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# Wisconsin Legislative Council

## RULES CLEARINGHOUSE

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## CLEARINGHOUSE RULE 23-032

### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]**

#### 1. Statutory Authority

In the department’s analysis for the proposed rule, rather than citing generally to s. 323.60, Stats., the listing of statutory authority could be revised to more precisely cite s. 323.60 (2) (b) and (7) (a), Stats. The more precise citations are reflected in the explanation of agency authority.

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

a. In the introductory clause for the proposed rule, the enumeration of provisions treated by the rule should be grouped in the following order: to repeal; to amend; to repeal and recreate; and to create. The repeal of s. WEM 1.07 (5) (Note) and the creation of s. WEM 1.08 should be added to the itemization of treated provisions. The department should revise “amend WEM 1.03 ...” to “amend WEM 1.03 ...”. Additionally, it is unnecessary to repeat “amend” before each provision that receives that treatment. Lastly, the phrase “to amend Chapter” should be removed. [s. 1.01 (1), Manual.]

b. In the department’s analysis for the proposed rule, the summary and comparison with federal statutes and regulations could be revised to include a brief description of the federal Emergency Planning and Community Right-to-Know Act (EPCRA).

c. In the department’s analysis for the proposed rule, an entry should be inserted for the analysis and supporting documents used to determine the effect on small business.

d. SECTION 1 of the proposed rule should be divided and treated in two separate SECTIONS. Section WEM 1.03 is affected in its entirety but s. WEM 1.04 is not, and accordingly should be treated separately. [s. 1.03 (2) (b), Manual.]

e. In SECTION 1 of the proposed rule, amending s. WEM 1.04 (7), the treatment clause for the SECTION and the introductory clause for the proposed rule should be revised to more precisely identify that the proposed rule is amending s. WEM 1.04 (7) (a) to (j). The text of sub. (7) (intro.) should not be shown. The format for the designations of pars. (a) to (j) in the text should be corrected to enclose the designations in parentheses. [ss. 1.03 (2) (a) 2. and 1.10 (1) (b) 4., Manual.]

f. In SECTION 2 of the proposed rule, the treatment of s. WEM 1.04 (Note) should be identified as repealing and recreating the note, as the existing text is modified in its entirety. The recreated text should be shown without underscoring. The treatment clause for the SECTION and the introductory clause for the proposed rule should be revised accordingly to identify the correct treatment. [s. 1.04 (5), Manual.]

g. In SECTION 3 of the proposed rule, amending s. WEM 1.07, the treatment clause for the SECTION and introductory clause for the proposed rule should be revised to more precisely identify that the proposed rule is amending s. WEM 1.07 (3). The text of s. WEM 1.07 (intro.), (1), and (2) should not be shown. [s. 1.03 (2) (a) 2., Manual.]

h. In SECTIONS 4 and 5 of the proposed rule, the stricken text of the repealed notes should not be shown. [s. 1.04 (3) (a) and (b), Manual.] Also, in the treatment clause for SECTION 5, the designation “(5)” should be inserted before “(Note)”.

i. In SECTION 6 of the proposed rule, the text in the newly created provision should be shown without underscoring. [s. 1.04 (2) (a), Manual.] Also, the text should include the section number and a title for the provision. [s. 1.10 (2) (a) 2. and (b) 2., Manual.]

j. The department could consider including an initial applicability clause to specify the applicability of the revised fees. For example, would the revised fee apply to all inventory forms received on or after the effective date of the proposed rule? This may be a question particularly if the fee may be submitted separately from the inventory form. [s. 1.03 (3), Manual.]

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

a. SECTION 1 of the proposed rule establishes a deadline for certain required documentation and fees by reference to 42 U.S.C. s. 11002 (5) (c). The department should specify the deadline directly, rather than by reference to a provision of federal law. [s. 1.14 (7), Manual.] Additionally, it appears the specific citation employed in the proposed rule does not exist in the federal code.

b. In SECTION 2 of the proposed rule, the department should include the department’s website address.

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

In SECTION 6 of the proposed rule, the department should identify with greater specificity which U.S. Bureau of Labor Statistics inflation calculator will be used to calculate fee adjustments. The department could also consider including a link to the calculator that will be used in a note. The department should rewrite proposed s. WEM 1.08 in the active voice to clarify that the division shall biennially adjust fees for inflation and post the previous and current fee amounts on its website. Lastly, will the department post all previous fee amounts, or only the immediately prior fee amounts?