

Clearinghouse Rule 06-088

ORDER OF THE DEPARTMENT OF MILITARY AFFAIRS DIVISION OF EMERGENCY MANAGEMENT CREATING RULES RELATING TO THE APPLICATION PROCESS FOR DETERMINING ELIGIBILITY FOR PAYMENT UNDER THE MAJOR DISASTER ASSISTANCE FUND

Analysis Prepared By Wisconsin Emergency Management

Chapter WEM 7 establishes eligibility criteria for payments to local units of government for damages suffered and costs incurred from response to major disasters. This administrative rule delineates the application procedure that a local unit of government must follow in order to receive payment from the major disaster assistance fund under s. 166.03 (2) (b) 9., Stats. The rule establishes the filing procedures, the costs eligible for payment under the fund, the required supporting documentation and an appeals process. For those major disasters that are catastrophic and place an undue burden on the local unit of government, the rule provides for an expedited payment process.

SECTION 1. Chapter WEM 7 is created to read:

WEM 7.01	Purpose
WEM 7.02	Definitions
WEM 7.03	Eligibility Criteria
WEM 7.04	Application Process
WEM 7.05	Eligible and Ineligible Costs
WEM 7.06	Payments of Major Disaster Assistance Fund Applications
WEM 7.07	Expedited Claims and Payment Process
WEM 7.08	Record Retention
WEM 7.09	Fund Expenditure Limitation
WEM 7.10	Dual Payment
WEM 7.11	Appeal Process

7.01 PURPOSE. The purpose of this chapter ~~section~~ is to establish the application process and the criteria for determining eligibility for payment under the major disaster assistance fund as required in ss. 166.03 (2) (b) 9., Stats.

7.02 DEFINITIONS. In this chapter:

- (1) "Administrator" means the administrator of the Wisconsin division of emergency management.
- (2) "Applicant" means any local governmental unit that applies for major disaster assistance funding under this chapter.
- (3) "Applicant's authorized representative" means any person authorized by the governing body of a local governmental unit to apply for major disaster assistance funding under this chapter.
- (4) "County" means the county or counties where a major catastrophe has occurred.

- (5) "Department" means the Wisconsin department of military affairs.
- (6) "Disaster declaration" means a document by which an authorized official or the governing body of a local governmental unit or the State declares a disaster.
- (7) "Division" means the Wisconsin division of emergency management.
- (8) "Incident period" means the definite time interval of a major catastrophe with a specific start and end date.
- (9) "Local governmental unit" has the meaning given in 19.42 (7u), Stats.
- (10) "Major catastrophe" has the meaning given in s. 166.02 (6u), Stats.
- (11) "State" means the state of Wisconsin.

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 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) The local governmental unit will contribute at least 30% of the total amount of the damages and eligible costs incurred from the major catastrophe from other funding sources.

(2) In making a determination under sub (1), the administrator shall consider all of the following:

- (a) The availability of funding from other federal and state government sources.
- (b) The availability of insurance.
- (c) Any other factors the administrator considers relevant.

7.04 APPLICATION PROCESS. (1) The division shall prepare application materials which may be updated as needed. The application materials shall set forth the application instructions and requirements for funding under this chapter.

Note: Application materials are available on request without charge from the Disaster Resources Section Supervisor, Wisconsin Emergency Management, 2400 Wright Street, Room 213, P.O. Box 7865, Madison, WI 53707-7865, telephone (608) 242-3200. The

completed forms and supporting documentation shall be mailed to the Disaster Resources Section Supervisor, Wisconsin Emergency Management, 2400 Wright Street, Room 213, P.O. Box 7865, Madison, WI 53707-7865. Application materials may also be accessed from the Wisconsin Emergency Management webpage at: <http://emergencymanagement.wi.gov/>

Note: Within six months of enactment of the administrative rules, Wisconsin Emergency Management will develop an administrative manual that details the implementation process and provides specific information on program eligibility. Until such time as the manual is developed, Wisconsin Emergency Management will adhere to the eligibility criteria outlined for Categories A, B, and C of FEMA's Public Assistance Program contained in the FEMA Public Assistance Guidance Document.

(2) A county, on behalf of eligible local units of government units within the county, shall provide the administrator with written notice of intent, DMA form XXX (x/2006), to apply within 30 days of the major catastrophe. A late notice of intent shall be cause for the denial of the application.

(3) Within 60 days after the end of the incident period of the major disaster, an application shall be submitted by the county to the administrator. A complete application under this chapter shall include the following: A completed DMA Form XXX (x/2006), signed by the county emergency management director containing the following information:

(a) The cause, the location of damage, a list of the affected local units of government within the county, and the incident period of the major catastrophe.

(b) Documentation of a local, county or state disaster declaration in response to the major catastrophe.

(c) A description of damages and the amount of eligible costs incurred by the eligible local governmental units.

(d) A statement or evidence that the local governmental unit has matching funds to cover at least 30% of the total of eligible costs incurred from the major catastrophe.

(e) Any other information that the administrator considers relevant.

(4) The administrator shall review the application and supporting documentation for completeness and may return the application with a request for more detailed information. The administrator may consult with local public officials to ensure the application reflects the extent and magnitude of the damages and to reconcile any differences. The application is not complete until the administrator receives all requested information.

(5) An application returned to the applicant with a request for more detailed information or for correction of deficiencies must be resubmitted within 30 days from receipt by applicant. The failure of the applicant to provide in a timely manner the requested information without a reasonable explanation shall be cause for denial of the application.

(6) For purposes of this section, an application and supporting documentation is deemed complete when the administrator determines the application fully complies with the requirements under this chapter. When the application is complete, a notice will be provided to the applicant of the administrator's receipt and acceptance of the application.

(7) If the administrator determines that a review of the application and supporting documentation cannot be completed because the records, documents and other evidence were not maintained in accordance with generally accepted accounting principles and practices consistently applied, or were for any reason inadequate to demonstrate the reasonableness of the eligible costs claimed, the administrator may reject the application or make adjustments, if possible. Further consideration of such amounts will depend on the adequacy of subsequent documentation submitted by the applicant. Any additional information requested by

the administrator must be resubmitted by the applicant within 30 days from receipt unless specifically extended by the administrator. The failure of the applicant to provide in a timely manner the requested information without a reasonable explanation shall be cause for denial of the application.

(8) The administrator shall take no longer than 30 days from the time the application is deemed complete in which to approve or deny the application. Applications that are approved shall be paid in accordance with section 7.06 of this chapter. A letter of denial shall be sent upon decision by the administrator that the application is denied.

(9) If the application is approved, the administrator will notify eligible local governmental units of the steps necessary to obtain payment or reimbursement for eligible costs as specified in 7.05 (1), including submission of invoices or other documentation substantiating the costs to be reimbursed.

7.05 ELIGIBLE AND INELIGIBLE COSTS. (1) **ELIGIBLE COSTS.** Costs eligible for payment under this chapter are those arising from a major catastrophe that are a direct result of response or recovery operations ~~to~~^{for} the declared major catastrophe during the incident period and the applicant is responsible for providing response and recovery operations in the major catastrophe.

(a) Eligible costs shall include, but are not limited to:

~~as follows:~~

1. ~~Debris removal to include woody debris, building wreckage, dirt, gravel, vehicles and other disaster related materials~~ Debris removal to include woody debris, building wreckage, dirt, gravel, vehicles and other disaster related materials.

2. Emergency protective measures to eliminate or reduce immediate threats to life, public health or safety or a hazard that threatens significant damage to improved public or private property.

3. Damages to roads and bridges to include surfaces, bases, shoulders, ditches, drainage structures, piers, girders, abutments, slope protection and approaches.

(2) **INELIGIBLE COSTS.** Those costs which the administrator determines are not of such severity and magnitude that effective response and payment are beyond the capabilities of the affected local governmental units.

(a) Ineligible costs include, but are not limited to:

1. Damages to water control facilities including dams, reservoirs, levees, drainage channels, shore protective devices, irrigation facilities and pumping facilities.

2. Damages to buildings and equipment.

3. Damages to utilities including power generation facilities, sewage collection systems and water treatment plants.

4. Ordinary operating expenses of local governmental units, such as salaries and expenses of public officials that are not directly related to the application.

5. Costs for which payment has been, or will be, received from any other funding source.

6. Disaster-related costs which should be covered and compensated by insurance.

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7.06 PAYMENTS OF MAJOR DISASTER ASSISTANCE APPLICATIONS. (1) GENERAL

PROVISIONS. (a) The state share of the damages and eligible costs incurred by local governmental units shall not be greater than 70% of the eligible disaster costs.

(b) In any quarter of the state fiscal year, the department may not make payments to applicants in excess of 25% of the total amounts allocated in s. 20.465. (3) (b) and (s), Stats.

(c) If major disaster assistance application payments requested during a quarter exceed 25% of the total amounts allocated in s. 20.465. (3) (b) and (s), Stats., all accepted applications will be paid proportionately.

(d) During the last quarter of the state fiscal year, the department shall proportionately allocate and pay the balance, if any, remaining in the appropriations created in s. 20.465. (3) (b) and (s), Stats. among all the applications submitted during the fiscal year with unpaid eligible costs.

(2) MATCH REQUIREMENTS. (a) The local share of damages and eligible costs incurred by local governmental units may not be less than 30%.

(b) The substantiated value of donated materials, equipment, services and labor may be used as all or part of the local share of the eligible costs subject to all of the following:

1. All sources of local share donation shall be indicated when the application and supporting documentation is submitted.

2. The maximum value of donated, non-professional labor shall be equal to the prevailing federal minimum wage requirements.

3. The value of donated equipment may not exceed the Wisconsin department of transportation highway rates equipment.

4. The value of donated materials and professional services shall conform to market rates and be established by invoice.

(3) AUDIT. (a) The applicant shall account for all funds received and paid under this chapter in conformance with generally accepted accounting principles and practices. The applicant shall maintain detailed records of expenditures to show that fund payments were used for the purpose for which the payment was made. The applicant shall keep all financial records, including all invoices and canceled checks or bank statements that support all eligible costs claimed by the applicant, and the records shall be available for inspection by the department for 5 years after the final payment.

(b) The department may audit all of the applicant's records pertaining to this application. The department's audit may result in an adjustment in the payment amount.

(4) PAYMENT. The applicant shall submit to the administrator claims for payment of actual and eligible costs on forms provided by the department. All eligible costs claimed for payment shall be documented and shall be consistent with the eligibility provisions of this chapter.

(5) FINAL INSPECTION. Upon completion of all work by an applicant, the division shall inspect all the work that the applicant claims. The applicant shall provide the division employees with access to all claimed work and shall permit review of all records relating to the work.

(6) CLOSEOUT OF APPLICATION. (a) The administrator shall close out the applicant's major disaster assistance application when all of the following occurs:

1. The recovery work is complete.
2. The division~~The Division~~ completes a final inspection of all work claimed for reimbursement by the applicant.
3. The division~~The Division~~ pays eligible costs.
4. The required audits are complete.
5. The applicant receives the final amount due or pays any amount owed.

7.07 EXPEDITED CLAIM AND PAYMENT PROCESS. (1) If the major catastrophe places an undue burden or hardship on the local governmental unit and public officials wish to expedite the application and payment process, the local governmental unit shall submit an expedited request for payment on DMA Form XXX (x/2006) with required documentation that shall include a statement explaining why expedited payment of the application is necessary and the specific hardship posed.

(2) All requests for an advance of funds shall be signed by the applicant's authorized representative and forwarded to the administrator. The administrator shall assess a request for an advance to determine whether the request is reasonable and for eligible costs that have been completed. The administrator shall grant a request for an advance for work not completed only if an applicant has demonstrated that the work cannot be completed without an advance. The amount of an advance will be based upon eligible costs to date and the estimated eligible costs for the next 60-day period.

7.08 RECORD RETENTION.

The applicant shall maintain for five years all records relating to the application submitted in accordance with the State's standard audit practices and shall make the records available for inspection and audit. If a contract or subcontract for the furnishing of goods, equipment, labor, materials, or services to the applicant may result in a claim, the applicant shall include in the contract or subcontract a provision that all books, accounts, reports, and other records relating to the contract or subcontract shall be subject to inspection and audit by the state for five years after completion of the contract or subcontract.

7.09 FUND EXPENDITURE LIMITATION.

Expenditures from the major disaster assistance fund, as a result of a catastrophic disaster, shall not exceed the amount authorized in the major disaster assistance appropriations created in s. 20.465. (3) (b) and (s), Stats. An expenditure payment cap of 25% of the total amounts allocated in s. 20.465. (3) (b) and (s), Stats., shall be set quarterly by the department and balances shall be reconciled at the end of the state fiscal year.

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7.10 DUAL PAYMENT.

If eligible costs are subsequently recovered from other sources after payment from the major disaster assistance fund, the applicant shall return the recovered eligible costs to the department for deposit back into the fund. If the administrator or an applicant determines that the applicant received duplicate funds for a claim from the state and from another source, the applicant shall refund the amount received from the state.

7.11 APPEAL PROCESS.

- (1) Applicant shall have 30 days after receipt of the final determination by the administrator in which to file a written appeal.
- (2) The applicant shall first appeal directly to the administrator.
- (3) Following an appeal to the administrator, an applicant may then request a problem resolution process in which the adjutant general of the department of military affairs reviews the materials submitted by the applicant and issues a decision based on those materials or meets with the parties to negotiate an acceptable resolution of the problem.
- (4) An applicant may request an administrative hearing under Ch. 227 Stats.