

STATEMENT OF SCOPE

Department of Military Affairs

Rule No.: Chapter WEM 7 Disaster Fund Rule

Relating to: Eligibility Criteria for Disaster Funds Authorized by s. 323.31

Rule Type: Emergency and Permanent

The department of military affairs (DMA) is pursuing an emergency and permanent rule as indicated below. DMA will proceed with the permanent rule-making process at the same time it is proceeding with the emergency rule-making process. It is anticipated that the proposed permanent rule will be identical to the emergency rule.

1. Finding/nature of emergency (Emergency Rule only):

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 with recovery from a disaster. Current WEM 7.03(1)(b) provides that, in order to be eligible for s. 323.31 funds, a local government unit, as defined in WEM 7.02(9), 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 dates of a disaster. WEM 7.02(8). The Wisconsin Emergency Management Division (WEM) of DMA has heard from local governments which seek funds under s. 323.31 that, in the wake of disasters, it is often not possible to make a disaster declaration during the incident period given that the local governments are overwhelmed with responding to the disaster during that time. Elimination of the declaration-of-disaster eligibility criteria by eliminating WEM 7.03(1)(b) will ensure that local government units can focus on responding to a disaster without being precluded from obtaining disaster funds simply because the disaster 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, time is of the essence in amending WEM 7.03 accordingly.

2. Detailed description of the objective of the proposed rule:

The objective of eliminating WEM 7.03(1)(b) is to remove an eligibility requirement for the grant of disaster funds currently set forth in WEM 7.03(1)(b) that is *not* required by the applicable statute, s. 323.31, and which works a hardship for many local governments seeking funds. As noted, WEM 7.03(1)(b) currently requires that a disaster declaration be issued by a local government during the period between the start and the end of a disaster, a time period during which it is often not possible for the local government to take time away from responding to the disaster to issue the declaration.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Other than ensuring that disaster funds get into the hands of local government units who are doing their best to respond to disasters, there are no other existing policies relevant to the proposed elimination of WEM 7.03(1)(b) and there are no new policies being proposed at this time. The elimination of that subsection will not have an impact on any other statute or administrative rule.

Because leaving WEM 7.03(1)(b) in place would work a significant hardship on communities struggling to recover from a disaster, there are no reasonable alternatives to rulemaking.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

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.**

(Emphasis added.)

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:

1. A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.
2. A statutory provision describing the agency's general powers or duties does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.
3. A statutory provision containing a specific standard, requirement, or threshold does not confer rule-making authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

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. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule :

The department estimates that it will take approximately five hours to develop the text of the rule as it is simply a matter of eliminating one subsection and renumbering the others.

6. List with description of all entities that may be affected by the proposed rule :

The proposed rules will impact counties, tribes and bands, towns, village, cities, and non-profit electric cooperatives in the state.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule :

There are no existing or proposed federal regulation intended to address the activities to be regulated by the proposed elimination of WEM 7.03(1)(b)—the award of state funds for disaster relief.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The rule revision is not likely to have a significant economic impact on small businesses as it affects monies awarded to local governments.

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