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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**Ronald Sklansky**  
*Clearinghouse Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

### CLEARINGHOUSE RULE 06-88

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated January 2005.]**

#### **2. Form, Style and Placement in Administrative Code**

- a. The rule’s summary should include all of the headings in s. 1.02 (2) (a), Manual.
- b. The table of contents at the beginning of the chapter does not match the section headings in the text. For example, see ss. WEM 7.06 (title) and 7.07 (title).
- c. Chapter WEM 7 needs a title, written in solid capital letters. [s. 1.05 (1), Manual.]
- d. Throughout the rule, titles to rule sections (s. WEM 7.01, for example) should be written with an initial capital letter and in bold print. It is the subsection titles that are written in all capital letters, unbolded. [s. 1.05 (2) (a), Manual.]
- e. In s. WEM 7.03 and elsewhere in the rule, the text of sub. (1) should be moved up to immediately follow the section title.
- f. In the second note after s. WEM 7.04 (1), it is suggested that the department ask the Revisor of Statutes to insert the actual date that is six months after the effective date of this rule.

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

- a. In s. WEM 7.02 (9), “s.” should be inserted before the statute number.
- b. In s. WEM 7.04 (8), “section 7.06 of this chapter” should read: “s. WEM 7.06.”
- c. In s. WEM 7.04 (9), “s. WEM” should be inserted before “7.05 (1).”

## **5. Clarity, Grammar, Punctuation and Use of Plain Language**

- a. In the next-to-the-last line of the analysis, the second “and” should read “an.”
- b. In s. WEM 7.02 (2) and (3), the “any” should be changed to “a.”
- c. In s. WEM 7.03 (1) (e) and other provisions, it seems unnecessary to mention damages as well as eligible costs. It is the costs incurred for which the local government will contribute 30% of the funds. Therefore, the phrase “the damages and” could be deleted.
- d. In s. WEM 7.03 (2) (intro.), a period should be inserted after “sub” and in sub. (2) (a), the “and” should be replaced by “or.” Also, in sub. (2) (a), should the administrator also consider the availability of funding from *private* sources?
- e. The following comments pertain to s. WEM 7.04 (2):
  - (1) The second “units” on line 1 should be deleted.
  - (2) Reference is made here, and in other locations, to “DMA form XXX (x/2006).” Was it intended that different letters or numbers would be inserted in place of the X’s? It appears that two different forms must be referenced properly: the form giving notice of intent to apply referred to in sub. (2) and the form accompanying the application referred to in sub. (3).
  - (3) Also, in sub. (2), reference to the form could be moved to a note following the provision, so that the remaining phrase would read: “with written notice of intent to apply...” The note should indicate how an applicant may obtain the form.
  - (4) Is the 30 days to give notice of intent counted from the beginning or the end of the major catastrophe? Could reference instead be made to the end of the incident period, as is done on the first line of sub. (3)?
- f. The following comments pertain to s. WEM 7.04 (3):
  - (1) In the first sentence of the (intro.) and elsewhere in the rule, the meaning would be clearer if it were rewritten in the active voice. For example: “...the county shall submit an application to the administrator.” The entire rule should be reviewed for use of the passive voice. [s. 1.01 (1), Manual.]
  - (2) The (intro.) needs clarification. The first sentence refers to an application being submitted. The second sentence indicates that a complete application includes a completed form containing specified information. Is the form different from the application or is the form the application itself? If it is separate, what is the purpose of the form?
  - (3) In the (intro.), the phrase “in this chapter” in the second sentence is unnecessary and a comma should be inserted after “director” on line 3.
  - (4) In sub. (3) (e), how will the applicant know, when making application, what other information the administrator considers relevant?
- g. In s. WEM 7.04 (4), is it necessary that the administrator *return* the application or would it suffice to simply request the additional information needed?

h. In s. WEM 7.04 (5), “the” should be inserted before “applicant” at the end of the first sentence. In the second sentence, the phrase “the requested information” should be moved to follow “provide.” This comment also pertains to the same language in sub. (7).

i. The language in sub. (6) appears to be unnecessarily repetitive of language about completed applications in sub. (4), which already provides that the administrator must review the application and supporting documentation for completeness and may request more detailed information and consult with local officials and that the application is not complete until the administrator receives all of the requested information. It does not seem to add anything to say in sub. (6) that the application and supporting documentation is complete when the application fully complies with the requirements of this chapter. The sub. (6) language requiring notice to the applicant that the administrator has received and accepted the application could be folded into sub. (4). However, if language in sub. (6) is retained, how is the administrator’s *acceptance* of the application different from the *receipt*, since it does not appear that acceptance means approval? Are both words necessary?

j. In s. WEM 7.04 (7), what is meant by “generally accepted accounting principles and practices consistently applied?” Is that the accounting standard to which local governments are held? How is this different from “the State’s standard audit practices” referenced in s. WEM 7.08? Will the “records, documents and other evidence” necessarily be solely financial documents? Also in sub. (7), what is meant by “the administrator may...make adjustments, if possible?” What are “adjustments” and what specifically can the administrator do? To what does “such amounts” refer? Finally, why does a finding in sub. (7) that the application review cannot be completed for lack of proper recordkeeping result in a rejection of or adjustments to the application, while a finding in sub. (5) that the application needs more detailed information or correction of deficiencies results in the application being returned for more information or in information being gleaned from discussions with local officials? Is sub. (7) necessary in light of sub. (5)?

k. In s. WEM 7.04 (8), how long does the administrator have if he or she asks for “adjustments,” rather than approving or denying the application?

l. In s. WEM 7.04 (9), the “will” on line 1 should be changed to “shall.”

m. The following comments pertain to s. WEM 7.05 (1):

(1) For clarity, it is suggested that sub. (1) (intro.) be rewritten to read:

“Costs eligible for payment under this chapter are those that are a direct result of response or recovery operations for which the applicant is responsible that are performed during the incident period.”

(2) Because there is only a par. (a), the language in that paragraph should simply follow the language currently in sub. (1) (intro.). Subdivisions 1. to 3. would then become pars. (a) to (c). The same comment pertains to sub. (2) and s. WEM 2.06 (6). [s. 1.03, Manual.]

(3) In sub. (1) (a) (intro.), the “shall” is unnecessary, as is the phrase “but not limited to,” because the word “include” encompasses other reasonably related examples

not specifically enumerated. [s. 1.01 (7) (c), Manual.] This comment also applies to sub. (2) (a) (intro.).

However, with this open-ended list of eligible costs, how will a local government know what other costs may be considered eligible for reimbursement? Could more types of eligible costs be delineated and the open-endedness removed? Could the eligible costs be limited to the three types currently listed? Could additional costs identified by the administrator be limited to costs for items similar to those delineated?

(4) In sub. (1) (a) 3., “Damages” should be singular.

n. In s. WEM 7.05 (2):

(1) The language in the (intro.) is not a complete sentence. The sentence could be rewritten to start with: “Ineligible costs are those costs that...” Also, by defining ineligible costs as those that the administrator determines are not so severe as to be beyond the capabilities of the local government, the (intro.) seems to give the administrator discretion to decide that certain costs *are* of such severity and magnitude that they are beyond the capabilities of the local government. However, sub. (2) (a) then lists several types of damage that are ineligible for reimbursement. How are the two provisions reconciled if, for example, the administrator concludes that damage to a utility (one of the listed ineligible costs) is of such severity and magnitude that it is beyond the capability of the local government to manage the costs to repair the damage?

(2) In sub. (2) (a) 1. to 3., the word “Damages” should be singular. In sub. (2) (a) 4., a comma should be inserted after “officials.” Also, should “application” be changed to “major catastrophe?”

o. In s. WEM 7.06:

(1) There is an extraneous number above the section title here and in other locations. In the section title, “APPLICATIONS” should be deleted.

(2) In sub. (1) (a), the “shall” should be changed to “may” and “total” should be inserted before “eligible” on line 2.

(3) In sub. (1) (c), the “will” should be changed to “shall.”

(4) In sub. (1) (d), the phrase “of funds” should be inserted after “balance” on line 2.

(5) In sub. (2) (b) (intro.), a comma should be inserted after “costs.” In sub. (2) (b) 1., the “when” should be changed to “in”, and the “is submitted” should be deleted.

(6) In sub. (2) (b) 2., the language is awkward—how is “value...equal to requirements?” Could “requirements” be dropped from the sentence? In sub. (2) (b) 3., what is “highway rates equipment?”

(7) In sub. (3) (b), line 1, “this” should be changed to “an” and “under this chapter” should be inserted at the end of the first sentence.

- (8) In sub. (6) (a) (intro.), the “when” should be changed to “after” and “occurs” should be changed to “occur.” Also, what is the difference between “the division pays eligible costs” in sub. (6) (a) 3. and “the applicant receives the final amount due or pays any amount owed” in sub. (6) (a) 5.?

p. The title to s. WEM 7.07 refers to expedited claims and the payment process. Expedited claims are treated in sub. (1), but sub. (2) pertains to advance funds, not expedited claims or the payment process. What “payment process” is being referenced in the title? Does the “expedited claim” language in sub. (1) have anything to do with an “advance of funds” in sub. (2)? It appears that the section title should be revised to reflect the section’s content and that sub. (2) should specifically provide that the applicant may receive an advance of funds in specified circumstances and then list those circumstances. Also in sub. (2), “is” should be inserted before “for eligible costs” on line 3. On line 5, “will” should be changed to “shall.” Finally, should there be a provision that explains the payment process in a nonexpedited case and where no advance funds are requested?

q. Could provisions of s. WEM 7.08 be combined with the audit requirements in s. WEM 7.06 (3)? It would be less confusing to have all audit language in one provision. In s. WEM 7.08, how does the applicant know if the furnishing of goods, etc., “may result in a claim?”

r. In s. WEM 7.09, is it necessary to repeat the limitation stated in s. WEM 7.06 (1) that only 25% of funds are to be expended in a quarter? If the s. WEM 7.09 language is retained, it does not seem correct to state that the expenditure payment cap of 25% is “set quarterly by the department.” Rather, the 25% cap is set forth in this rule and a dollar limit equal to 25 % of the total amount allocated for the year may be paid out in each quarter.

s. In WEM 7.10, reference is made to the administrator or an applicant determining that the applicant received duplicate funds. What about an auditor?

t. In s. WEM 7.11 (1), the phrase “of a denial of funds” could be inserted at the end of the provision. In sub. (3), does the adjutant general have discretion over whether to enter into the problem resolution process, or is he or she required to? Also, the word “either” should be inserted before “issues” on line 3. In sub. (4), should it be stated that the applicant first has to exhaust the departmental appeals before requesting a ch. 227 hearing? Also, it is suggested that a note be inserted after this provision, indicating how to obtain appeals forms. The “ch.” should be changed to “ch.” and a comma should be inserted before “Stats.”