facility owner can submit required completed forms

WEM accepts required forms both on paper and through an electronic submission format. The proposed rule would clarify that both submission formats are acceptable.

d. Remove references to repealed statutes and update terminology to reflect current applicable statutes

Section 166.20(1)(gm), Stats., was repealed, and the language was incorporated into s. 323.60(7)(dm). The proposed rule would replace the reference to s. 166.20(1)(gm) with reference to s. 323.60(7)(dm).

## **2. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives.**

WEM 1 lists the requirements for facilities to report hazardous chemicals and the associated fees. This rule change would impact only the amounts of the fees in the future and clarify the annual fee receipt deadline.

The policy under the applicable statute is to fund WEM's administrative expenses incurred in fulfilling its obligations under the statutes and the grants for assistance in complying with s. 323.60 and EPCRA sections 323.60(7) and 323.61, Stats. No new policies are being proposed. The goal of revising WEM 1 would be to ensure sufficient funding for these legislative purposes. The alternative to revising the rule would undercut legislative intent and policy.

Concerning the timing of payment, s. 323.60 requires that the fees be paid annually. A revision to the rule will clarify what submission of the fees to WEM constitutes. The alternative would be not to make the change to a rule that has caused at least one facility some confusion.

The proposed amendment to the rule clarifying acceptance of electronic submission of required forms and changing reference from s. 166.20(1)(gm), Stats., would not result in a change in policy.

### **3. Detailed explanation of statutory authority for the rule, including the statutory citation and language.**

Section 323.60 (7) (a), Stats., grants WEM the authority to promulgate administrative rules to set fees specified in that section. The text of s. 323.60(7) is as follows:

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. Estimate of amount of time that state employees will spend developing the rule and other resources necessary to develop the rule.**

The department estimates that it will take approximately ten hours to revise the text of the rule.

### **5. List with description of all entities that may be affected by the proposed rule.**

The proposed rule change will impact hazardous chemical reporting and planning facilities.

### **6. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule.**

There is no existing or proposed federal regulation intended to address the activities to be regulated by the proposed rule change.

**7. Anticipated economic impact of implementing the rule. Also, please note if the rule is likely to have a significant economic impact on small businesses.**

It is not anticipated that the revisions to the rule would have a significant economic impact on any facility, including facilities operated by small businesses.

**8. Contact person.**

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