

**HOMELAND SECURITY AND EMERGENCY  
MANAGEMENT DIVISION[605]**

**Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code sections 17A.3 and 34A.22, the Homeland Security and Emergency Management Division proposes to amend Chapter 7, “Local Emergency Management,” Iowa Administrative Code.

The Homeland Security and Emergency Management Division proposes to amend Chapter 7 to reflect changes made to Iowa Code chapter 29C in 2011 Iowa Acts, Senate File 315. Additionally, these proposed amendments change the planning requirements for local emergency management commissions in paragraph 7.3(4)“d.”

Consideration will be given to all written suggestions or comments on the proposed amendments received on or before March 13, 2012. Such written materials should be sent to the Administrative Rules Coordinator, Iowa Homeland Security and Emergency Management Division, 7105 N.W. 70th Avenue, Camp Dodge, Building W-4, Johnston, Iowa 50319; fax (515)725-3260.

Also, there will be a public hearing on March 14, 2012, at 1 p.m. in the Homeland Security and Emergency Management Division Conference Room, Building W-4, Camp Dodge, Johnston, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements, such as hearing or mobility impairments, should contact the Homeland Security and Emergency Management Division and advise of specific needs.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement 2011 Iowa Code Supplement chapter 29C.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definitions of “Commission” and “Local emergency management agency” in rule **605—7.2(29C)**:

“*Commission*” means a local emergency management commission or joint emergency management commission.

“*Local emergency management agency*” means a countywide, joint county-municipal agency organized to administer this chapter under the authority of a commission.

ITEM 2. Amend subrule 7.3(1), introductory paragraph, as follows:

**7.3(1)** The county board of supervisors, city councils, and ~~school district boards of directors~~ sheriff in each county shall cooperate with the homeland security and emergency management division to establish a local emergency management commission to carry out the provisions of 2011 Iowa Code Supplement chapter 29C.

ITEM 3. Amend subrule **7.3(2)**, unnumbered paragraph, as follows:

The bylaws, as adopted, shall be signed by each member of the commission. The commission shall record the signed bylaws with the county recorder and shall forward a copy of the bylaws to the administrator of the state homeland security and emergency management division.

ITEM 4. Amend subparagraph 7.3(4)“a”(1) as follows:

(1) Establish and maintain ~~an~~ a local emergency management agency responsible for the local emergency management program. The primary responsibility of this agency is to develop and maintain a comprehensive emergency management capability in cooperation with other governmental agencies, volunteer organizations, and private sector organizations. The name of this agency shall be the (county name) county emergency management agency.

ITEM 5. Amend subparagraph 7.3(4)“a”(7) as follows:

(7) Coordinate emergency management activities and services among county and city governments and the private sector agencies ~~within the county~~ under the jurisdiction of the commission.

ITEM 6. Rescind paragraph 7.3(4)“d” and adopt the following new paragraph in lieu thereof:

*d.* Planning.

(1) The commission shall develop a comprehensive emergency plan that is capabilities-based, multihazard and multifunctional in nature. The plan shall conform to the Comprehensive Preparedness Guide 101 as established by the Federal Emergency Management Agency.

(2) Plans shall contain the following common elements:

1. Identification of the functional roles and responsibilities of internal and external agencies, organizations, departments, and individuals during mitigation, preparedness, response and recovery.

2. Establishment and identification of lines of authority for those agencies, organizations, departments, and individuals.

(3) Plans shall be regularly reviewed and amended as appropriate in accordance with a five-year schedule established by the commission, which shall include at a minimum:

1. A complete review, and amendment as appropriate, at a minimum of every five years. However, a review, and amendment as appropriate, of the hazardous materials portion and of a minimum of 20 percent of the remaining annexes or portions of the plan shall be conducted on a yearly basis. The complete operations plan must be reviewed entirely, and amended as appropriate, every five years. A copy of the portions of the plan that are reviewed, regardless of amendment, must be certified and submitted to the division for approval by August 1 of each year.

2. Recovery and mitigation plans must also be reviewed, and amended as appropriate, certified and submitted to the division for approval within 180 days of the formal closing of the disaster incident period for a presidential declaration for major disaster.

(4) To be certified, the plan must be adopted by the members of the commission and attested to by the chairperson and the local emergency management coordinator on a signature document as specified by the division.

(5) In addition to the standards heretofore established in paragraph 7.3(4)“d,” the operations plan shall include provisions for damage assessment.

(6) Hazardous materials plans shall meet the minimum requirements of federal law, 42 U.S.C. §11003.

(7) Counties designated as risk or host counties for a nuclear facility emergency planning zone shall meet the standards and requirements as published by the United States Nuclear Regulatory Commission and the Federal Emergency Management Agency in NUREG-0654, FEMA-REP-1, Rev. 1, March 1987.

(8) Commissions participating in or conducting exercises or experiencing real disaster incidents which require after-action and corrective action reports have 180 days from the date of the publication of the corrective action report to incorporate the corrective actions, as appropriate, into the commission’s plans.

(9) Within 60 calendar days from the receipt of the plan, the division shall review plans or portions of plans submitted by a commission for approval. The division shall notify the local emergency management agency in writing of the approval or nonapproval of the plan. If the plan is not approved, the division shall state the specific standard or standards that are not being met and offer guidance on how the plan may be brought into compliance.

(10) A comprehensive emergency plan shall not be considered approved by the homeland security and emergency management division as required in 2011 Iowa Code Supplement subsection 29C.9(8) unless such plan adheres to and meets the minimum standards as established in paragraph 7.3(4) “d.”

(11) 2011 Iowa Code Supplement section 29C.6 provides that state participation in funding financial assistance in a presidentially declared disaster is contingent upon the commission’s having on file a state-approved, comprehensive emergency plan as provided in 2011 Iowa Code Supplement subsection 29C.9(8). Plans must be received by the division within 180 days of the formal closing of the disaster incident period for a presidential declaration for major disaster for the affected jurisdiction and must be approved by the division within 240 days of the formal closing of the disaster incident period for public or private nonprofit entities within the county to be eligible to receive state financial assistance.

ITEM 7. Amend paragraph 7.3(4) “h” as follows:

*h.* Operations and procedures. The commission should encourage public and private agencies, ~~having which have~~ defined responsibilities in the ~~countywide~~ comprehensive emergency ~~operations~~ plan, to develop standard operating procedures, policies, and directives in support of the plan.

ITEM 8. Amend subparagraph 7.3(4) “i” (4) as follows:

(4) The commission should encourage individuals, other than the emergency management coordinator, with emergency management responsibilities as defined in the ~~countywide~~ comprehensive emergency ~~operations~~ plan, to complete, within two years of appointment, training consistent with their emergency management responsibilities.

ITEM 9. Amend numbered paragraph 7.3(4) “k” (2) “4” as follows:

4. The capability to communicate with ~~special~~ functional needs populations.

ITEM 10. Amend subrule 7.3(5) as follows:

**7.3(5)** Two or more commissions. Two or more ~~local~~ commissions may, upon review by the state administrator and with the approval of their respective boards of supervisors, ~~and cities, and sheriffs,~~ enter into agreements pursuant to Iowa Code chapter 28E for the joint coordination and administration of emergency management services throughout the multicounty area.

ITEM 11. Amend rule 605—7.4(29C), catchwords, as follows:

**605—7.4(29C) Emergency Local emergency management coordinator.**

ITEM 12. Amend subrule 7.4(1) as follows:

**7.4(1)** Each ~~county emergency management commission or joint~~ commission shall appoint ~~an~~ a local emergency management coordinator who shall serve at the pleasure of the commission. The commission shall delegate to the emergency management coordinator the authority to fulfill the commission’s and coordinator’s duties as provided in 2011 Iowa Code Supplement sections 29C.9 and 29C.10, as further described in subrule 7.3(4), and as otherwise assigned and authorized by the commission.

ITEM 13. Amend paragraph 7.4(2) “a” as follows:

*a.* A member of a ~~local or joint~~ commission shall not be appointed as the local emergency management coordinator.

ITEM 14. Amend subrule 7.4(3), introductory paragraph, as follows:

**7.4(3) Emergency Local emergency management coordinator qualifications.** Each person appointed after July 1, 1990, as ~~an~~ a local emergency management coordinator shall meet the following requirements with regard to education, abilities, experience, knowledge and skills:

ITEM 15. Amend subrule 7.4(4), introductory paragraph, as follows:

**7.4(4) Emergency Local emergency management coordinator continuing education requirements.** Each local emergency management coordinator shall meet the following educational development requirements. The administrator may extend the time frame for meeting these continuing education requirements upon request from the ~~local or joint~~ commission.

ITEM 16. Amend paragraph 7.4(4)“a,” introductory paragraph, as follows:

a. Within five years of appointment as ~~an~~ a local emergency management coordinator, the person must complete the following ~~ten independent~~ study courses as prescribed by the Federal Emergency Management Agency:

ITEM 17. Amend paragraph 7.4(4)“b” as follows:

b. Within five years of appointment as ~~an~~ a local emergency management coordinator, the person must complete the professional development series of courses as prescribed by the Federal Emergency Management Agency.

ITEM 18. Amend rule 605—7.5(29C) as follows:

**605—7.5(29C) Local ~~commission or joint commission~~ Commission personnel.**

7.5(1) Personnel for the ~~local commission or joint~~ commission, including the coordinator, operations officers, and emergency management assistants, shall be considered as employees of that local commission to include the coordinator, operations officers, and emergency management assistants.

7.5(2) The ~~local or joint~~ commission shall determine the personnel policies of the agency to include holidays, rate of pay, sick leave, vacation, and health benefits. The local commission may adopt existing county or city policies in lieu of writing ~~their~~ the commission’s own policies.

ITEM 19. Amend rule 605—7.6(29C), introductory paragraph, as follows:

**605—7.6(29C) Damage assessment and financial assistance for disaster recovery.** Disaster-related expenditures and damages incurred by local governments, private nonprofit entities, individuals, and businesses may be reimbursable and covered under certain state and federal disaster assistance programs. Preliminary damage assessments shall be provided to the homeland security and emergency management division prior to the governor’s making a determination that the magnitude and impact are sufficient to warrant a request for a presidential disaster declaration.

ITEM 20. Amend subrule 7.6(1) as follows:

7.6(1) *Local preliminary damage assessment and impact statement.* The ~~county~~ local emergency management coordinator shall be responsible for the coordination and collection of damage assessment and impact statement information immediately following a disaster that affects the ~~county or any municipality within the county~~ jurisdiction.

ITEM 21. Amend subrule 7.6(2) as follows:

7.6(2) *Damage assessment guidance and forms to be provided.* The ~~state~~ homeland security and emergency management division will provide guidance regarding the methodologies to be used in collecting damage assessment and impact statement information and shall provide the forms and format by which this information shall be recorded.

ITEM 22. Amend subrule 7.6(5) as follows:

7.6(5) *Forfeiture of assistance funding.* Failure to provide timely and accurate damage assessment and impact statement information may jeopardize or eliminate an applicant’s ability to receive federal and state disaster assistance funds that may otherwise be available.

State participation in funding of disaster financial assistance in a presidentially declared disaster shall be contingent upon the ~~local or joint emergency management~~ commission’s having on file a state-approved, comprehensive, ~~countywide~~ emergency operations plan which meets the standards as provided in ~~subrule paragraph 7.3(4), paragraph “d.”~~

ITEM 23. Amend rule 605—7.7(29C), introductory paragraph, as follows:

**605—7.7(29C) Emergency management performance grant (EMPG) program.** Emergency management is a joint responsibility of the federal government, the states, and their political subdivisions. “Emergency management” means all those activities and measures designed or undertaken to mitigate against, prepare for, respond to, or recover from the effects of a human-caused, technological, or natural hazard. The purpose of the emergency management performance grant

program is to provide the necessary assistance to ~~local governments~~ commissions to ensure that a comprehensive emergency preparedness system exists for all hazards.

ITEM 24. Amend subrule 7.7(1) as follows:

**7.7(1) Eligibility.** ~~Local or joint emergency management commissions~~ Commissions may be eligible for funding under the state and emergency management performance grant program by meeting the requirements, conditions, duties and responsibilities for ~~emergency management commissions~~ and ~~county local~~ emergency management coordinators established in rules ~~605—7.3(29C)~~ and ~~605—7.4(29C)~~. In addition, the ~~local~~ commission shall ensure that the coordinator works an average of 20 hours per week or more toward the emergency management effort. ~~Joint commissions~~ Commissions ~~formed under subrule 7.5(5)~~ shall ensure that the coordinator works an average of 40 hours per week toward the emergency management effort.

ITEM 25. Amend subrule 7.7(2) as follows:

**7.7(2) Application for funding.** ~~Local or joint commissions~~ Commissions may apply for funding under the emergency management performance grant program by entering into an agreement with the division and by completing the necessary application and forms, as published and distributed yearly to each commission by the division.

ITEM 26. Amend paragraph 7.7(3)“a” as follows:

a. The homeland security and emergency management division shall allocate funds to eligible ~~local or joint~~ commissions within 45 days of receipt of notice from the federal Department of Homeland Security, Preparedness Directorate, Office of Grants and Training, that such funds are available. The division shall use a formula for the allocation of funds based upon the number of eligible applicants, the part-time or full-time status of the coordinator, 50 percent equal-share base, and 50 percent population base. The total allocation of funds for an applicant may not exceed the lesser of \$39,000 or the amount requested by the applicant.

ITEM 27. Amend paragraph 7.7(3)“c” as follows:

c. Funds will be reimbursed to ~~local and joint~~ commissions on a federal fiscal year, quarterly basis; and such reimbursement will be based on eligible claims made against the ~~local or joint~~ commission’s allocation. In no case will the allocation or reimbursement of funds be greater than one-half of the total cost of eligible emergency management related expenses.

ITEM 28. Amend subrule 7.7(4), introductory paragraph, as follows:

**7.7(4) Compliance.** The administrator may withhold or recover emergency management performance grant funds from any ~~local or joint~~ commission for its failure or its coordinator’s failure to meet any of the following conditions:

ITEM 29. Amend paragraph 7.7(4)“c” as follows:

c. Adopt a comprehensive ~~countywide~~ emergency ~~operations~~ plan that meets current standards.

ITEM 30. Amend subrule 7.7(5) as follows:

**7.7(5) Serious nonperformance problems.** If a ~~local or joint~~ commission cannot demonstrate achievement of agreed-upon work products, the division is empowered to withhold reimbursement or to recover funds from the ~~local or joint~~ commission. Corrective action procedures are designed to focus the commission’s attention on nonperformance problems and to bring about compliance with the cooperative agreement. Corrective action procedures, which could lead to sanction, may be enacted as soon as the administrator becomes aware of serious nonperformance or noncompliance. This realization may arise from staff visits or other contacts with the local emergency management agency or commission, from indications in the commission’s or coordinator’s quarterly report that indicate a significant shortfall from planned accomplishments, or from the commission’s or coordinator’s failure to report. Financial sanctions are to be applied only after corrective action remedies fail to result in accomplishment of agreed-upon work product.

ITEM 31. Amend paragraph 7.7(6)“a” as follows:

a. *Informal corrective action.* As a first and basic step to correcting nonperformance, a designated member of the ~~state~~ homeland security and emergency management division staff will visit, call or write the local emergency management coordinator to determine the reason for nonperformance and seek an agreeable resolution.

ITEM 32. Amend paragraph 7.7(6)“b” as follows:

b. *Formal corrective action.* On those occasions when there is considerable discrepancy between agreed-upon and actual performance and response to informal corrective action is not sufficient or agreeable, the division will take the following steps:

(1) Emergency Homeland security and emergency management division staff will review the scope of work, as agreed to in the cooperative agreement, to determine the extent of nonperformance. To focus attention on the total nonperformance issue, all instances of nonperformance will be addressed together in a single correspondence to the ~~local or joint~~ commission.

(2) The administrator will prepare a letter to the ~~local or joint~~ commission which will contain, at a minimum, the following information:

1. The reasons why the division believes the ~~local or joint~~ commission may be in noncompliance, including the specified provisions in question.

2. A description of the efforts made by the division to resolve the matter and the reasons these efforts were unsuccessful.

3. A declaration of the ~~local or joint~~ commission’s commitment to accomplishing the work agreed upon and specified in the comprehensive cooperative agreement and its importance to the emergency management capability of the local jurisdiction.

4. A description of the exact actions or alternative actions required of the ~~local or joint~~ commission to bring the problem to an agreed resolution.

5. A statement that this letter constitutes the final no-penalty effort to achieve a resolution and that financial sanctions provided for in these rules will be undertaken if a satisfactory response is not received by the division within 30 days.

ITEM 33. Amend subrule 7.7(7) as follows:

**7.7(7) Financial sanctions.** If the corrective actions heretofore described fail to produce a satisfactory resolution to cases of serious nonperformance, the administrator may invoke the following financial sanction procedures:

a. Send a “Notice of Intention to Withhold Payment” to the chairperson of the ~~local or joint~~ commission. This notice shall also contain notice of a reasonable time and place for a hearing, should the ~~local or joint~~ commission request a hearing before the administrator.

b. Any request by a ~~local or joint~~ commission for a hearing must be made in writing, to the division, within 15 days of receipt of the Notice of Intention to Withhold Payment.

c. Any hearing under the Notice of Intention to Withhold Payment shall be held before the administrator. However, the administrator may designate an administrative law judge to take evidence and certify to the administrator the entire record, including findings and recommended actions.

d. The ~~local or joint~~ commission shall be given full opportunity to present its position orally and in writing.

e. If, after a hearing, the administrator finds sufficient evidence that the ~~local or joint~~ commission has violated established rules and regulations or the terms and conditions of the cooperative agreement, the administrator may withhold such contributions and payments as may be considered advisable, until the failure to expend funds in accordance with said rules, regulations, terms and conditions has been corrected or the administrator is satisfied that there will no longer be any such failure.

f. If upon the expiration of the 15-day period stated for a hearing, a hearing has not been requested, the administrator may issue the findings and take appropriate action as described in ~~the preceding paragraph-~~ 7.7(7)“e.”

g. If the administrator finds there is serious nonperformance by the commission or its coordinator and issues an order to withhold payments to the ~~local or joint~~ commission as described in this rule, the

commission shall not receive funds under the emergency management performance grant program for the remainder of the federal fiscal year in which the order is issued and one additional year or until such time that all issues of nonperformance have been agreeably addressed by the division and the commission.

*h.* Any emergency management ~~performee~~ performance grant program funds withheld or recovered by the division as a result of this process shall be reallocated at the end of the federal fiscal year to the remaining participating ~~counties~~ commissions.