

STATE OF WISCONSIN

DEPARTMENT OF MILITARY AFFAIRS

EMERGENCY MANAGEMENT DIVISION

ORDER OF THE ADJUTANT GENERAL REPEALING CURRENT SECTION WEM 7.03(1)(b)

The statement of scope for this rule, SS 007-22, was approved by the Governor on January 27, 2022, published in Register No. 794A3 on February 21, 2022, and approved by The Adjutant General on February 11, 2022, as required by s. 227.135(2), Stats. The final draft of the rule was approved by the Governor on May 5, 2022, pursuant to s. 227.185, Stats.

The Adjutant General hereby adopts an order repealing current section WEM 7.03(1)(b) regarding eligibility criteria for disaster fund grants.

Analysis

1. Statute Interpreted:

Section [323.31](#), Stats.

2. Statutory Authority:

Sections [323.31](#) and [227.11\(2\)\(a\)](#), Stats.

3. Explanation of Agency Authority:

The Wisconsin Disaster Fund (WDF) was created by 2005 Wisconsin Act 269 and codified in § 323.31, Stats. The statute authorizes the adjutant general to may payments to local governmental units, federally-recognized tribes and bands and retail electric cooperatives for damages suffered and costs incurred because of a “disaster,” as that word is defined in ch. 323, Stats. Section 323.31 also authorized the department to promulgate rules establishing the application process and eligibility criteria for receipt of payment under s. 323.31. The proposed rule change addresses eligibility criteria. Specifically, it removes the current provision that requires that an entity otherwise eligible for funds must also declare a disaster during the disaster to be able to receive disaster funds.

Section 227.11(2)(a) authorizes the department to promulgate rules interpreting the provisions of any statute enforced or administered by the agency if considered necessary to effectuate the purpose of the statute. The removal of the eligibility criteria proposed here is necessary to effectuate the purpose of s. 323.31 because that statute does not require a declaration of emergency.

4. Related Statutes or Rules:

s. 227.11 (2) (a), Stats.

5. Plain Language Analysis:

Section [323.31](#) requires DMA to provide state disaster assistance payments to local governmental units when federal disaster assistance is not available, directing DMA to promulgate rules establishing the application process and the criteria for determining eligibility for payments under the statute. Section WEM [7.03\(1\)](#) establishes disaster assistance funds eligibility criteria. One of the current criteria specifies that a local governmental unit must have declared a disaster or emergency within the period of the disaster, referred to as an “incident period.” That criterium is not required by s. [323.31](#) and, based on feedback from local governmental units, often cannot be met because the local governmental unit is busy during the period of the disaster responding to the disaster, working to save lives and preserve property. The proposed revisions to section WEM [7.03\(1\)](#) removes the requirement that a disaster or emergency must be declared during the incident period as a condition of eligibility.

6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:

While there are no existing or proposed federal regulations intended to address the specific activities to be regulated by the elimination of WEM 7.09(1)(b), to be eligible for federal disaster funds under the Stafford Act, 42 U.S.C. ch. 68, the governor must "find" that a disaster has occurred before he/she can ask the president for a disaster declaration that would trigger availability of federal disaster relief funds. The request to the president must be made within 30 days of the incident.

7. If Held, Summary of Comments Received During Preliminary Comment Period and at a Public Hearing on the Statement of Scope:

No such hearing was held.

8. Comparison with Similar Rules in Adjacent States:

Illinois -

WEM did not find any administrative rules regarding state-funded disaster assistance programs for local governments that were tied to a local governmental unit disaster or emergency declaration.

Iowa -

Iowa does have an administrative rule that addresses general "financial assistance for disaster recovery" to local governments and others, but the rule addresses assistance tied to the issuance of a presidential disaster declaration. No rule governing state financial assistance to local governmental units upon a state or local disaster declaration was found.

Michigan -

Under Michigan's administrative rules, local governments applying for disaster funds have to declare an emergency in a "timely manner." Mich. Admin. Code R 30.53. No definition of "timely manner" and no other provision requiring that a disaster declaration be made during the duration of the disaster were found in the rules.

Minnesota -

WEM did not find any administrative rules regarding state-funded disaster assistance programs for local governments that were tied to a local governmental unit disaster or emergency declaration.

9. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen:

When WEM reminded local jurisdictions that WEM [7.03\(1\)\(b\)](#) requires the issuance of a disaster declaration within the incident period, it received numerous communications about the impact of the current requirement. The comments indicated that, when disaster strikes, local jurisdictions spend their time in the immediate response phase, assisting their citizens and protecting life and property from further damage. Many leaders of local jurisdictions wear multiple "hats" that require them to try to manage a disaster, while responding at the same time.

Comments also indicated that incidents that are wind/tornadic related or "quick hitting" happen so fast that it is impossible for jurisdictions to declare an emergency within the incident period. This is especially true in small towns and rural areas of the state where an incident can cut off communications and infrastructure to making the timely declaration. This is also true if the incident occurs during the night hours, when the overall impact of the incident doesn't become apparent until the daylight hours the next day, leaving the jurisdiction ineligible for disaster fund assistance if it was unable to declare a disaster during the incident timeframe.

10. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report:

The proposed rule is not anticipated to have any effect on small business. Please see the accompanying Fiscal Estimate and Economic Impact Analysis.

11. Effect on Small Business (initial regulatory flexibility analysis):

The department expects no economic impact on small businesses directly related to these proposed rules. The proposed rule does not impose any compliance, service standards, or reporting requirements on small businesses.

12. Agency Contact Person:

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TEXT OF RULE

SECTION 1. Section WEM 7.03(1)(b) is repealed and WEM 7.03(1)(c)-(f):

WEM 7.03 Eligibility criteria.

- (1) The division may make payments to eligible local governmental units under this chapter upon receipt and consideration of an application if the administrator determines all of the following:
- (a) The local governmental unit has suffered a major catastrophe.
 - ~~(b) A disaster or emergency declaration was issued by the local governmental unit or the state during the incident period of the major catastrophe.~~
 - (c) The damages suffered and eligible costs incurred are the direct result of a major catastrophe.
 - (d) Federal disaster assistance is not available for that major catastrophe because the governor's request that the president declare the catastrophe a major disaster under [42 USC 5170](#) has been denied or where no federal assistance is requested because the major catastrophe does not meet the statewide or countywide per capita impact indicator under the public assistance program guidelines issued by the federal emergency management agency.
 - (e) At least one local governmental unit within the county or a tribal governmental unit has incurred public assistance costs that equal or exceed the countywide per capita impact indicator under the public assistance program guidelines issued by the federal emergency management agency. Only local units of government that reach this threshold will be eligible for assistance.
 - (f) The local governmental unit will contribute at least 30% of the total amount of eligible costs incurred from the major catastrophe from other funding sources.

SECTION 2. EFFECTIVE DATE. This rule shall take effect on the first day of the first month commencing after the date of publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)