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# Wisconsin Legislative Council

## RULES CLEARINGHOUSE

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## CLEARINGHOUSE RULE 21-012

### 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

The proposed rule modifies the definition of “economic emergency”, for the purposes of the grants authorized by s. 45.40, Stats., to mean “an occurrence that results in a temporary adverse financial consequence in which an applicant has no control”, and to include “a local, state, or national emergency”. Section 45.40 (1m) (a), Stats., provides that “The department may provide subsistence payments only to a veteran who has suffered a loss of income due to illness, injury, or natural disaster”. Is the rule’s modification of the definition of “economic emergency” consistent with the purposes for which s. 45.40 (1m) (a), Stats., allows subsistence grants to be made?

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

a. The introductory clause in the caption for the proposed rule indicates that the proposed order renumbers and amends, among other provisions, s. VA 2.01 (2) (a) (title). SECTION 10 of the proposed rule amends, but does not renumber, s. VA 2.01 (2) (a) (title). The department should correct this listing to reflect the applicable treatment.

b. The introductory clause indicates that the proposed order amends s. VA 2.03 (1) (intro.), (d), (g), (e), and (k). The department should correct this listing to reflect that the treatment, in the proposed rule, is of s. VA 2.03 (1) (intro.), (d), and (g), and (2) (e) and (k). [See SECTIONS 34, 36, and 38.]

c. In the introductory clause, the department should delete the comma between “2.02 (1g)” and “(2) (a) (Note)” and insert the word “and” between these two provisions.

d. In SECTION 3 of the proposed rule, the definition of “approved treatment programs” includes a parenthetical reference to the acronym “USDVA”. If used in a rule, an acronym should itself be a defined term. The department should amend the rule to remove the parenthetical use of the acronym and add a definition for the acronym. [s. 1.08 (2) (a), Manual.]

e. SECTION 3 of the proposed rule should be divided to address the provisions treated in SECTIONS 4 and 5 in sequential order. [s. 1.03 (1) and (2) (c) 2. and (d), Manual.]

f. In SECTION 11 of the proposed rule, the underscoring for the numbering of subds. 2. and 5. should be shown after the stricken words. SECTION 21 and other SECTIONS should be reviewed for similar issues.

g. SECTION 14 of the proposed rule revises s. VA 20.01 (2) (b), titled “eligibility”, which addresses both subsistence and health care grants under the current version of the rule. The proposed rule applies this paragraph only to subsistence grants. The only eligibility requirement listed in this paragraph is that the applicant’s household income may not exceed 200 percent of the federal poverty guidelines. The grants authorized by s. 45.40 (1m), Stats., for subsistence aid, however, provide a variety of requirements for a person to be eligible for a grant. Among other requirements, the person must either be a veteran or be eligible as the spouse or dependent child of a veteran. Both the current and proposed rule incorporate the s. 45.40, Stats., requirements via a cross-reference to s. 45.40, Stats., within the rule’s definition of “applicant”. This is confusing, though, because an applicant would not be able to ascertain whether he or she might be eligible for a grant simply by consulting this provision, though the title would suggest otherwise. Additionally, the proposed rule replicates the current rule’s incorporation of certain substantive eligibility requirements into the definition of “applicant”. Substantive provisions should not be incorporated as part of a definition. [s. 1.07 (1) (d), Manual.]

h. In the treatment clause for SECTION 17 of the proposed rule, the reference to “and (f)” should be removed.

i. SECTION 20 of the proposed rule creates a paragraph titled “eligibility” that applies to health care grants and is problematic for the same reasons as apply to the comments about SECTION 14. In addition, at least three of the five subdivisions included within this paragraph appear more closely related to what type of action the department should take under various circumstances than whether a particular applicant is eligible to receive a grant. While the availability of funds may impact whether an applicant actually receives a grant, it would seem not to affect whether an applicant is eligible to receive a grant. These provisions might be more appropriately placed in a paragraph other than one pertaining to an applicant’s eligibility. Additionally, subd. 5. should be revised to include an introductory statement, ending in a colon, to explain the applicability of the further subunits.

j. In SECTION 74 of the proposed rule, the treatment of s. VA 2.08 (5) (L) (intro.) should be moved to a separate SECTION to renumber and amend the provision from par. (L) (intro.) to par. (L). In the text, the final colon should be shown with a strike-through, the underscored word “agreement” should be moved to the end, and an underscored period should be inserted.

k. The proposed rule requires the department to deny a grant if there are no remaining funds available at the time the applicant applies. This suggests that if funds subsequently become available again, an otherwise eligible applicant would be required to resubmit the application. Is this intended?

l. The department should review and revise the introductory clause in the rule caption to reflect any updates made in response to these comments.

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

a. Throughout the proposed rule, the department should consider revising requirements to active voice and consistently using the singular form of words. [s. 1.05 (1) (c) and (d), Manual.]

b. In SECTION 20 of the proposed rule, it appears “department authorized agent” should be “department-authorized agent”. Also in SECTION 20, “the department shall make a decision” should be “the department shall determine”.

c. In SECTION 62 of the proposed rule, “means the ability of a nonprofit organization” may be more clearly written “means a nonprofit organization is able”.