

Notice of Hearing

The Emergency Management Division (WEM) of the Wisconsin Department of Military Affairs announces that it will hold a public hearing on a permanent rule to amend Chapter WEM 1, relating to an increase in emergency planning notification and hazardous chemical inventory fees required by s. 323.60 (7), Stats., clarifying when fees and required reports are considered submitted to WEM, permitting electronic submissions, removing reference to obsolete statutes and updating language to conform to applicable statutes.

Hearing Information

Date: August 3, 2023

Time: 11:00 AM

Location: Department of Military Affairs, 2400 Wright Street, Madison, Wisconsin

Please note that you will be required to present a state-issued ID at the gate entrance. Please park in the lot to the left of the entry gate and enter through the main doors. Once inside the building, guests should wait to be escorted to the hearing room.

Appearances at the Hearing and Submittal of Written Comments

The rules may be reviewed, and comments made at <https://wem.wi.gov/epcra/>.

Comments may also be submitted to Wisconsin Emergency Management, Department of Military Affairs, 2400 Wright Street, Madison, WI 53704, or by email to katie.sommers@widma.gov. Comments must be received at or before the public hearing to be included in the record of rulemaking proceedings.

Initial Regulatory Flexibility Analysis

Introduction

Wisconsin Emergency Management (WEM) is a division of the Wisconsin Department of Military Affairs that works with local governments to coordinate effective disaster response and recovery efforts. Chapter WEM 1 establishes a fee payment structure for owners or operators of facilities with hazardous chemicals present, as required by s. 323.60 (7), Stats. This proposed rule does not increase regulatory compliance burdens on small businesses but does seek to impose relatively small increases to the one-time fee (\$315) and to annual fees (increases from \$60 - \$450) which WEM is required by s. 323.60, Stats., to collect to cover its costs of administering the Emergency Preparedness and Community Right-to-Know Act (EPCRA) and grants authorized by s. 323.61, as well as to fund the grants. The proposed increases are designed to account for inflation, which has increased nearly 30% since the current fees were put in place in 2010 and the rule would also establish a mechanism to recalculate these fees in the future tied to the US Bureau of Labor Statistics Inflation Calculator. The proposed rule would also clarify deadlines for fee payment as well as permit electronic submission of forms and payment to make compliance more convenient and to remove references to repealed statutes. The department believes that the proposed changes may have an effect on small businesses, as defined in Wis. Stat. § 227.114(1). However, the proposed revision to this rule will not have a significant economic impact on a substantial number of small businesses for the reasons discussed below.

Proposed Fee Increases

WEM seeks fee increases on a one-time fee and on annual fees as set forth below and in the text of the proposed rule. There are a total of 2,554 active planning facilities that paid a one-time Emergency Planning Notification fee when they initially reported.

One-Time Emergency Planning Notification Fee	Current	Proposed	# of Facilities 2022		Projected Increase in Revenue
			Paid	Exempt	
	\$1,080	\$1,395	53	3	\$16,695

Tier II* Fees	Under 100,000 lbs. Cumulative				Over 100,000 lbs. Cumulative				Projected Increase 111 Revenue
#of Chemicals	Current	Proposed	# of Facilities 2022		Current	Proposed	# of Facilities 2022		
			Paid	Exempt			Paid	Exempt	
1	\$205	\$265	2,395	749	\$245	\$320	1,159	579	\$230,625
2-10	\$405	\$525	2,384	392	\$485	\$630	588	353	\$371,340
11-100	\$610	\$790	189	15	\$730	\$965	56	0	\$47,180
101-200	\$745	\$965	11	0	\$890	\$1,150	1	0	\$2,680
201-300	\$880	\$1,140	0	0	\$1,055	\$1,365	0	0	\$0
301-400	\$1,015	\$1,310	1	0	\$1,215	\$1,570	0	0	\$295
401-500	\$1,150	\$1,485	1	0	\$1,375	\$1,775	0	0	\$335
500+	\$1,285	\$1,660	0	0	\$1,540	\$1,990	0	0	\$0

Other Tier II* Fees	Current	Proposed	# of Facilities 2022		Projected Increase in Revenue
			Paid	Exempt	
Temp Construction	\$27	\$35	17	2	\$136
Batch Plants	\$27	\$35	30	1	\$240

* Tier II reports convey specific information on hazardous chemicals present at a facility and are required by the US Environmental Protection Agency for facilities that are required to prepare or have available a Safety Data Sheet (also known as the Material Safety Data Sheet) under the regulations implementing the Occupational Safety and Health Act of 1970.

Discussion

As previously stated, the increase in the year the rule is promulgated would be only 30%. For example, if a fee is \$205, then the 30% increase would result in a fee of \$265, a \$60 difference. In the future, the fees would only rise in line with the rate of inflation. WEM would maintain the proposed rates or modify them only when inflation increases to maintain consistent and adequate

funding for program administration. The rates will be posted on WEM's website and communicated in all written and electronic communications WEM generates regarding EPCRA fees. WEM believes that this will have a gradual and incremental impact on any small business. The fees increase as the number of chemicals and the weight of the chemicals at a facility increase. Approximately 94% of the businesses that are required to pay the fees have between one and 10 types of chemicals, with 46% having just one and 48% having between two and 10. The maximum increase for the 46% would be \$75/year and the maximum increase for the 48% would be \$145/year. There is only one business that currently is in the highest fee range and the 30% increase would result in a maximum of a \$450 increase. Logically, smaller businesses are less likely to have significant numbers and quantities of chemicals, which means smaller businesses will be subject to smaller increases.

Additionally, only about 8,923 businesses in Wisconsin are required to file reports under Wis. Stat. § 323.60. Approximately 23.4% of those businesses have fewer than ten employees and are exempt from any of the WEM 1 fees. As a result, approximately only 6,832 businesses will be affected by this rule in any way. It is unknown how many employees those 6,832 businesses have. Even if all 6,832 businesses are considered "small businesses" for the purposes of Wis. Stat. § 227.114, given the number of small businesses in the state as a whole, the proposed revision will not have a significant economic impact on a substantial number of small businesses throughout the state.

In 2024, when the rule goes into effect, WEM anticipates generating revenue of \$669,526, an increase of 30% over the 2023 revenues, which approximately matches the rate of inflation since the fees were first established.