

STATE OF WISCONSIN

DEPARTMENT OF MILITARY AFFAIRS

Elimination of Disaster or Emergency Declaration Requirement

Disaster Fund Rule

Section WEM 7.03

The Wisconsin Department of Military Affairs proposes to delete current section WEM 7.03(1)(b) regarding eligibility criteria for disaster fund grants and renumber section WEM 7.03(1)(c)-(f) to (b)-(e).

The statement of scope for this rule, SS 007-22, was approved by the Governor on January 27, 2022, published in Register, No. 793B on January 31, 2022, and approved by the Department of Military Affairs on February 11, 2022. This emergency rule was approved by the Governor on February 24, 2022.

Analysis Prepared by the Department of Military Affairs

**1. Finding of Emergency:**

The Department of Military Affairs (DMA) finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. The facts constituting the emergency are as follows:

Section [323.31](#), Stats., directs DMA to, among other things, promulgate rules regarding eligibility for state-provided funds to assist retail electric cooperatives, as defined in s. [16.957 \(1\) \(t\)](#), Stats., local governmental units, as defined in s. [19.42 \(7u\)](#), Stats., and federally recognized American Indian tribes and bands in this state (collectively, local governmental units) with recovery from a disaster. The statute does not require that a local governmental unit has to have declared a disaster or emergency before being eligible for the funds. However, current section WEM [7.03\(1\)\(b\)](#) provides that, to be eligible for s. [323.31](#) funds, a local governmental unit must issue a declaration of disaster or emergency during an “incident period.” An incident period is the period of time between the start and end of a disaster. Section [WEM 7.02\(8\)](#). The Emergency Management Division (WEM) of DMA has heard from local governmental units that seek funds under s. [323.31](#) that, in the wake of disasters, it is often not possible to make a disaster or emergency declaration during the incident period given that the local governmental units are overwhelmed with responding to the disaster during that time. This is particularly true with respect to incidents that may only last a day or two. During the incident period, affected jurisdictions have many crucial things to focus on. These things include:

- Immediate debris removal activities for emergency services (e.g., EMS, Fire, Police, etc.)
- Resuming traffic patterns.
- Life safety and property protection.
- Sandbagging and pumping for flooding issues.
- Evacuations and rescues.
- Road closures.

—Emergency road repairs.

—Coordination of staff, equipment, resources, and volunteers responding after an incident starts.

Elimination of the declaration-of-disaster or emergency eligibility criterium by eliminating section WEM [7.03\(1\)\(b\)](#) is consistent with the governing statute and will ensure that local governmental units can focus on responding to a disaster without being precluded from obtaining disaster funds simply because the disaster or emergency declaration is not issued during the midst of the response. As such, it is necessary for the preservation of the public safety, health and welfare to amend the rule as outlined. As disasters can strike at any time, and particularly so in spring, time is of the essence in amending section WEM [7.03\(1\)](#) accordingly.

## **2. Statute Interpreted:**

Section [323.31](#), Stats.

## **3. Statutory Authority:**

Section [323.31](#), Stats.

## **4. Explanation of Agency Authority:**

Section [323.31](#), Stats., provides as follows:

State disaster assistance. From the appropriations under s. [20.465 \(3\) \(b\)](#) and [\(s\)](#), the adjutant general shall make payments to retail electric cooperatives, as defined in s. [16.957 \(1\) \(t\)](#), to local governmental units, as defined in s. [19.42 \(7u\)](#), and to federally recognized American Indian tribes and bands in this state for the damages and costs incurred as the result of a disaster if federal disaster assistance is not available for that disaster because the governor's request that the president declare the disaster a major disaster under [42 USC 5170](#) has been denied or because the disaster, as determined by the department of military affairs, does not meet the statewide or countywide per capita impact indicator under the public assistance program that is issued by the federal emergency management agency. To be eligible for a payment under this section, the retail electric cooperative, local governmental unit, or tribe or band shall pay 30 percent of the amount of the damages and costs resulting from the disaster. The department of military affairs shall promulgate rules establishing the application process and the criteria for determining eligibility for payments under this section.

Section [227.11\(2\)\(a\)](#), Stats., provides as follows:

(2) Rule-making authority is expressly conferred on an agency as follows;

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by the agency:

Section [227.24\(1\)\(a\)](#), Stats., provides as follows:

(1)(a) An agency may, except as provided in s. [227.136\(1\)](#), promulgate a rule as an emergency rule without complying with the notice, hearing, and publication requirements under this chapter if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effective if the agency complied with the procedures.

## **5. Related Statutes or Rules:**

None.

## **6. 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 incident period. That criterion 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\(1\)](#) remove from the eligibility criteria the requirement that a disaster or emergency be declared during the incident period and renumbers the remaining subparagraphs in section WEM [7.03\(1\)](#) accordingly.

## **7. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:**

There are no existing or proposed federal regulations intended to address the activities to be regulated by the elimination of WEM [7.03\(1\)\(b\)](#).

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

The department did not hold a preliminary public hearing.

## **9. 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.

**10. 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\(1\)\(b\)](#) required the issuance of a disaster declaration within the incident period, it received communications from numerous local jurisdictions about the impact of the current requirement. The local jurisdictions indicated that, when disaster strikes, they are spending 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 of 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.

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

The rule will be posted to solicit economic impact comments and the economic impact analysis will be provided as required during the permanent rule rulemaking process.

**12. 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.

**13. Agency Contact Person:**

Robby Stoikes, Recovery Section Supervisor, Wisconsin Emergency Management, Department of Military Affairs, (608) 242-3226, [widisasterfund@wisconsin.gov](mailto:widisasterfund@wisconsin.gov).

**14. Place where comments are to be submitted and deadline for submission:**

Written comments may be submitted at any public hearings, by regular mail, or email to:

Department of Military Affairs

ATTN: Wisconsin Emergency Management

2400 Wright Street

Madison, WI 53704

Comments may be submitted to the department office listed above or to [widisasterfund@wisconsin.gov](mailto:widisasterfund@wisconsin.gov) until the deadline given in the upcoming notice of public hearing. The notice of public hearing and deadline for submitting comments will be published on the department’s emergency management division’s webpage: <https://wem.wi.gov/>.

## RULE TEXT

**SECTION 1. Section WEM 7.03(1)(b) is deleted and WEM 7.03(1)(c)-(f) are renumbered to WEM 7.03(1)(b)-(e):**

### **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)~~ (b) The damages suffered and eligible costs incurred are the direct result of a major catastrophe.

~~(d)~~ (c) 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)~~ (d) 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)~~ (e) 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 takes effect upon publication in the state newspaper and shall remain in effect for 150 days, as provided in s. [227.24\(1\)\(c\)](#), Stats., subject to extensions under s. [227.24\(2\)](#), Stats.