

**ORDER OF THE
DEPARTMENT OF MILITARY AFFAIRS
DIVISION OF EMERGENCY MANAGEMENT
CREATING RULES**

Relating to the application process and criteria for determining eligibility for payments to local units of government for damages and costs incurred for major catastrophes.

To create chapter WEM 7

Analysis Prepared By Wisconsin Emergency Management:

Chapter WEM 7 establishes eligibility criteria for payments to local governmental units for damages suffered and costs incurred from response to major disasters. This administrative rule delineates the application procedure that local governmental units 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.

Pursuant to the authority vested in the Division of Emergency Management by ss. 166 and 227.11 (2) (b), the Division of Emergency Management hereby proposes to create rules interpreting s. 166.03 (2) (b) 9, Stats, as follows:

SECTION 1. Chapter WEM 7 is created to read:

**CHAPTER WEM 7
DISASTER FUND RULE**

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	Fund Expenditure Limitation
WEM 7.08	Dual Payment
WEM 7.09	Appeal Process

WEM 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.

WEM 7.02 DEFINITIONS. In this chapter:

- (1) “Administrator” means the administrator of the Wisconsin division of emergency management.

- (2) "Applicant" means a local governmental unit that applies for major disaster assistance funding under this chapter.
- (3) "Applicant's authorized representative" means a 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 s. 19.42 (7u), Stats., and also includes a tribe or band.
- (10) "Major catastrophe" has the meaning given in s. 166.02 (6u), Stats.
- (11) "Public Assistance costs" are those costs incurred by a local governmental unit as a direct result of a disaster.
- (12) "State" means the state of Wisconsin.
- (13) "Tribe or band" has the meaning given in 66.0314 (1) (fe), Stats.

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.
- (2) In making a determination under sub. (1), the administrator shall consider all of the following:
- (a) The availability of funding from other federal or state government or private sources.
 - (b) The availability of insurance.
 - (c) Any other factors the administrator considers relevant.

WEM 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.

- (2) Within 30 days after the end of the incident period, a county, on behalf of eligible local units within the county or a tribal governmental unit, shall provide the administrator with a written notice of intent to apply. A late notice of intent may be cause for the denial of the application.
- (3) Within 60 days after the end of the incident period of the major disaster, the county or a tribal governmental unit shall submit an Application for Wisconsin Disaster Assistance to the administrator. A complete application shall include the following:
 - (a) The cause, the location **of damage**, a list of the affected local governmental units within the county and the incident period of the major catastrophe.
 - (b) Documentation of a local, tribal, county or state disaster or emergency 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 and the population of each unit.
 - (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.
- (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 damage and to reconcile any differences. The application is not complete until the administrator receives all requested information. When the application is complete, a notice will be provided to the applicant of the administrator's approval of the application.

- (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 the applicant. The failure of the applicant to provide the requested information in a timely manner without a reasonable explanation may be cause for denial of the application.
- (6) 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 s. WEM 7.06 of this chapter. A letter of denial shall be sent upon decision by the administrator that the application is denied.
- (7) If the application is approved, the administrator shall notify eligible local governmental units of the steps necessary to obtain payment or reimbursement for eligible costs as specified in s. WEM 7.05 (1), including submission of invoices or other documentation substantiating the costs to be reimbursed.

WEM 7.05 ELIGIBLE AND INELIGIBLE COSTS. (1) Eligible Costs. Costs eligible for payment under this chapter are those that are a direct result of the disaster~~to~~ and are incurred during the designated incident period. Eligible costs are:

~~as follows:~~

a. ~~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.

b. 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.

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

(2) Ineligible Costs are:

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

b. Damage to buildings and equipment.

c. Damage to utilities including power generation facilities, sewage collection systems and water treatment plants.

d. Ordinary operating expenses of local governmental units, such as salaries and expenses of public officials, which are not directly related to the major catastrophe.

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

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

g. Projects and claims totaling less than \$500.00.

WEM 7.06 PAYMENTS OF MAJOR DISASTER ASSISTANCE. (1) General Provisions.

- (a) The state share of the damages and eligible costs incurred by local governmental units may not be greater than 70% of the total 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 shall be paid proportionately.
- (d) During the last quarter of the state fiscal year, the department shall proportionately allocate and pay the balance of funds, 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 in the application and supporting documentation.
2. The maximum value of donated, non-professional labor shall be equal to the prevailing federal minimum wage.
3. The value of donated equipment may not exceed the Wisconsin department of transportation highway equipment rates.
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 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. 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 for 5 years after the final payment.

- (b) The department may audit all of the applicant's records pertaining to an application under this chapter. 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 records pertaining to all claimed work and shall permit review of all records relating to the work.
- (6) Closeout of Application. The administrator shall close out the applicant's major disaster assistance application after all of the following occur:
 - a. The recovery work is complete.
 - b. The division~~The Division~~ completes a final inspection of all work claimed for reimbursement by the applicant.
 - c. The applicant receives the final amount due or pays any amount owed.~~The Division~~
 - d. The required audits are complete.

WEM 7.07 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.

WEM 7.08 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, auditor or 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.

WEM 7.09 APPEAL PROCESS. (1) Applicant shall have 30 days after receipt of the final determination by the administrator in which to file a written appeal of a denial of funds.

- (2) The applicant shall first appeal directly in writing to the administrator detailing the rationale for overturning the original determination.
- (3) Following an appeal to the administrator, an applicant may then request, in writing, a problem resolution process in which the adjutant general of the department of military affairs reviews the materials submitted by the applicant and either issues a decision based on those materials or meets with the parties to negotiate an acceptable resolution of the problem.

- (4) Upon exhaustion of a departmental appeal, an applicant may request an administrative hearing under 227, Stats.

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.