

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]

[Prior to 12/23/92, see Disaster Services Division[607]; renamed Emergency Management Division by
1992 Iowa Acts, chapter 1139, section 21]
[Prior to 3/31/04, see Emergency Management Division[605]; renamed Homeland Security and Emergency Management
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CHAPTER 1 ORGANIZATION

[Prior to 4/18/90, Public Defense Department[650], Ch 5]

[Prior to 5/12/93, Disaster Services Division[607], Ch 1]

605—1.1(29C) Description. The emergency management division is a division within the department of public defense.

1.1(1) Director. The adjutant general, as the director of the department of public defense under the direction and control of the governor, shall have supervisory direction and control of the emergency management division and shall be responsible to the governor for the carrying out of the provisions of Iowa Code chapter 29C. In the event of disaster beyond local control, the adjutant general may assume direct operational control over all or any part of the emergency management functions within this state.

1.1(2) Administrator. The emergency management division shall be under the management of an administrator appointed by the governor. The administrator shall be vested with the authority to administer emergency management affairs in this state and shall be responsible for preparing and executing the emergency management programs of this state subject to the direction of the adjutant general. The administrator, upon the direction of the governor and supervisory control of the director of the department of public defense, shall: prepare a comprehensive plan and emergency management program for disaster preparedness, response, mitigation, recovery, emergency operation, and emergency resource management of this state; make such studies and surveys of the industries, resources and facilities in this state as may be necessary to ascertain the capabilities of the state for disaster recovery, disaster planning and operations, and emergency resource management, and to plan for the most efficient emergency use thereof; provide technical assistance to any local emergency management commission or joint commission requiring such assistance in the development of an emergency management program; implement planning and training for emergency response teams as mandated by the federal government under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended by the Superfund Amendments and Reauthorization Act of 1986 42 U.S.C. § 9601 et seq.; the administrator, with the approval of the governor and upon recommendation of the adjutant general, may employ a deputy administrator and such technical, clerical, stenographic and other personnel and make such expenditures within the appropriation or from other funds made available to the department of public defense for purposes of emergency management, as may be necessary to administer the purposes of Iowa Code chapters 29C, 30, and 34A.

605—1.2(29C) Definitions. The following definitions are applicable to the emergency management division:

“*Administrator*” means the administrator of the emergency management division of the department of public defense.

“*Comprehensive countywide emergency operations plan*” means documents which describe the actions to be taken to lessen the effects of, prepare for, respond to and recover from a disaster by county and city governments, quasi-government agencies, and private organizations which have emergency operations responsibility. The plan is multihazard in scope (covers all hazards for the county) and provides for a coordinated effort. It references authority, assigns functional responsibilities, provides for direction and control, and the effective use of resources.

“*Disaster*” means human-caused, technological or natural occurrences, such as fire, flood, drought, earthquake, tornado, windstorm, hazardous substance or nuclear power plant accident or incident, which threaten the public peace, health and safety of the people or which damage or destroy public or private property. The term includes terrorism, enemy attack, sabotage, or other hostile action from without the state.

“*Division*” means the emergency management division of the department of public defense.

“*Emergency*” means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action to protect life or property. Such actions are normally handled in a routine manner by law enforcement, fire protection, public works, utilities, and emergency medical services.

“Emergency management” means lessening the effects of, preparations for, operations during, and recovery from natural, technological or human-caused disasters. These actions are broad in scope and include, but are not limited to: disaster plans, mitigation, preparedness, response, warning, emergency operations, training, exercising, research, rehabilitation, and recovery activities.

“Emergency management performance grant program” means a program by which federal funds are utilized to pay no more than 50 percent of the salaries, benefits, travel, and office expenses incurred in the administration of the state and local emergency management program.

“Joint commissions” means two or more local emergency management commissions acting as a joint commission for the coordination and administration of emergency management.

“Local commission” means the local emergency management commission.

“Mitigation” means any action taken to reduce or eliminate the long-term risk to human life and property from hazards. Examples of mitigation activities include building codes, land use management, floodplain management, building of protective structures such as flood walls, public education, research, risk mapping, safety codes, and statutes and ordinances.

“Preparedness” means any activity taken in advance of an emergency or disaster that improves emergency readiness posture and develops or expands operational capabilities. Examples of preparedness activities include, but are not limited to, continuity of government, emergency alert and warning systems, emergency communications, emergency operations centers, comprehensive countywide emergency operations plans, emergency public information materials, exercise of plans and systems, hazard analysis, mutual aid agreements, resource management, and the training and equipping of personnel.

“Recovery” means short-term activity to return vital life support systems to minimum operating standards and long-term activity designed to return the affected people and areas to their predisaster conditions. Examples of recovery activity are crisis counseling, damage assessment, debris clearance, decontamination, disaster insurance payments, disaster loans and grants, disaster unemployment assistance, public information, community outreach, temporary housing, and reconstruction.

“Response” means any action taken immediately before, during, or directly after an emergency or disaster occurs, which is intended to save lives, minimize injuries, lessen property and environmental damage and enhance the effectiveness of recovery. Examples of response activity include rendering of assistance by emergency responders, activation of the emergency operations center, emergency alert system activation, emergency instructions to the public, emergency plan implementation, public official alerting, evacuation, sheltering of victims, search and rescue, resource mobilization, and warning system activation.

These rules are intended to implement Iowa Code chapters 29C, 30 and 34A.

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CHAPTER 2
PETITIONS FOR RULE MAKING
[Prior to 5/12/93, Disaster Services Division[607], Ch 2]

605—2.1(17A) Petition for rule making. Any person or agency may file a petition for rule making with the division at the Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319. A petition is deemed filed when it is received by that office. The division must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the division an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

EMERGENCY MANAGEMENT DIVISION	
Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter).	} PETITION FOR RULE MAKING

The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
2. A citation to any law deemed relevant to the division’s authority to take the action urged or to the desirability of that action.
3. A brief summary of the petitioner’s arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by or interested in, the proposed action which is the subject of the petition.
6. Any request by petitioner for a meeting provided by rule 2.4(17A).

2.1(1) The petition must be dated and signed by the petitioner or the petitioner’s representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner’s representative, and a statement indicating the person to whom communications concerning the petition should be directed.

2.1(2) The emergency management division may deny a petition because it does not substantially conform to the required form.

605—2.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The emergency management division may request a brief from the petitioner or from any other person concerning the substance of the petition.

605—2.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Administrator, Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319.

605—2.4(17A) Consideration.

2.4(1) Within 14 days after the filing of a petition, the division must submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by petitioner in the petition, the emergency management division must schedule a brief and informal meeting between the petitioner and the division, a member of the division, or a member of the staff of the division, to discuss the petition. The emergency management division may request the petitioner to submit additional information or argument concerning the petition. The division may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the emergency management division by any person.

2.4(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the emergency management division must, in writing, deny the petition, and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the division mails or delivers the required notification to petitioner.

2.4(3) Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the division's rejection of the petition.

These rules are intended to implement Iowa Code chapter 17A.

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CHAPTER 3
DECLARATORY ORDERS
[Prior to 5/12/93, Disaster Services Division[607], Ch 3]

605—3.1(17A) Petition for declaratory order. Any person may file a petition with the emergency management division for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the division at Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319. A petition is deemed filed when it is received by that office. The division shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the division an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

EMERGENCY MANAGEMENT DIVISION	
Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	} PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by 3.7(17A).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

605—3.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the emergency management division shall give notice of the petition to all persons not served by the petitioner pursuant to 3.6(17A) to whom notice is required by any provision of law. The division may also give notice to any other persons.

605—3.3(17A) Intervention.

3.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

3.3(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the emergency management division.

3.3(3) A petition for intervention shall be filed at the Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319. Such a petition is deemed filed when it is received by that office. The division will provide the petitioner with a file-stamped copy of the petition for intervention

if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

EMERGENCY MANAGEMENT DIVISION	
Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	} PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

605—3.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The emergency management division may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

605—3.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Administrator, Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319.

605—3.6(17A) Service and filing of petitions and other papers.

3.6(1) When service required. Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

3.6(2) Filing—when required. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the division.

3.6(3) Method of service, time of filing, and proof of mailing. Method of service, time of filing, and proof of mailing shall be as provided by rule 605—6.12(17A).

605—3.7(17A) Consideration. Upon request by petitioner, the emergency management division must schedule a brief and informal meeting between the original petitioner, all intervenors, and the division, a member of the division, or a member of the staff of the division, to discuss the questions raised. The division may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the division by any person.

605—3.8(17A) Action on petition.

3.8(1) Within the time allowed by Iowa Code section 17A.9(5), after receipt of a petition for a declaratory order, the administrator or designee shall take action on the petition as required by Iowa Code section 17A.9(5).

3.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in rule 605—6.2(17A).

605—3.9(17A) Refusal to issue order.

3.9(1) The emergency management division shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1) and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the division to issue an order.
3. The division does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a division decision already made.
9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.
10. The petitioner requests the emergency management division to determine whether a statute is unconstitutional on its face.

3.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final division action on the petition.

3.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

605—3.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

605—3.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

605—3.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the emergency management division, the petitioner, and any intervenors and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other

persons, a declaratory order serves only as precedent and is not binding on the emergency management division. The issuance of a declaratory order constitutes final agency action on the petition.

These rules are intended to implement Iowa Code chapter 17A.

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CHAPTER 4
AGENCY PROCEDURE FOR RULE MAKING
[Prior to 5/12/93, Disaster Services Division[607], Ch 4]

605—4.1(17A) Adoption by reference. The emergency management division hereby adopts the agency procedure for rule making segment of the Uniform Rules on Agency Procedure which are printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words “(commission, board, council, director)” insert “administrator”.
2. In lieu of the words “(specify time period)” insert “one year”.
3. In lieu of the words “(identify office and address)” insert “Administrator, Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319”.
4. In lieu of the words “(designate office and telephone number)” insert “the administrator at (515)281-3231”.
5. In lieu of the words “(designate office)” insert “Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319”.
6. In lieu of the words “(specify the office and address)” insert “Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319”.
7. In lieu of the words “(agency head)” insert “administrator”.

These rules are intended to implement Iowa Code chapter 17A.

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CHAPTER 5
FAIR INFORMATION PRACTICES
[Prior to 4/18/90, see Public Defense Department[650], Ch 9]
[Prior to 5/12/93, Disaster Services Division[607], Ch 5]

605—5.1(17A) Adoption by reference. The emergency management division hereby adopts the fair information practices segment of the Uniform Rules on Agency Procedure which are printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words “(official or body issuing these rules)” insert “Emergency Management Division”.

2. In lieu of the words “(insert agency head)” insert “administrator”.

3. In lieu of the words “(insert agency name and address)” insert “Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319”.

4. In lieu of the words “(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)” insert the words “at any time from 9 a.m. to 12 noon and from 1 to 4 p.m., Monday through Friday, excluding legal holidays, unless the person exercising such right and the lawful custodian agree on a different time”.

5. In lieu of the words “(specify time period)” insert the words “30 minutes”.

6. In lieu of the words “(designate office)” insert the words “Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319”.

7. Delete the words “(and, where applicable, the time period during which the record may be disclosed)”.

8. Delete the words “(Additional requirements may be necessary for special classes of records.)”.

9. Insert at the end of rule 605—5.7(17A,22) the following new sentence: “For federal records maintained by the emergency management division, a subject will provide a Privacy Act release in accordance with the requirements of Title 5 United States Code, Section 552, in writing, and signed by the subject of the record.”

10. Delete the words “(Each agency should revise its forms to provide this information.)”.

11. Insert at the end of rule 605—5.8(17A,22) the following new sentence: “For federal records and forms, the United States government’s determination of routine use and the consequences of failure to provide required or optional information as requested shall be provided to the supplier of the information.”

12. Insert the following new rule:

605—5.9(17A,22) Federal records. Pursuant to Iowa Code section 22.9, the division finds that maintenance, use, or disclosure of federal records described in this rule, except as allowed by federal law and regulation, would result in denial of United States government funds, services and essential information that would otherwise definitely be available and that have been available to the division in the past. The division has authority to enter into agreements and contracts to obtain funds pursuant to Iowa Code chapter 29C. The division makes such agreements and contracts with the Federal Emergency Management Agency (FEMA) under the authority of Public Law 93-288 (the Robert T. Stafford Disaster Relief and Emergency Assistance Act) and an Emergency Management Performance Grant Agreement which specify categories of records and information that must be kept confidential. In addition, 44 CFR 5.71 specifies categories of records that are exempt from disclosure under 5 U.S.C. 552. These records include those containing personally identifiable information concerning applicants to individual assistance and mitigation assistance programs that are administered by the state under a presidentially declared disaster. Nuclear Regulatory Commission Title 10 CFR 73.21 relates to the physical protection of nuclear power plants and materials. This regulation requires that certain information contained in plans and documents on file with the division be kept confidential and include information concerning the physical protection at fixed sites; physical protection in transit; inspections, audits and evaluations; and correspondence insofar as it contains safeguards information.

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CHAPTER 6
CONTESTED CASES

605—6.1(17A) Scope and applicability. This chapter applies to contested case proceedings conducted by the emergency management division.

605—6.2(17A) Definitions. Except where otherwise specifically defined by law:

“*Contested case*” means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under Iowa Code section 17A.10A.

“*Issuance*” means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

“*Party*” means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

“*Presiding officer*” means the administrator of the emergency management division or the administrator’s designee.

“*Proposed decision*” means the presiding officer’s recommended findings of fact, conclusions of law, decision, and order in a contested case in which the administrator did not preside.

605—6.3(17A) Time requirements.

6.3(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

6.3(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute or by rule. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

605—6.4(17A) Requests for contested case proceeding. Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the agency action in question.

The request for a contested case proceeding should state the name and address of the requester, identify the specific agency action which is disputed, and where the requester is represented by a lawyer identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute.

605—6.5(17A) Notice of hearing.

6.5(1) Delivery. Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

- a. Personal service as provided in the Iowa Rules of Civil Procedure; or
- b. Certified mail, return receipt requested; or
- c. First-class mail; or
- d. Publication, as provided in the Iowa Rules of Civil Procedure.

6.5(2) Contents. The notice of hearing shall contain the following information:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;
- e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the agency or the state and of parties’ counsel where known;
- f. Reference to the procedural rules governing conduct of the contested case proceeding;
- g. Reference to the procedural rules governing informal settlement;

h. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., agency head, members of multimembered agency head, administrative law judge from the department of inspections and appeals); and

i. Notification of the time period in which a party may request, pursuant to Iowa Code section 17A.11(1) and rule 6.6(17A), that the presiding officer be an administrative law judge.

605—6.6(17A) Presiding officer.

6.6(1) Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer as the agency head or members of the agency.

6.6(2) The agency may deny the request only upon a finding that one or more of the following apply:

a. Neither the agency nor any officer of the agency under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

c. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

d. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

e. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.

f. The request was not timely filed.

g. The request is not consistent with a specified statute.

6.6(3) The agency shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed.

6.6(4) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the agency. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

6.6(5) Unless otherwise provided by law, agency heads and members of multimembered agency heads, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

605—6.7(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the agency in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

605—6.8(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

605—6.9(17A) Disqualification.

6.9(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

a. Has a personal bias or prejudice concerning a party or a representative of a party;

b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

- d.* Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e.* Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f.* Has a spouse or relative within the third degree of relationship that (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or
- g.* Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

6.9(2) The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrules 6.9(3) and 6.23(9).

6.9(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

6.9(4) If a party asserts disqualification on any appropriate grounds, including those listed in subrule 6.9(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 6.25(17A) and seek a stay under rule 6.29(17A).

605—6.10(17A) Consolidation—severance.

6.10(1) Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

6.10(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

605—6.11(17A) Pleadings.

6.11(1) Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

6.11(2) Petition.

a. Any petition required in a contested case proceeding shall be filed within 20 days of delivery of the notice of hearing or subsequent order of the presiding officer, unless otherwise ordered.

b. A petition shall state in separately numbered paragraphs the following:

- (1) The persons or entities on whose behalf the petition is filed;

- (2) The particular provisions of statutes and rules involved;
- (3) The relief demanded and the facts and law relied upon for such relief; and
- (4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

6.11(3) Answer. An answer shall be filed within 20 days of service of the petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any.

Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

6.11(4) Amendment. Any notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

605—6.12(17A) Service and filing of pleadings and other papers.

6.12(1) *When service required.* Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the agency, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

6.12(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

6.12(3) *Filing—when required.* After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the presiding officer as identified in the notice of hearing. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319.

6.12(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the emergency management division, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

6.12(5) *Proof of mailing.* Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date)

(Signature)

605—6.13(17A) Discovery.

6.13(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

6.13(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 6.13(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

6.13(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

605—6.14(17A) Subpoenas.**6.14(1) Issuance.**

a. An agency subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

6.14(2) Motion to quash or modify. The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

605—6.15(17A) Motions.

6.15(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

6.15(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the agency or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

6.15(3) The presiding officer may schedule oral argument on any motion.

6.15(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the agency or an order of the presiding officer.

6.15(5) Motions for summary judgment. Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 237 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to 6.28(17A) and appeal pursuant to 6.27(17A).

605—6.16(17A) Prehearing conference.

6.16(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than

seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the presiding officer to all parties. For good cause the presiding officer may permit variances from this rule.

6.16(2) Each party shall bring to the prehearing conference:

a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

c. Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

6.16(3) In addition to the requirements of subrule 6.16(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters which the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters which will expedite the hearing.

6.16(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

605—6.17(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

6.17(1) A written application for a continuance shall:

a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The agency may waive notice of such requests for a particular case or an entire class of cases.

6.17(2) In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

g. The existence of a conflict in the schedules of counsel, parties, or witnesses;

h. The timeliness of the request; and

i. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

605—6.18(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with agency rules. Unless otherwise provided, a withdrawal shall be with prejudice.

605—6.19(17A) Intervention.

6.19(1) Motion. A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

6.19(2) When filed. Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

6.19(3) Grounds for intervention. The movant shall demonstrate that (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

6.19(4) Effect of intervention. If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

605—6.20(17A) Hearing procedures.

6.20(1) The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

6.20(2) All objections shall be timely made and stated on the record.

6.20(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

6.20(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

6.20(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

6.20(6) Witnesses may be sequestered during the hearing.

6.20(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

b. The parties shall be given an opportunity to present opening statements;

c. Parties shall present their cases in the sequence determined by the presiding officer;

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

605—6.21(17A) Evidence.

6.21(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

6.21(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

6.21(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

6.21(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

6.21(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

6.21(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

605—6.22(17A) Default.

6.22(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

6.22(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

6.22(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 6.27(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

6.22(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

6.22(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

6.22(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 236.

6.22(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision

granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 6.25(17A).

6.22(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

6.22(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues (but, unless the defaulting party has appeared, it cannot exceed the relief demanded).

6.22(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 6.29(17A).

605—6.23(17A) Ex parte communication.

6.23(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the agency or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 6.9(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

6.23(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

6.23(3) Written, oral or other forms of communication are “ex parte” if made without notice and opportunity for all parties to participate.

6.23(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 6.12(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

6.23(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

6.23(6) The executive director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 6.23(1).

6.23(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 6.17(17A).

6.23(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order or disclosed. If the presiding officer determines

that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

6.23(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

6.23(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the agency. Violation of ex parte communication prohibitions by agency personnel shall be reported to the administrator for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

605—6.24(17A) Recording costs. Upon request, the emergency management division shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

605—6.25(17A) Interlocutory appeals. Upon written request of a party or on the administrator's own motion, the administrator may review an interlocutory order of the presiding officer. In determining whether to do so, the administrator shall weigh the extent to which granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the agency at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

605—6.26(17A) Final decision.

6.26(1) When the emergency management division administrator presides over the reception of evidence at the hearing, the administrator's decision is a final decision.

6.26(2) When the emergency management division administrator does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the emergency management division administrator within the time provided in rule 6.27(17A).

605—6.27(17A) Appeals and review.

6.27(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the emergency management division administrator within 30 days after issuance of the proposed decision.

6.27(2) *Review.* The administrator may initiate review of a proposed decision on the administrator's own motion at any time within 30 days following the issuance of such a decision.

6.27(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the emergency management division administrator. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- a. The parties initiating the appeal;
- b. The proposed decision or order appealed from;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought;
- e. The grounds for relief.

6.27(4) Requests to present additional evidence. A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The administrator may remand a case to the presiding officer for further hearing, or the administrator may preside at the taking of additional evidence.

6.27(5) Scheduling. The emergency management division administrator shall issue a schedule for consideration of the appeal.

6.27(6) Briefs and arguments. Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs.

The administrator may resolve the appeal on the briefs or provide an opportunity for oral argument. The administrator may shorten or extend the briefing period as appropriate.

605—6.28(17A) Applications for rehearing.

6.28(1) By whom filed. Any party to a contested case proceeding may file an application for rehearing from a final order.

6.28(2) Content of application. The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the agency decision on the existing record and whether, on the basis of the grounds enumerated in subrule 6.27(4), the applicant requests an opportunity to submit additional evidence.

6.28(3) Time of filing. The application shall be filed with the emergency management division administrator within 20 days after issuance of the final decision.

6.28(4) Notice to other parties. A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the emergency management division shall serve copies on all parties.

6.28(5) Disposition. Any application for a rehearing shall be deemed denied unless the agency grants the application within 20 days after its filing.

605—6.29(17A) Stays of agency actions.

6.29(1) When available.

a. Any party to a contested case proceeding may petition the emergency management division administrator for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the agency. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The administrator may rule on the stay or authorize the presiding officer to do so.

b. Any party to a contested case proceeding may petition the emergency management division administrator for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

6.29(2) When granted. In determining whether to grant a stay, the presiding officer or administrator shall consider the factors listed in Iowa Code section 17A.19(5)“c.”

6.29(3) Vacation. A stay may be vacated by the issuing authority upon application of the emergency management division or any other party.

605—6.30(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached,

a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

605—6.31(17A) Emergency adjudicative proceedings.

6.31(1) Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the Constitution and other provisions of law, the agency may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the agency by emergency adjudicative order. Before issuing an emergency adjudicative order the agency shall consider factors including, but not limited to, the following:

- a. Whether there has been a sufficient factual investigation to ensure that the agency is proceeding on the basis of reliable information;
- b. Whether the specific circumstances which pose immediate danger to the public health, safety, or welfare have been identified and determined to be continuing;
- c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety, or welfare;
- d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety, or welfare; and
- e. Whether the specific action contemplated by the agency is necessary to avoid the immediate danger.

6.31(2) Issuance of order.

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the agency's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

- (1) Personal delivery;
- (2) Certified mail, return receipt requested, to the last address on file with the agency;
- (3) Certified mail to the last address on file with the agency;
- (4) First-class mail to the last address on file with the agency; or
- (5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that agency orders be sent by fax and has provided a fax number for that purpose.

c. To the degree practicable, the agency shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

6.31(3) Oral notice. Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the agency shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

6.31(4) Completion of proceedings. After the issuance of an emergency adjudicative order, the agency shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which agency proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further agency proceedings to a later date will be granted only in compelling circumstances upon application in writing.

These rules are intended to implement Iowa Code chapter 17A.

[Filed 7/18/00, Notice 5/17/00—published 8/9/00, effective 9/13/00]

CHAPTER 7
LOCAL EMERGENCY MANAGEMENT

[Prior to 4/18/90, Public Defense Department[650], Ch 7]

[Prior to 5/12/93, Disaster Services Division[607], Ch 7]

605—7.1(29C) Scope and purpose. These rules apply to each local emergency management commission as provided for in Iowa Code section 29C.9. These rules are intended to establish standards for emergency management and to provide local emergency management commissions with the criteria to assess and measure their capability to mitigate against, prepare for, respond to, and recover from emergencies or disasters.

605—7.2(29C) Definitions. For purposes of this chapter, the following definitions will apply:

“*Shall*” indicates a mandatory requirement.

“*Should*” indicates a recommendation or that which is advised but not required.

605—7.3(29C) Local emergency management commission.

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

a. The local commission shall be named the (county name) county emergency management commission.

b. The commission shall be comprised of the following members:

(1) A member of the county board of supervisors or its appointed representative.

(2) The county sheriff or the sheriff’s appointed representative.

(3) The mayor or the mayor’s appointed representative from each city within the county.

c. The commission is a municipality as defined in Iowa Code section 670.1.

7.3(2) Local commission bylaws. The commission shall develop bylaws to specify, at a minimum, the following information:

a. The name of the commission.

b. The list of members.

c. The date for the commencement of operations.

d. The commission’s mission.

e. The commission’s powers and duties.

f. The manner for financing the commission and its activities and maintaining a budget therefor.

g. The manner for acquiring, holding and disposing of property.

h. The manner for electing or appointing officers and the terms of office.

i. The manner by which members may vote.

j. The manner for appointing, hiring, disciplining and terminating employees.

k. The rules for conducting meetings of the commission.

l. Any other necessary and proper rules or procedures.

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 emergency management division.

7.3(3) Commission business. Commission business shall be conducted in compliance with Iowa Code chapter 21, “Official Meetings Open to Public,” and Iowa Code chapter 22, “Examination of Public Records.”

7.3(4) The commission shall have the following minimum duties and responsibilities:

a. Administration and finance.

(1) Establish and maintain an 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.

- (2) Determine the mission of the agency and its program.
- (3) Develop and adopt a budget in accordance with the provisions of Iowa Code chapter 24 and Iowa Code section 29C.17 in support of the commission and its programs. The commission shall be the fiscal authority and the chairperson or vice chairperson shall be the certifying official for the budget.
- (4) Appoint an emergency management coordinator who meets the qualifications established in subrule 7.4(3).
- (5) Develop and adopt policies defining the rights and liabilities of commission employees, emergency workers and volunteers.
- (6) Provide direction for the delivery of the emergency management services of planning, administration, coordination, training, exercising, and support for local governments and their departments.
- (7) Coordinate emergency management activities and services among county and city governments and the private sector agencies within the county.
 - b. Hazard identification, risk assessment, and capability assessment.
 - (1) The commission should continually identify credible hazards that may affect their jurisdiction, the likelihood of occurrence, and the vulnerability of the jurisdiction to such hazards. Hazards to be considered should include natural, technological, and human-caused.
 - (2) The commission should conduct an analysis to determine the consequences and impact of identified hazards on the health and safety of the public, the health and safety of responders, property and infrastructure, critical and essential facilities, public services, the environment, the economy of the jurisdiction, and government operations and obligations.
 - (3) The hazard analysis should include identification of vital personnel, systems, operations, equipment, and facilities at risk.
 - (4) The commission should identify mitigation and preparedness considerations based upon the hazard analysis.
 - (5) A comprehensive assessment of the emergency management program elements should be conducted periodically to determine the operational capability and readiness of the jurisdiction to address the identified hazards and risks.
 - c. Resource management.
 - (1) The commission should develop a method to effectively identify, acquire, distribute, account for, and utilize resources essential to emergency functions.
 - (2) The commission shall utilize, to the maximum extent practicable, the services, equipment, supplies and facilities of the political subdivisions that are members of the commission.
 - (3) The commission should identify resource shortfalls and develop the steps and procedures necessary to overcome such shortfalls.
 - (4) The commission shall, in collaboration with other public and private agencies within this state, develop written mutual aid agreements. Such agreements shall provide reciprocal disaster services and recovery aid and assistance in case of disaster too great to be dealt with by the jurisdiction unassisted. Mutual aid agreements shall be in compliance with the appropriate requirements contained in Iowa Code chapter 28E.
 - d. Planning.
 - (1) The commission shall develop comprehensive countywide emergency operations plans that are multihazard and multifunctional in nature and that shall include, but not be limited to, a part "A" operations plan, part "B" mitigation plan, and part "C" recovery plan that may be contained in a single document or multiple documents. Part A, B, and C plans must be completed and submitted to the division on or before October 5, 2003.
 1. A part "A" operations plan assigns responsibilities to organizations and individuals for carrying out specific actions at projected times and places in an emergency or disaster.
 2. The part "B" mitigation plan shall establish interim and long-term strategies to eliminate hazards or to reduce the impact of those hazards that cannot be eliminated. This requirement notwithstanding, to qualify for federal funding for mitigation assistance, the eligible applicant must

comply with the mitigation planning requirements set forth in 44 CFR Section 201.6 and the Iowa Hazard Mitigation Grant Program Administrative Plan, as appropriate.

3. A part “C” recovery plan shall identify the short-term and long-term strategic priorities, processes, vital resources, and acceptable time frames and procedures for restoration.

(2) Plans shall contain the following common elements.

1. The functional roles and responsibilities of internal and external agencies, organizations, departments, and individuals during mitigation, preparedness, response and recovery shall be identified.

2. Lines of authority for those agencies, organizations, departments, and individuals shall be established and identified.

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

1. A complete review, and amendment as appropriate, of the part “A” operations plan 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 entirely reviewed and amended as appropriate every five years. A printed copy of the portions of the plan that are reviewed, regardless of amendment, must be certified and submitted to the division for approval.

2. A complete review, and amendment as appropriate, of the part “B” mitigation plan at a minimum of every five years at such time a printed copy of the plan, regardless of amendment, must be submitted to the division for approval. Part “B” 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.

3. A complete review, and amendment as appropriate, of the part “C” recovery plan at a minimum of every five years at such time a printed copy of the plan, regardless of amendment, must be submitted to the division for approval. Part “C” recovery 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 local or joint emergency management commission and attested to by the chairperson and the local emergency management coordinator on a form to be provided 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., Sec. 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) Local or joint emergency management 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, in their plans.

(9) Required plans or portions of plans, submitted for approval to the division by a local or joint emergency management commission, shall be reviewed within 60 calendar days from the receipt of the plan. The division shall notify the local emergency management coordinator 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 countywide emergency operations plan shall not be considered approved by the emergency management division as required in Iowa Code subsection 29C.9(8) unless such plan adheres to and meets the minimum standards as established in paragraph 7.3(4) “d.”

(11) Iowa Code section 29C.6 provides that state participation in funding financial assistance in a presidentially declared disaster is contingent upon the local government’s having on file a state-approved, comprehensive, countywide plan as provided in Iowa Code subsection 29C.9(8). Required 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 county, and must be approved by the division within 240 days of this date for public or private nonprofit entities within the county to be eligible to receive state financial assistance.

e. Direction, control and coordination.

(1) The commission shall execute and enforce the orders or rules made by the governor, or under the governor's authority.

(2) The commission shall establish and maintain the capability to effectively direct, control and coordinate emergency and disaster response and recovery efforts.

(3) The commission shall establish a means of interfacing on-scene management with direction and control personnel and facilities.

(4) The commission should actively support use of the Incident Command System (ICS) model by all emergency and disaster response agencies within the jurisdiction.

f. Damage assessment.

(1) The commission shall develop and maintain a damage assessment capability consistent with local, state and federal requirements and shall designate individuals responsible for the function of damage assessment.

(2) Individuals identified by the commission to perform the function of damage assessment shall be trained through a course of instruction approved by the division.

g. Communications and warning.

(1) The commission should identify a means of disseminating a warning to the public, key officials, emergency response personnel and those other persons within the jurisdiction that may be potentially affected.

(2) The commission should identify the primary and secondary means of communications to support direction, control, and coordination of emergency management activities.

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

i. Training.

(1) The commission shall require the local emergency management coordinator to meet the minimum training requirements as established by the division and identified in subrule 7.4(4).

(2) The commission should, in conjunction with the local emergency management coordinator, arrange for and actively support ongoing emergency management related training for local public officials, emergency responders, volunteers, and support staff.

(3) Persons responsible for emergency plan development or implementation should receive training specific to, or related to, hazards identified in the local hazard analysis.

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

(5) The commission should encourage all individuals with emergency management responsibilities to maintain current and adequate training consistent with their responsibilities.

j. Exercises.

(1) The commission shall ensure that exercise activities are conducted annually in accordance with local, state and federal requirements.

(2) Exercise activities should follow a progressive five-year plan that is designed to meet the needs of the jurisdiction.

(3) Local entities assigned to an exercise should actively participate and support the role of the entity in the exercise.

(4) Local entities assigned to an exercise should actively participate in the design, development, implementation, and evaluation of the exercise activity.

k. Public education and information.

- (1) The commission should designate the individual or individuals who are responsible for public education and information functions.
- (2) The commission should ensure a public information capability, to include:
 1. Designated public information personnel trained to meet local requirements.
 2. A system of receiving and disseminating emergency public information.
 3. A method to develop, coordinate, and authorize the release of information.
 4. The capability to communicate with special needs populations.
- (3) The commission should actively support the development of capabilities to electronically collect, compile, report, receive, and transmit emergency public information.

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, enter into agreements pursuant to Iowa Code chapter 28E for the joint coordination and administration of emergency management services throughout the multicounty area.

605—7.4(29C) Emergency management coordinator.

7.4(1) Each county emergency management commission or joint commission shall appoint an 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 Iowa Code sections 29C.9 and 29C.10, as further described in subrule 7.3(4), and as otherwise assigned and authorized by the commission.

7.4(2) Political activity.

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

b. An individual serving in a full-time or part-time governmental position incompatible with the position of coordinator shall not be appointed as the emergency management coordinator.

c. Any employee of an organization for emergency management shall not become a candidate for any partisan elective office. However, the employee is not precluded from holding any nonpartisan elective office for which no pay or only token payment is received.

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

a. Demonstrate a knowledge of local, state, and federal laws and regulations pertaining to emergency management.

b. Demonstrate an understanding of communications systems, frequencies, and equipment capabilities.

c. Demonstrate a knowledge of basic accounting principles and practices.

d. Express oneself clearly and concisely, both orally and in writing.

e. Establish and maintain effective working relationships with employees, public officials, and the general public.

f. Prepare accurate reports.

g. Write plans, direct the use of resources, and coordinate emergency operations under extraordinary circumstances.

h. Exercise good judgment in evaluating situations and making decisions.

i. Coordinate with agencies at all levels of government.

j. Have graduated from an accredited four-year college or university and have two years of responsible experience in emergency management, public or business administration, public relations, military preparedness or related work; or have an equivalent combination of experience and education, substituting 30 semester hours of graduate study for each year of the required work experience to a maximum of two years; or have an equivalent combination of experience and education, substituting one year of experience in the aforementioned areas for each year of college to a maximum of four years; or be an employee with current continuous experience in the state classified service that includes the equivalent of 18 months of full-time experience as an emergency management operations officer;

or be an employee with current continuous experience in the state classified service that includes the equivalent of 36 months of full-time experience as a local emergency management assistant.

7.4(4) Emergency management coordinator continuing education requirements. Each local 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.

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

- (1) Citizens Guide to Disaster Assistance IS-7.
- (2) The EOC's Role in Community Preparedness, Response and Recovery Activities IS-775.
- (3) Emergency Manager: An Orientation to the Position IS-1.
- (4) Are You Ready? An In-depth Guide to Citizen Preparedness IS-22.
- (5) An Introduction to Hazardous Materials IS-5A.
- (6) Introduction to Incident Command System IS-100.a.
- (7) ICS for Single Resources and Initial Action Incidents IS-200.a.
- (8) Radiological Emergency Management IS-3.
- (9) Introduction to Hazard Mitigation IS-393.a.
- (10) Emergency Management Program Development.

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

c. Upon completion of the requirements established in subrule 7.4(4), paragraphs "a" and "b," a person must complete annually a minimum of 24 hours of state-approved emergency management training. Since completion of the annual training will follow the federal fiscal year, October 1 to September 30, the requirement to complete 24 hours of annual training will commence on the next October 1.

d. The local emergency management coordinator must document completion of courses by submitting a copy of the certificate of completion, a letter indicating satisfactory completion, or other appropriate documentation.

e. The Iowa homeland security and emergency management division, in conjunction with the Iowa Emergency Management Association, may substitute courses when deemed appropriate.

f. An emergency management coordinator who has met the baseline requirements prior to October 1, 2006, will not be required to take any of the new courses listed above to reestablish the person's baseline.

[ARC 8116B, IAB 9/9/09, effective 10/14/09]

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

7.5(1) Personnel for the local commission or joint commission 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 own policies.

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 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.

7.6(1) *Local preliminary damage assessment and impact statement.* The county 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.

7.6(2) *Damage assessment guidance and forms to be provided.* The state 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.

7.6(3) *Joint preliminary damage assessment.* Once the governor has determined that a request for a presidential disaster declaration is appropriate, joint preliminary damage assessment teams, consisting of local, state, and federal inspectors, will assess the uninsured damages and costs incurred or to be incurred in responding to and recovering from the disaster. All affected city, municipality, or county governments shall be required to provide assistance to the joint preliminary damage assessment teams for conducting damage assessments. The jurisdiction may be required to develop maps to show the damaged areas and to compile lists of names and telephone numbers of individuals, businesses, private nonprofit entities, and governmental agencies sustaining disaster response and recovery costs or damages. This joint preliminary damage assessment may be required before the request for presidential declaration is formally transmitted to the Federal Emergency Management Agency.

7.6(4) *Public assistance and hazard mitigation briefing.* In the event that a presidential disaster declaration is received, affected jurisdictions and eligible private nonprofit entities should be prepared to attend a public assistance and hazard mitigation briefing to acquire the information and documents necessary to make their formal applications for public and hazard mitigation assistance. Failure to comply with the deadlines for making application for public and mitigation assistance as established in 44 CFR Part 206 and the Stafford Act (PL 923-288) may jeopardize or eliminate the jurisdiction's or private nonprofit entity's ability to receive assistance.

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 7.3(4), paragraph "d."

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 to ensure that a comprehensive emergency preparedness system exists for all hazards.

7.7(1) *Eligibility.* Local or joint emergency management 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 emergency management coordinators established in rules 7.3(29C) and 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 shall ensure that the coordinator works an average of 40 hours per week toward the emergency management effort.

7.7(2) *Application for funding.* Local or joint 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.

7.7(3) Allocation and distribution of funds.

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.

b. The formula shall be applied in the following manner: The pass-through amount is divided equally between an equal-share base and a population base.

(1) The amount of total equal-share base dollars is divided by the total number of EMPG counties to establish a per-county average. For counties with part-time coordinators, the per-county average is reduced by 50 percent to determine the part-time county allocation. The total baseline dollar amount, minus the cumulative total dollars already allocated to part-time counties, is then divided by the total number of counties with full-time coordinators to determine the full-time county allocation.

(2) The population base amount for each county is determined by adding the populations of all counties together; then each county's population is divided by that total population to determine a percentage. The total population base dollars are then multiplied by a county's percentage to determine that county's share of the population dollars.

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.

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:

- a. Appoint a qualified coordinator.
- b. Comply with continuing education requirements.
- c. Adopt a comprehensive countywide emergency operations plan that meets current standards.
- d. Determine the mission of its agency.
- e. Show continuing progress in fulfilling the commission's duties and obligations.
- f. Conduct commission business according to the guidelines and rules established in this chapter.
- g. Enter into and file a cooperative agreement with the division by the stipulated filing date.
- h. Abide by state and federal regulations governing the proper disbursement and accountability for federal funds, equal employment opportunity and merit system standards.
- i. Accomplish work specified in one or more program areas, as agreed upon in the cooperative agreement, or applicable state or federal rule or statute.
- j. Provide the required matching financial contribution.
- k. Expend funds for authorized purposes or in accordance with applicable laws, regulations, terms and conditions.
- l. Respond to, or cooperate with, state efforts to determine the extent and nature of compliance with the cooperative agreement.

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 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.

7.7(6) Corrective actions.

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

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 management 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.

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.

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 performe 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.

[ARC 8543B, IAB 2/24/10, effective 4/14/10]

These rules are intended to implement Iowa Code sections 29C.6 and 29C.8.

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[Filed Without Notice ARC 8543B, IAB 2/24/10, effective 4/14/10]

[◇] Two or more ARCs

CHAPTER 8
CRITERIA FOR AWARDS OR GRANTS

605—8.1(29C,17A) Purpose. The emergency management division receives and distributes funds to a variety of entities throughout the state for support of emergency management planning, training, and other initiatives. Unless otherwise prohibited by state or federal law, rule or regulation, the administrator may make such funds subject to competition. Where such funds are designated by the administrator to be competitive, the division shall ensure equal access, objective evaluation of applications for these funds, and that grant application material shall contain, at a minimum, specific content.

605—8.2(29C,17A) Definitions. For the purpose of these rules, the following definitions shall apply:

“*Administrator*” means the administrator of the emergency management division within the Iowa department of public defense.

“*Competitive grant*” means the competitive grant application process to determine the grant award for a specified project period.

“*Division*” means the emergency management division of the Iowa department of public defense.

“*Project*” means the activity(ies) or program(s) funded by the division.

“*Project period*” means the period of time for which the division intends to support the project without requiring the recompetition of funds.

“*Service delivery area*” means the defined geographic area for delivery of project services.

605—8.3(29C,17A) Exceptions. The division considers funds subject to competition except in those cases where:

1. State or federal law, rule or regulation prohibits such competition.
2. The state, federal or private funding source specifies a sole source for the receipt of funds.
3. There is mutual agreement among the division and contract organizations.
4. The administrator designates such funds to be noncompetitive.

605—8.4(29C,17A) Public notice of available competitive grants. When making funds available through a competitive grant application process, the division shall, at least 60 days prior to the application due date, issue a public notice in the Iowa Administrative Bulletin that identifies the availability of funds and states how interested parties may request an application packet. A written request for the packet shall serve as the letter of intent. Services, delivery areas, and eligible applicants shall be described in the public notice.

If the receipt of a grantor’s official notice of award to the division precludes a full 60-day notice in the Iowa Administrative Bulletin, the division shall nonetheless issue the public notice in the Iowa Administrative Bulletin at the earliest publication date.

In the event the publication date would not allow at least 30 days for interested parties to request and submit an application packet, the division shall notify current contractors and other interested parties of the availability of funds through press releases and other announcements.

605—8.5(29C,17A) Requirements. Where funds are designated as competitive, the following shall be included in all grant application materials made available by the division:

1. Funding source;
2. Project period;
3. Services to be delivered;
4. Service delivery area;
5. Funding purpose;
6. Funding restrictions;
7. Funding formula (if any);
8. Matching requirements (if any);
9. Reporting requirements;
10. Performance criteria;

11. Description of eligible applicants;
12. Need for letters of support or other materials (if applicable);
13. Application due date;
14. Anticipated date of award;
15. Eligibility guidelines for those receiving the service or product and the source of those guidelines, including fees or sliding fee scales (if applicable);
16. Target population to be served (if applicable); and
17. Appeal process in the event an application is denied.

605—8.6(29C,17A) Review process (competitive applications only). The review process to be followed in determining the amount of funds to be approved for award of a contract shall be described in the application material. The review criteria and point allocation for each element shall also be described in the grant application material.

The competitive grant application review committee shall be determined by the division bureau chief administering the grant or award, with oversight from the administrator. The review committee members shall apply points according to the established review criteria in conducting the review.

In the event competitive applications for a project receive an equal number of points, a second review shall be conducted by the administrator and the bureau chief administering the grant or award.

605—8.7(29C,17A) Opportunity for review and comment. Program advisory committees or related task forces of the program may be provided with an opportunity to review and comment on the criteria and point allocation prior to implementation. Exceptions may occur when the funding source to the division has already included such criteria and point allocation within the award or the time frame allowed is insufficient for such review and comment.

605—8.8(29C,17A) Awards. Once applications have been scored and ranked, the division shall award all available funds to eligible applicants based on the ranking of their applications. Should there be more eligible applications than funds available, those remaining eligible applications shall be kept on file by the division.

In those cases in which applicants have received an award but actual project costs are less than anticipated or established in the application, remaining funds shall become deobligated funds. The division shall award deobligated funds to remaining eligible applications on file with the division. Should deobligated funds remain after satisfying all eligible applications, the division shall republish the availability of funds.

These rules are intended to implement Iowa Code chapter 17A and section 29C.13.

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CHAPTER 9
IOWA COMPREHENSIVE PLAN
[Prior to 4/18/90, Public Defense Department[650], Ch 6]
[Prior to 5/12/93, Disaster Services Division[607], Ch 6]
[Prior to 8/9/00, see 605—Chapter 6]

605—9.1(29C) Description. Iowa Code section 29C.8 requires the administrator of the homeland security and emergency management division to prepare a comprehensive plan for homeland security, disaster response, recovery, mitigation, and emergency resource management for the state. This comprehensive plan is comprised of the following parts:

Part A: Iowa Emergency Response Plan

Part B: Iowa Hazard Mitigation Plan

Part C: Iowa Disaster Recovery Plan

Part D: Iowa Critical Asset Protection Plan (confidential per Iowa Code section 22.7, Confidential records)

605—9.2(29C) Part A: Iowa Emergency Response Plan. The Part A: Iowa Emergency Response Plan is developed in accordance with Iowa Code section 29C.8, and has been adopted, published, and maintained by the division. Part A details the state government response to a wide range of natural, technological or human-caused disasters.

1. A copy of Part A will be placed in the state library located in the Ola Babcock Miller Building, 1112 East Grand Avenue, Des Moines, Iowa.
2. Part A shall be distributed to state agencies and departments that have been assigned emergency functions and to all county emergency management agencies.
3. The Iowa Emergency Response Plan serves as the state disaster emergency response document.
4. The division updates the plan by amendments promulgated by rule in accordance with Iowa Code chapter 17A and distributes amendments to all plan holders on the division distribution list.
5. Part A shall be available for public view at the Homeland Security and Emergency Management Division, Hoover State Office Building, Level A, Des Moines, Iowa.

605—9.3(29C) Part B: Iowa Hazard Mitigation Plan. The Part B: Iowa Hazard Mitigation Plan is developed in accordance with Iowa Code section 29C.8, and has been adopted on September 17, 2007, published, and maintained by the division. Part B details the state government goals, objectives, and strategies to mitigate a wide range of natural, technological or human-caused disasters in accordance with Section 322 of the Stafford Act, 42 U.S.C. 5165.

1. A copy of Part B will be placed in the state library located in the Ola Babcock Miller Building, 1112 East Grand Avenue, Des Moines, Iowa.
2. Part B shall be distributed to state agencies and departments that have participated in the writing of the plan or are assigned hazard mitigation functions and to all county emergency management agencies.
3. The Iowa Hazard Mitigation Plan serves as the state hazard mitigation document and demonstrates the state's commitment to reduce risks from natural, technological, and human-caused hazards and serves as a guide for the commitment of resources to reducing the effects of natural, technological, and human-caused hazards.
4. The division updates the plan by amendments promulgated by rule in accordance with Iowa Code chapter 17A and distributes amendments to all plan holders on the division distribution list. Part B shall be reviewed and amended as appropriate at a minimum of every three years.
5. Part B shall be available for public view at the Homeland Security and Emergency Management Division, Hoover State Office Building, Level A, Des Moines, Iowa.

605—9.4(29C) Part C: Iowa Disaster Recovery Plan. The Part C: Iowa Disaster Recovery Plan is developed in accordance with Iowa Code section 29C.8, and has been adopted on March 20, 2008,

published, and maintained by the division. Part C details the state government goals, objectives, and strategies to recover from a wide range of natural, technological, or human-caused disasters.

1. A copy of Part C will be placed in the state library located in the Ola Babcock Miller Building, 1112 East Grand Avenue, Des Moines, Iowa.

2. Part C shall be distributed to state agencies and departments that have been assigned recovery functions and to all county emergency management agencies.

3. The Iowa Disaster Recovery Plan serves as the state disaster recovery document.

4. The division updates the plan by amendments promulgated by rule in accordance with Iowa Code chapter 17A and distributes amendments to all plan holders on the division distribution list. Part C shall be reviewed and amended as appropriate at a minimum of every three years.

5. Part C shall be available for public view at the Homeland Security and Emergency Management Division, Hoover State Office Building, Level A, Des Moines, Iowa.

These rules are intended to implement Iowa Code section 29C.8.

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¹ Effective date of Chapter 6 delayed by the Administrative Rules Review Committee for 70 days pursuant to Iowa Code section 17A.4.

CHAPTER 10
ENHANCED 911 TELEPHONE SYSTEMS

[Prior to 4/18/90, see Public Defense[601]Ch 10]

[Prior to 5/12/93, Disaster Services Division[607]Ch 10]

605—10.1(34A) Program description. The purpose of this program is to provide for the orderly development, installation, and operation of enhanced 911 emergency telephone systems and to provide a mechanism for the funding of these systems, either in whole or in part. These systems shall be operated under governmental management and control for the public benefit. These rules shall apply to each joint E911 service board or alternative 28E entity as provided in Iowa Code chapter 34A and to each provider of enhanced 911 service.

605—10.2(34A) Definitions. As used in this chapter, unless context otherwise requires:

“*Access line*” means an exchange access line that has the ability to access dial tone and reach a public safety answering point.

“*Administrator*,” unless otherwise noted, means the administrator of the homeland security and emergency management division of the department of public defense.

“*Automatic location identification (ALI)*” means a system capability that enables an automatic display of information defining a geographical location of the telephone used to place the 911 call.

“*Automatic number identification (ANI)*” means a capability that enables the automatic display of the number of the telephone used to place the 911 call.

“*Call attendant*” means the person who initially answers a 911 call.

“*Call detail recording*” means a means of establishing chronological and operational accountability for each 911 call processed, consisting minimally of the caller’s telephone number, the date and time the 911 telephone equipment established initial connection (trunk seizure), the time the call was answered, the time the call was transferred (if applicable), the time the call was disconnected, the trunk line used, and the identity of the call attendant’s position, also known as an ANI printout.

“*Call relay method*” means the 911 call is answered at the PSAP, where the pertinent information is gathered, and the call attendant relays the caller’s information to the appropriate public or private safety agency for further action.

“*Call transfer method*” means the call attendant determines the appropriate responding agency and transfers the 911 caller to that agency.

“*Central office (CO)*” means a telephone company facility that houses the switching and trunking equipment serving telephones in a defined area.

“*Coin-free access (CFA)*” means coin-free dialing or no-coin dial tone which enables a caller to dial 911 or “0” for operator without depositing money or incurring a charge.

“*Competitive local exchange service provider*” means the same as defined in Iowa Code section 476.96.

“*Conference transfer*” means the capability of transferring a 911 call to the action agency and allowing the call attendant to monitor or participate in the call after it has been transferred to the action agency.

“*Direct dispatch method*” means 911 call answering and radio-dispatching functions, for a particular agency, are both performed at the PSAP.

“*E911 communications council*” means the council as established under the provisions of Iowa Code section 34A.15.

“*E911 program manager*” means that person appointed by the administrator of the homeland security and emergency management division, and working with the E911 communications council, to perform the duties specifically set forth in Iowa Code chapter 34A and this chapter.

“*Emergency call*” means a telephone request for service which requires immediate action to prevent loss of life, reduce bodily injury, prevent or reduce loss of property and respond to other emergency situations determined by local policy.

“*Emergency 911 notification device*” means a product capable of accessing a public safety answering point through the E911 system.

“Enhanced 911 (E911)” means the general term referring to emergency telephone systems with specific electronically controlled features, such as ALI, ANI, and selective routing.

“Enhanced 911 (E911) operating authority” means the public entity, which operates an E911 telephone system for the public benefit, within a defined enhanced 911 service area.

“Enhanced 911 (E911) service area” means the geographic area to be served, or currently served under an enhanced 911 service plan, provided that any enhanced 911 service area shall at a minimum encompass one entire county. The enhanced 911 service area may encompass more than one county and need not be restricted to county boundaries. This definition applies only to wire-line enhanced 911 service.

“Enhanced 911 (E911) service plan (wire-line)” means a plan, produced by a joint E911 service board, which includes the information required by Iowa Code subsection 34A.2(7).

“Enhanced 911 service surcharge” means a charge set by the joint E911 service board, approved by local referendum, and assessed on each access line which physically terminates within the E911 service area.

“Enhanced wireless 911 service area” means the geographic area to be served, or currently served, by a PSAP under an enhanced wireless 911 service plan.

“Enhanced wireless 911 service, phase I” means an emergency wireless telephone system with specific electronically controlled features such as ANI, specific indication of wireless communications tower site location, selective routing by geographic location of the tower site.

“Enhanced wireless 911 service, phase II” means an emergency wireless telephone system with specific electronically controlled features such as ANI and ALI and selective routing by geographic location of the 911 caller.

“Exchange” means a defined geographic area served by one or more central offices in which the telephone company furnishes services.

“Implementation” means the activity between formal approval of an E911 service plan and a given system design, and commencement of operations.

“Joint E911 service board” means those entities created under the provisions of Iowa Code section 34A.3, which include the legal entities created pursuant to Iowa Code chapter 28E referenced in Iowa Code subsection 34A.3(3).

“Local exchange carrier” means the same as defined in Iowa Code section 476.96.

“Local exchange service provider” means a vendor engaged in providing telecommunications service between points within an exchange and includes, but is not limited to, a competitive local exchange service provider and a local exchange carrier.

“911 call” means any telephone call that is made by dialing the digits 911.

“911 system” means a telephone system that automatically connects a caller, dialing the digits 911, to a PSAP.

“Nonrecurring costs” means one-time charges incurred by a joint E911 service board or operating authority including, but not limited to, expenditures for E911 service plan preparation, surcharge referendum, capital outlay, installation, and initial license to use subscriber names, addresses and telephone information.

“One-button transfer” means another term for a (fixed) transfer which allows the call attendant to transfer an incoming call by pressing a single button. For example, one button would transfer voice and data to a fire agency, and another button would be used for police, also known as “selective transfer.”

“Political subdivision” means a geographic or territorial division of the state that would have the following characteristics: defined geographic area, responsibilities for certain functions of local government, public elections and public officers, and taxing power. Excluded from this definition are departments and divisions of state government and agencies of the federal government.

“Provider” means a person, company or other business that provides, or offers to provide, 911 equipment, installation, maintenance, or access services.

“Public or private safety agency” means a unit of state or local government, a special purpose district, or a private firm, which provides or has the authority to provide firefighting, police, ambulance, emergency medical services or hazardous materials response.

“*Public safety answering point (PSAP)*” means a 24-hour, state, local, or contracted communications facility, which has been designated by the local service board to receive 911 service calls and dispatch emergency response services in accordance with the E911 service plan.

“*Public switched telephone network*” means a complex of diversified channels and equipment that automatically routes communications between the calling person and called person or data equipment.

“*Recurring costs*” means repetitive charges incurred by a joint E911 service board or operating authority including, but not limited to, database management and personnel directly associated with addressing, lease of access lines, lease of equipment, network access fees, and applicable maintenance costs.

“*Selective routing (SR)*” means an enhanced 911 system feature that enables all 911 calls originating from within a defined geographical region to be answered at a predesignated PSAP.

“*Subscriber*” means any person, firm, association, corporation, agencies of federal, state and local government, or other legal entity responsible by law for payment for communication service from the telephone utility.

“*Tariff*” means a document filed by a telephone company with the state telephone utility regulatory commission which lists the communication services offered by the company and gives a schedule for rates and charges.

“*Telecommunications device for the deaf (TDD)*” means any type of instrument, such as a typewriter keyboard connected to the caller’s telephone and involving special equipment at the PSAP which allows an emergency call to be made without speaking, also known as a TTY.

“*Trunk*” means a circuit used for connecting a subscriber to the public switched telephone network.

“*Wireless communications service*” means cellular, broadband PCS, and SMR which provide real-time two-way interconnected voice service, the networks of which utilize intelligent switching capability and offer seamless handoff to customers. This definition includes facilities-based service providers and non-facilities-based resellers. For purposes of wireless 911 surcharge, wireless communications service does not include services whose customers do not have access to 911, or a 911-like service, a communications channel utilized only for data transmission, or a private telecommunications system.

“*Wireless communications surcharge*” means a surcharge of up to 65 cents imposed on each wireless communications service number provided in this state and collected as part of a wireless communications service provider’s monthly billing to a subscriber.

“*Wireless E911 phase 1*” means a 911 call made from a wireless device in which the wireless service provider delivers the call-back number and the address of the tower that received the call to the appropriate public safety answering point.

“*Wireless E911 phase 2*” means a 911 call made from a wireless device in which the wireless service provider delivers the call-back number and the latitude and longitude coordinates of the wireless device to the appropriate public safety answering point.

[ARC 8314B, IAB 11/18/09, effective 12/23/09]

605—10.3(34A) Joint E911 service boards. Each county board of supervisors shall establish a joint E911 service board.

10.3(1) Membership.

a. Each political subdivision of the state, having a public safety agency serving territory within the county E911 service area, is entitled to one voting membership. For the purposes of this paragraph, a township that operates a volunteer fire department providing fire protection services to the township, or a city that provides fire protection services through the operation of a volunteer fire department not financed through the operation of city government, shall be considered a political subdivision of the state having a public safety agency serving territory within the county.

b. Each private safety agency, such as privately owned ambulance services, airport security agencies, and private fire companies, serving territory within the county E911 service area, is entitled to a nonvoting membership on the board.

c. Public and private safety agencies headquartered outside but operating within a county E911 service area are entitled to membership according to their status as a public or private safety agency.

d. A political subdivision that does not operate its own public safety agency but contracts for the provision of public safety services is not entitled to membership on the joint E911 service board. However, its contractor is entitled to one voting membership according to the contractor's status as a public or private safety agency.

e. The joint E911 service board elects a chairperson and vice chairperson.

f. The joint E911 service board shall annually submit a listing of members, to include the political subdivision they represent and, if applicable, the associated 28E agreement, to the E911 program manager. A copy of the list shall be submitted within 30 days of adoption of the operating budget for the ensuing fiscal year and shall be on the prescribed form provided by the E911 program manager.

10.3(2) *Alternate 28E entity.* The joint E911 service board may organize as an Iowa Code chapter 28E agency as authorized in Iowa Code subsection 34A.3(3), provided that the 28E entity meets the voting and membership requirements of Iowa Code subsection 34A.3(1).

10.3(3) *Joint E911 service board bylaws.* Each joint E911 service board shall develop bylaws to specify, at a minimum, the following information:

- a.* The name of the joint E911 service board.
- b.* A list of voting and nonvoting members.
- c.* The date for the commencement of operations.
- d.* The mission.
- e.* The powers and duties.
- f.* The manner for financing activities and maintaining a budget.
- g.* The manner for acquiring, holding and disposing of property.
- h.* The manner for electing or appointing officers and terms of office.
- i.* The manner by which members may vote to include, if applicable, the manner by which votes may be weighted.
- j.* The manner for appointing, hiring, disciplining, and terminating employees.
- k.* The rules for conducting meetings.
- l.* The permissible method or methods to be employed in accomplishing the partial or complete termination of the board and the disposing of property upon such complete or partial termination.
- m.* Any other necessary and proper rules or procedures.

Each member shall sign the adopted bylaws.

The joint E911 service board shall record the signed bylaws with the county recorder and shall forward a copy of the signed bylaws to the E911 program administrator at the state homeland security and emergency management division.

10.3(4) *Executive board.* The joint E911 service board may, through its bylaws, establish an executive board to conduct the business of the joint E911 service board. The executive board will have such other duties and responsibilities as assigned by the joint E911 service board.

10.3(5) *Meetings.*

a. The provisions of Iowa Code chapter 21, "Official Meetings Open to the Public," are applicable to joint E911 service boards.

b. Joint E911 service boards shall conduct meetings in accordance with their established bylaws and applicable state law.

[ARC 7695B, IAB 4/8/09, effective 5/13/09; ARC 8314B, IAB 11/18/09, effective 12/23/09]

605—10.4(34A) Enhanced 911 service plan (wire-line).

10.4(1) The joint E911 service board shall be responsible for developing an E911 service plan as required by Iowa Code section 34A.3 and as set forth in these rules. The plan will remain the property of the joint E911 service board. Each joint E911 service board shall coordinate planning with each contiguous joint E911 service board. A copy of the plan and any modifications and addenda shall be submitted to:

- a.* The state emergency management division.

- b.* All public and private safety agencies serving the E911 service area.
- c.* All providers affected by the E911 service plan.

10.4(2) The E911 service plan shall, at a minimum, encompass the entire county, unless a waiver is granted by the administrator. Each plan shall include:

- a.* The mailing address of the joint E911 service board.
- b.* A list of voting members on the joint E911 service board.
- c.* A list of nonvoting members on the joint E911 service board.
- d.* The name of the chairperson and vice chairperson of the joint E911 service board.
- e.* A geographical description of the enhanced 911 service area.
- f.* A list of all public and private safety agencies within the E911 service area.
- g.* The number of public safety answering points within the E911 service area.
- h.* Identification of the agency responsible for management and supervision of the E911 emergency telephone communication system.
- i.* A statement of estimated charges to be incurred by the joint E911 service board, including separate estimates of recurring and nonrecurring charges. These charges shall be limited to charges directly attributable to the provision of E911 service. The charges shall include the following:
 - (1) Item(s) or unit(s) of measurement, or both, and the associated tariff prices applicable in the development of the charges.
 - (2) Where tariff prices are not available, work papers showing the development of the charges by item(s)/unit(s) shall be included.
 - (3) Charges shall be justified as being attributable to the provision of E911 telephone communication service.
- j.* Information from telephone service providers detailing the current equipment operated by the provider to provide telephone service and additional central office equipment or technology upgrades, or both, necessary to implement E911 service.
- k.* The total number of telephone access lines by telephone company or companies having points of presence within the E911 service area and the number of this total that is exempt from surcharge collection as provided in rule 10.9(34A) and Iowa Code subsection 34A.7(3).
- l.* The estimated number of pay telephones within the E911 service area.
- m.* If applicable, a schedule for implementation of the plan throughout the E911 service area. A joint E911 service board may decide not to implement E911 service.
- n.* The total property valuation in the E911 service area.
- o.* Maps of the E911 service area showing:
 - (1) The jurisdictional boundaries of all law enforcement agencies serving the area.
 - (2) The jurisdictional boundaries of all firefighting districts and companies serving the area.
 - (3) The jurisdictional boundaries of all ambulance and emergency medical service providers operating in the area.
 - (4) Telephone exchange boundaries and the location of telephone company central offices, including those located outside but serving the service area.
 - (5) The location of PSAP(s) within the service area.
- p.* A block drawing for each telephone central office within the service area showing the method by which the 911 call will be delivered to the PSAP(s).

10.4(3) All plan modifications and addenda shall be filed with, reviewed, and approved by the E911 program manager.

10.4(4) The E911 program manager shall base acceptance of the plan upon compliance with the provisions of Iowa Code chapter 34A and the rules herein.

10.4(5) The E911 program manager will notify in writing, within 20 days of review, the chairperson of the joint E911 service board of the approval or disapproval of the plan.

- a.* If the plan is disapproved, the joint E911 service board will have 90 days from receipt of notice to submit revisions/addenda.
- b.* Notice for disapproved plans will contain the reasons for disapproval.

c. The E911 program manager will notify the chairperson, in writing within 20 days of review, of the approval or disapproval of the revisions.
[ARC 8314B, IAB 11/18/09, effective 12/23/09]

605—10.5(34A) Referendum and surcharge (wire-line).

10.5(1) The surcharge referendum may be initiated only by the joint E911 service board and shall be conducted in accordance with the provisions of Iowa Code sections 34A.6 and 34A.6A and Iowa Administrative Code rule 721—21.810(34A). The surcharge is not a local option tax that can be presented to the voters under Iowa Code chapter 422B.

10.5(2) The following information shall be filed with the E911 program manager before the surcharge may be imposed.

a. A copy of the “Abstract of Election” (Form 156-K) from each commissioner of elections, in each county or partial county included within the E911 service area, showing passage of the referendum allowing for the imposition of a surcharge for E911 service.

b. An E911 service plan for the proposed E911 service area approved by the joint E911 service board.

c. A letter signed by the chairperson of the joint E911 service board requesting that the surcharge be imposed within the E911 service area.

10.5(3) The E911 program manager shall notify a local exchange service provider scheduled to provide exchange access E911 service within an E911 service area that implementation of an E911 service plan has been approved by the joint E911 service board, E911 program manager, and by the service area referendum, and that collection of the surcharge is to begin within 100 days. The E911 program manager shall also provide notice to all affected public safety answering points.

10.5(4) The local exchange service provider shall collect the surcharge as a part of its monthly billing to its subscribers. The surcharge shall appear as a single line item on a subscriber’s monthly billing entitled “E911 emergency telephone service surcharge.”

10.5(5) The local exchange service provider may retain 1 percent of the surcharge collected as compensation for the billing and collection of the surcharge. If the compensation is insufficient to fully recover a provider’s costs for the billing and collection of the surcharge, the deficiency shall be included in the provider’s costs for rate-making purposes to the extent it is reasonable and just under Iowa Code section 476.6.

10.5(6) The local exchange service provider shall remit collected surcharge to the joint E911 service board on a calendar-quarter basis within 20 days of the end of the quarter.

10.5(7) The joint E911 service board may request, not more than once each quarter, the following information from the local exchange service provider:

- a. The identity of the exchange from which the surcharge is collected.
- b. The number of lines to which the surcharge was applied for the quarter.
- c. The number of refusals to pay per exchange, if applicable.
- d. The number of write-offs per exchange, if applicable.
- e. The number of lines exempt per exchange.
- f. The amount retained by the local exchange service provider from the 1 percent administrative fee.

Access line counts and surcharge remittances are confidential public records as provided in Iowa Code section 34A.8.

10.5(8) Collection for a surcharge shall terminate if E911 service ceases to operate within the respective E911 service area. The E911 program manager for good cause may grant an extension.

a. The administrator shall provide 100 days’ prior written notice to the joint E911 service board or the operating authority and to the local exchange service provider(s) collecting the fee of the termination of surcharge collection.

b. Individual subscribers within the E911 service area may petition the joint E911 service board or the operating authority for a refund. Petitions shall be filed within one year of termination. Refunds may be prorated and shall be based on funds available and subscriber access lines billed.

c. At the end of one year from the date of termination, any funds not refunded and remaining in the E911 service fund and all interest accumulated shall be retained by the joint E911 service board. However, if the joint E911 service board ceases to operate any E911 service, the balance in the E911 service fund shall be payable to the state homeland security and emergency management division. Moneys received by the division shall be used only to offset the costs for the administration of the E911 program.

605—10.6(34A) Waivers, variance request, and right to appeal.

10.6(1) All requests for variances or waivers shall be submitted to the E911 program manager in writing and shall contain the following information:

- a. A description of the variance(s) or waiver(s) being requested.
- b. Supporting information setting forth the reasons the variance or waiver is necessary.
- c. A copy of the resolution or minutes of the joint E911 service board meeting which authorizes the application for a variance or waiver.
- d. The signature of the chairperson of the joint E911 service board.

10.6(2) The E911 program manager may grant a variance or waiver based upon the provisions of Iowa Code chapter 34A or other applicable state law.

10.6(3) Upon receipt of a request for a variance or waiver, the E911 program manager shall evaluate the request and schedule a review within 20 working days of receipt of the request. Review shall be informal and the petitioner may present materials, documents and testimony in support of the petitioner's request. The E911 program manager shall determine if the request meets the criteria established and shall issue a decision within 20 working days. The E911 program manager shall notify the petitioner, in writing, of the acceptance or rejection of the petition. If the petition is rejected, such notice shall include the reasons for denial.

605—10.7(34A) Enhanced wireless 911 service plan. Each joint E911 service board, the department of public safety, the E911 communications council, and wireless service providers shall cooperate with the E911 program manager in preparing an enhanced wireless 911 service plan for statewide implementation of enhanced wireless 911 phase I and phase II implementation.

10.7(1) Plan specifications. The enhanced wireless 911 service plan shall include, at a minimum, the following information:

1. Maps showing geographic area to be served by each PSAP receiving enhanced wireless 911 telephone calls.
2. A list of all public and private safety agencies within the enhanced wireless 911 service area.
3. The geographic location of each PSAP receiving enhanced wireless 911 calls and the name of the person responsible for the management of the PSAP.
4. A set of guidelines for determining eligible cost for wireless service providers, wire-line service providers, and public safety answering points.
5. A statement of estimated charges for the implementation and operation of enhanced wireless 911 phase I and phase II service, detailing the equipment operated or needed to operate enhanced wireless 911 service, including any technology upgrades necessary to provide service. Charges must be directly attributable to the implementation and operation of enhanced wireless 911 service. Charges shall be detailed showing item(s) or unit(s) of cost, or both, and include estimated charges from:
 - Wireless service providers.
 - Wire-line service providers for implementation and operation of enhanced wireless 911 service.
 - Public safety answering points.
6. A schedule for the implementation of enhanced wireless 911 phase I and phase II service.

10.7(2) Adoption by reference. The "Wireless Enhanced 911 Implementation and Operation Plan," effective February 1, 2000, and available from the Homeland Security and Emergency Management Division, 7105 NW 70th Avenue, Camp Dodge, Bldg. W-4, Johnston, Iowa, or at the Law Library in the Capitol Building, Des Moines, Iowa, is hereby adopted by reference with the following changes effective May 8, 2002: Section F, provide further clarification of eligible costs for public safety answering points

and the Iowa department of public safety; Section G, provide further specification on the surplus payment process for local E911 service boards and the Iowa department of public safety; Attachment A, ensure that the application for surplus payments contains the language contained in Section G. Additional changes effective August 16, 2004: Sections A, D, E, I, J, K, and service area maps, update to reflect changes in the Code of Iowa and to represent the actual 911 operating conditions with the state; Sections F and G, provide further clarification of eligible costs and the payment of those costs.

[ARC 8314B, IAB 11/18/09, effective 12/23/09]

605—10.8(34A) E911 surcharge (wireless).

10.8(1) The E911 program manager shall adopt a monthly surcharge of up to 65 cents to be imposed on each wireless communications service number provided in this state. The amount of wireless surcharge to be collected may be adjusted once yearly, but in no case shall the surcharge exceed 65 cents per month, per customer service number.

10.8(2) The amount of wireless surcharge to be collected during a fiscal year shall be determined by the administrator's best estimation of enhanced wireless 911 costs for the ensuing fiscal year. The E911 program manager shall base the estimated cost on information provided by the E911 communications council, wireless service providers, vendors, public safety agencies, joint E911 service boards and any other appropriate parties or agencies involved in the provision or operation of enhanced wireless 911 service. The E911 communications council shall also provide a recommended monthly wireless surcharge for the ensuing fiscal year.

10.8(3) The E911 program manager shall order the imposition of surcharge uniformly on a statewide basis and simultaneously on all wireless communications service numbers by giving at least 100 days' prior notice to wireless carriers to impose a monthly surcharge as part of their periodic billings. The 100-day notice to wireless carriers shall also apply when making an adjustment in the wireless surcharge rate.

10.8(4) The wireless surcharge shall be 65 cents per month, per customer service number until changed by rule.

10.8(5) The wireless service provider shall list the surcharge as a separate line item on the customer's billing indicating that the surcharge is for E911 emergency telephone service. In the case of prepaid wireless service, this surcharge shall be collected under one of two methods:

a. The wireless service provider shall collect, on a monthly basis, the surcharge from each active prepaid customer whose account balance is equal to or greater than the surcharge; or

b. The wireless service provider shall divide the total earned prepaid wireless telephone revenue received by the wireless service provider within the calendar month and divide by 50 dollars, and multiply the quotient by the surcharge.

The surcharge shall be remitted based upon the address associated with the point of purchase, the customer billing address, or the location associated with the mobile telephone number for each active prepaid wireless telephone that has a sufficient positive balance as of the last days of the information, if that information is available. If the wireless service provider receives a partial payment of a monthly bill, the payment shall first be applied to the amount owed the wireless carrier with the remainder being applied to the surcharge. The wireless carrier shall bill and collect for a full month's surcharge in cases of a partial month's service. The wireless carrier is entitled to retain 1 percent of any wireless surcharge collected as a fee for collecting the surcharge as part of the subscriber's periodic billing. The wireless E911 surcharge is not subject to sales or use tax.

10.8(6) Remaining surcharge funds shall be remitted on a calendar-quarter basis within 20 days following the end of the quarter with a remittance form as prescribed by the E911 program manager. Providers shall issue their checks or warrants to the Treasurer, State of Iowa, and remit to the E911 Program Manager, Homeland Security and Emergency Management Division, 7105 NW 70th Avenue, Camp Dodge, Bldg. W-4, Johnston, Iowa 50131.

[ARC 8314B, IAB 11/18/09, effective 12/23/09]

605—10.9(34A) Wireless E911 emergency communications fund.

10.9(1) Wireless E911 surcharge money, collected and remitted by wireless service providers, shall be placed in a fund within the state treasury under the control of the administrator.

10.9(2) Iowa Code section 8.33 shall not apply to moneys in the fund. Moneys earned as income, including as interest, from the fund shall remain in the fund until expended as provided in this subrule. However, moneys in the fund may be combined with other moneys in the state treasury for purposes of investment.

10.9(3) Moneys in the fund shall be expended and distributed in the order and manner as follows:

a. An amount as appropriated by the general assembly to the homeland security and emergency management division for implementation, support, and maintenance of the functions of the E911 program and to employ the auditor of the state to perform an annual audit of the wireless E911 emergency communications fund.

b. The program manager shall allocate 21 percent of the total amount of surcharge generated per calendar quarter to wireless carriers to recover their costs to deliver wireless E911 phase 1 services as defined in the Federal Communications Commission docket 94-102 and further defined in their letter to King County, Washington, dated May 7, 2001. If this allocation is insufficient to reimburse all wireless carriers for the wireless service provider's eligible expenses, the program manager shall allocate a prorated amount to each wireless carrier equal to the percentage of the provider's eligible expenses as compared to the total of all eligible expenses for all wireless carriers for the calendar quarter during which expenses were submitted. When prorated expenses are paid, the remaining unpaid expenses shall no longer be eligible for payment under this paragraph.

c. The program manager shall reimburse local exchange service providers on a calendar quarter basis for their expenses for transport costs between the wireless E911 selective router and the public safety answering points related to the delivery of wireless E911 service.

d. The program manager shall reimburse local exchange service providers and third-party E911 automatic location information (ALI) database providers on a calendar quarter basis for the costs of maintaining and upgrading the E911 components and functionalities between the input and output points of the wireless E911 selective router. This includes the wireless E911 selective router and the automatic location information (ALI) database.

e. The program manager shall apply an amount up to \$500,000 per calendar quarter to any outstanding wireless E911 phase 1 obligations incurred pursuant to this chapter prior to July 1, 2004.

f. The program manager shall allocate an amount up to \$159,000 per calendar quarter equally to the joint E911 service boards and the department of public safety that have submitted a written request to the program manager. The written request shall be made with the "Request for Wireless E911 Funds" form contained in the "State of Iowa Wireless E911 Implementation and Operation Plan." The request is due to the program manager on May 15, or the next business day, of each year. A minimum of \$1,000 per calendar quarter shall be allocated for each public safety answering point with the E911 service area of the department of public safety or joint E911 service board.

Upon retirement of the outstanding obligations referred to in 10.9(3) "e," the amount allocated under 10.9(3) "f" shall be 25 percent of the total amount of surcharge generated per calendar quarter. The minimum amount allocated to the department of public safety and the joint E911 service boards shall be \$1,000 per PSAP operated by the respective authority. Additional funds shall be allocated as follows:

(1) Sixty-five percent of the total dollars available for allocation shall be allocated in proportion to the square miles of the E911 service area to the total square miles in the state.

(2) Thirty-five percent of the total dollars available for allocation shall be allocated in proportion to the wireless E911 calls answered at the public safety answering point in the E911 service area to the total of wireless E911 calls originating in the state.

g. If moneys remain after all obligations under subrule 10.9(3), paragraphs "a" to "f," as listed above, have been fully paid, the remainder may be accumulated as a carryover operating surplus. These moneys shall be used to fund future wireless phase 2 network improvements and public safety answering point improvements. These moneys may also be used for wireless service provider's transport costs related to wireless E911 phase 2 services, if those costs are not otherwise recovered by the wireless

service provider's customer billing or other sources and are approved by the program manager. Any moneys remaining in the fund at the end of each fiscal year shall not revert to the general fund of the state but shall remain available for the purposes of the fund.

10.9(4) Payments to wireless service providers and local exchange service providers shall be made quarterly, based on original, itemized claims or invoices presented within 20 days of the end of the calendar quarter. Payments to wireless service providers shall be made in accordance with these rules and the State of Iowa Accounting Policies and Procedures.

10.9(5) Wireless service providers and local exchange service providers shall be reimbursed for only those items and services that are defined as eligible in the enhanced wireless 911 service plan and when initiation of service has been ordered and authorized by the E911 program manager.

10.9(6) If it is found that an overpayment has been made to an entity, the E911 program manager shall attempt recovery of the debt from the entity by certified letter. Due diligence shall be documented and retained at the state homeland security and emergency management division. If resolution of the debt does not occur and the debt is at least \$50, the state homeland security and emergency management division will then utilize the income offset program through the department of revenue. Until resolution of the debt has occurred, the state homeland security and emergency management division may withhold future payments to the entity.

605—10.10(34A) E911 surcharge exemptions. The following agencies, individuals, and organizations are exempt from imposition of the E911 surcharge:

1. Federal agencies and tax-exempt instrumentalities of the federal government.
 2. Indian tribes for access lines on the tribe's reservation upon filing a statement with the joint E911 service board, signed by appropriate authority, requesting surcharge exemption.
 3. An enrolled member of an Indian tribe for access lines on the reservation, who does not receive E911 service, and who annually files a signed statement with the joint E911 service board that the person is an enrolled member of an Indian tribe living on a reservation and does not receive E911 service. However, once E911 service is provided, the member is no longer exempt.
 4. Official station testing lines owned by the provider.
 5. Individual wire-line subscribers to the extent that they shall not be required to pay on a single periodic billing the surcharge on more than 100 access lines, or their equivalent, in an E911 service area.
- All other subscribers not listed above, that have or will have the ability to access 911, are required to pay the surcharge, if imposed by the official order of the E911 program manager.

605—10.11(34A) E911 service fund.

10.11(1) The department of public safety and each joint E911 service board have the responsibility for the E911 service fund.

a. An E911 service fund shall be established in the office of the county treasurer for each joint E911 service board and with the state treasurer for the department of public safety.

b. Collected surcharge moneys and any interest thereon, as authorized in Iowa Code chapter 34A, shall be deposited into the E911 service fund. E911 surcharge moneys must be kept separate from all other sources of revenue utilized for E911 systems.

c. For joint E911 service boards, withdrawal of moneys from the E911 service fund shall be made on warrants drawn by the county auditor, per Iowa Code section 331.506, supported by claims and vouchers approved by the chairperson or vice chairperson of the joint E911 service board or the appropriate operating authority so designated in writing.

d. For the department of public safety, withdrawal of moneys from the E911 service fund shall be made in accordance with state laws and administrative rules.

10.11(2) The E911 service funds shall be subject to examination by the division at any time during usual business hours. E911 service funds are subject to the audit provisions of Iowa Code chapter 11. A copy of all audits of the E911 service fund shall be furnished to the division within 30 days of receipt. If through the audit or monitoring process the division determines that a joint E911 service board is not adhering to an approved plan or does not have a valid board membership, or if the division determines

that a joint E911 service board or the department of public safety is not using funds in the manner prescribed in these rules or Iowa Code chapter 34A, the administrator may, after notice and hearing, suspend surcharge imposition and order termination of expenditures from the E911 service fund. The joint E911 service board or department of public safety is not eligible to receive or expend surcharge moneys until such time as the E911 program manager determines that the board or department is in compliance with the approved plan, board membership, and fund usage limitations.

[ARC 8314B, IAB 11/18/09, effective 12/23/09]

605—10.12(34A) Operating budgets.

10.12(1) Each joint E911 service board and the department of public safety shall provide a copy, to the E911 program manager, within 30 days of adoption, of the operating budget for the ensuing fiscal year for the fund as established under subrule 10.11(1).

10.12(2) The E911 program manager shall, upon review of the operating budget, make necessary adjustments to the surcharge as provided in Iowa Code chapter 34A.

605—10.13(34A) Limitations on use of funds. Surcharge moneys in the E911 service fund may be used to pay recurring and nonrecurring costs including, but not limited to, network equipment, software, database, addressing, initial training, and other start-up, capital, and ongoing expenditures. E911 surcharge moneys shall be used only to pay costs directly attributable to the provision of E911 telephone systems and services and may include costs for portable and vehicle radios, communication towers and associated equipment, and other radios and equipment permanently located inside the public safety answering point. Funds allocated under paragraph 10.9(3)“f” shall be used for communication equipment located inside the public safety answering point for the implementation and maintenance of wireless E911 phase 2 service.

605—10.14(34A) Minimum operational and technical standards.

10.14(1) Each E911 system, supplemented with E911 surcharge moneys, shall, at a minimum, employ the following features:

- a. ALI (automatic location identification).
- b. ANI (automatic number identification).
- c. Ability to selectively route.
- d. Each PSAP shall provide two emergency seven-digit numbers arranged in rollover configuration for use by telephone company operators for transferring a calling party to the PSAP.
- e. ANI and ALI information shall be maintained and updated in such a manner as to allow for 95 percent or greater degree of accuracy.

10.14(2) E911 public safety answering points shall adhere to the following minimum standards:

- a. The PSAP shall operate 7 days per week, 24 hours per day, with operators on duty at all times.
- b. The primary published emergency number in the E911 service area shall be 911.
- c. All PSAPs will maintain interagency communications capabilities for emergency coordination purposes, to include radio as well as land line direct or dial line.
- d. Each PSAP shall develop and maintain a PSAP standard operating procedure for receiving and dispatching emergency calls.
- e. The date and time of each 911 emergency call shall be documented using an automated call detail recording device or other communications center log. Such logs shall be maintained for a period of not less than one year.
- f. If a call transfer method of handling 911 calls is employed, a 99 percent degree of reliability of transferred calls from a PSAP to responding agencies shall be maintained. All transferred calls shall employ, to the closest extent possible, conference transfer capabilities which provide that the call be announced and monitored by the PSAP operator to ensure that the call has been properly transferred.
- g. PSAPs not employing the transfer method of handling 911 emergency calls shall use the call relay method. Information shall be exchanged between the PSAP receiving the call and an appropriate emergency response agency or dispatch center having jurisdiction in the area of the emergency. In no

case during an emergency 911 call shall the caller be referred to another telephone number and required to hang up and redial. The call relay method shall also prevail in circumstances where emergency calls enter the 911 system (whether by design or by happenstance) from outside the E911 service area.

h. Access control and security of PSAPs and associated dispatch centers shall be designed to prevent disruption of operations and provide a safe and secure environment of communication operations.

i. PSAP supervision shall ensure that all telephone company employees, whose normal activities may involve contact with facilities associated with the 911 service, are familiar with safeguarding of facilities' procedures.

j. Emergency electrical power shall be provided for the PSAP environment that will ensure continuous operations and communications during a power outage. Such power should start automatically in the event of power failure and shall have the ability to be sustained for a minimum of 48 hours.

k. The PSAP shall make every attempt to disallow the intrusion by automatic dialers, alarm systems, or automatic dialing and announcing devices on a 911 trunk. If intrusion by one of these devices should occur, those responsible for PSAP operations shall make every attempt to contact the responsible party to ensure there is no such further occurrence by notifying the party that knowing and intentional interference with emergency telephone calls constitutes a crime under Iowa Code section 727.5. Those responsible for PSAP operations shall report persons who repeatedly use automatic dialers, alarm systems, or automatic announcing devices on 911 trunk lines to the county attorney for investigation of possible violations of section 727.5.

l. Each PSAP shall be equipped with an appropriate telecommunications device for the deaf (TDD) in accordance with 28 CFR Part 35.162, July 26, 1991.

10.14(3) Service providers shall adhere to the following minimum requirements:

a. The PSAP shall be notified of service interruptions in accordance with the provisions of Iowa Administrative Code 199—paragraph 22.6(3)“c.”

b. All service providers shall submit separate itemized bills to the E911 program manager, the department of public safety, a joint E911 service board or PSAP operating authority, as appropriate.

c. The service provider shall respond, within a reasonable length of time, to all appropriate requests for information from the administrator, the department of public safety, a joint E911 service board or operating authority and shall expressly comply with the provisions of Iowa Code section 34A.8.

10.14(4) Voluntary standards. Current technical and operational standards applying to E911 systems and services can be found in the “American Society for Testing and Materials Standard Guide for Planning and Developing 911 Enhanced Telephone Systems” and in publications issued by the National Emergency Number Association. Master street address guides are encouraged to be developed and maintained by using National Emergency Number Association technical standards 02-010 and 02-011. Standards contained in these documents shall be considered as guidance, and adherence thereto shall be voluntary. Notwithstanding the minimum standards published in these rules, it is intended that E911 telephone service providers and joint E911 service boards and operating authorities employ the best and most affordable technologies and methods available in providing E911 services to the public.

605—10.15(34A) Administrative hearings and appeals.

10.15(1) E911 program manager decisions regarding the acceptance or refusal of an E911 service plan, in whole or in part, the implementation of E911 and the imposition of the E911 surcharge within a specific E911 service area may be contested by an affected party.

10.15(2) Request for a hearing shall be made in writing to the state homeland security and emergency management division chief of staff within 30 days of the E911 program manager's mailing or serving a decision and shall state the reason(s) for the request and shall be signed by the appropriate authority.

10.15(3) The chief of staff shall schedule a hearing within 10 working days of receipt of the request for hearing. The chief of staff shall preside over the hearing, at which time the appellant may present any evidence, documentation, or other information regarding the matter in dispute.

10.15(4) The chief of staff shall issue a ruling regarding the matter within 20 working days of the hearing.

10.15(5) Any party adversely affected by the chief of staff's ruling may file a written request for a rehearing within 20 days of issuance of the ruling. A rehearing will be conducted only when additional evidence is available, the evidence is material to the case, and good cause existed for the failure to present the evidence at the initial hearing. The chief of staff will schedule a hearing within 20 days after the receipt of the written request. The chief of staff shall issue a ruling regarding the matter within 20 working days of the hearing.

10.15(6) Any party adversely affected by the chief of staff's ruling may file a written appeal to the administrator of the homeland security and emergency management division. The appeal request shall contain information identifying the appealing party, the ruling being appealed, specific findings or conclusions to which exception is taken, the relief sought, and the grounds for relief. The administrator shall issue a ruling regarding the matter within 90 days of the hearing. The administrator's ruling constitutes final agency action for purposes of judicial review.

[ARC 7695B, IAB 4/8/09, effective 5/13/09]

605—10.16(34A) Confidentiality. All financial or operations information provided by a wireless service provider to the E911 program manager shall be identified by the provider as confidential trade secrets under Iowa Code section 22.7(3) and shall be kept confidential as provided under Iowa Code section 22.7(3) and Iowa Administrative Code 605—Chapter 5. Such information shall include numbers of accounts, numbers of customers, revenues, expenses, and the amounts collected from said wireless service provider for deposit in the fund. Notwithstanding such requirements, aggregate amounts and information may be included in reports issued by the administrator if the aggregated information does not reveal any information attributable to an individual wireless service provider.

These rules are intended to implement Iowa Code chapter 34A.

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¹ Effective date of 8/2/89 delayed 70 days by the Administrative Rules Review Committee at its July 11, 1989, meeting.

CHAPTER 11
REPAIR, CALIBRATION, AND MAINTENANCE OF RADIOLOGICAL MONITORING,
DETECTION, AND SURVEY EQUIPMENT

The emergency management division operates a licensed radiological maintenance facility for the purpose of calibrating, repairing and performing the routine maintenance of radiological detection equipment. Iowa Code sections 23A.2 and 29C.8 provide that the division may enter into contracts and charge fees for performance of these services.

605—11.1(29C) Purpose. The emergency management division shall establish fees to be charged for the performance of the calibration, repair and maintenance of radiological detection equipment.

605—11.2(29C) Definitions. For the purposes of interpreting these rules, the following definitions are applicable.

“Calibration” means the determination of the response or reading of an instrument relative to a series of known radiation values over the range of the instrument; or the strength of a source of radiation relative to a standard.

“License” means a license issued by the Iowa department of public health in accordance with rules established by that agency.

“Monitoring” means the measurement of radiation, radioactive material concentrations, surface area activities or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses.

“Radiological detection equipment” means equipment used for the monitoring, detection, and surveying of radioactive materials and may include, but is not limited to, surveying instruments, dosimeters and calibrators.

“Surveying” means an evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, or presence of sources of radiation. When appropriate, such evaluation includes, but is not limited to, tests, physical examination, and measurements of levels of radiation or concentrations of radioactive material present.

605—11.3(29C) Standards of service. Calibration, repair and maintenance services will be performed in accordance with established rules and standards as published by the Iowa department of public health in 641—Chapters 38 through 45.

605—11.4(29C) Contracts for services. The division may enter into contracts with public and private entities for the purposes of providing radiological detection equipment, calibration, repair, and maintenance services. Such contracts will specify, at a minimum:

1. The duration of the contract.
2. The services to be performed.
3. Fees or the manner by which fees will be established.
4. The permissible methods for partial or complete termination of the contract.
5. Any other necessary and proper matters.

605—11.5(29C) Application of fees. In instances where the division has not previously entered into a contract with a public or private entity, the division will assess a fee for the performance of calibration, repair, and maintenance services it provides for radiological detection equipment and instruments not owned by the division or owned by the division but used for other than the division’s specified purpose.

The division will not assess a fee for the performance of calibration, repair, and maintenance services for radiological detection equipment and instruments:

1. Used in the administration and operation of the division's radiological emergency preparedness program.
2. Used by hazardous materials response teams recognized by the division.
3. Otherwise owned by the division and used for its express purposes.

605—11.6(29C) Fees. Unless otherwise specified by contract, the division will charge the following fees for the performance of its services:

Calibration Fees:

One radiation instrument and one radiation detector	\$70
Each additional radiation detector	\$20
Each dosimeter	\$10

Repair Fees:

Hourly rate	\$70
Parts	Cost plus 15 percent

The division will also assess a fee to recover actual shipping expenses, to include insurance coverage for the equipment being shipped.

Estimates will be given for instruments that are in need of repair. The customer will have the option of having the instrument repaired at the established rates or may have the instrument returned, at which time shipping expenses will be charged.

The division may offer to replace equipment with like equipment that is fully functional and that has been properly calibrated, in lieu of making calibrations or the necessary repairs. If the customer accepts this offer, the fee charged is the fee that would normally be charged for the calibration or repair of the instrument or dosimeter.

[ARC 8119B, IAB 9/9/09, effective 10/14/09]

605—11.7(29C) Returned check and late fees. Applicable fees are due to the division within 30 days from the date of invoice. Persons who fail to pay required fees to the division are subject to the following penalties:

1. Fifteen dollars for each payment received by the division in accordance with these rules, for which insufficient funds are available to fulfill the obligation of such payment to the division.
2. Fifteen dollars for each month for which a payment is overdue, or for each additional month for which insufficient funds are available to fulfill the obligation of such payment to the division.

605—11.8(29C) Records and reports. The division will maintain records and file reports regarding the calibration, maintenance, and repair of radiological detection equipment, in accordance with the requirements set forth in 641—Chapter 40.

These rules are intended to implement Iowa Code section 23A.2, subsection 10, and Iowa Code section 29C.8.

[Filed 3/9/01, Notice 1/10/01—published 4/4/01, effective 5/9/01]

[Filed ARC 8119B (Notice ARC 7958B, IAB 7/15/09), IAB 9/9/09, effective 10/14/09]

CHAPTER 12
HOMELAND SECURITY AND EMERGENCY RESPONSE TEAMS

605—12.1(29C) Purpose. The duties of the administrator of the homeland security and emergency management division include the development and ongoing operation of homeland security and emergency response teams to be deployed by the state to supplement and enhance local resources during times of disaster and emergency. These rules are intended to specify how teams and team members will be designated, minimum standards that shall be maintained, and the use of the teams.

605—12.2(29C) Definitions.

“Administrator” means the administrator of the homeland security and emergency management division of the department of public defense.

“First responder advisory committee” means the advisory committee created by the administrator for the purpose of providing advice on public safety response issues within Iowa.

“Governor’s disaster proclamation” means the proclamation of disaster emergency issued by the governor in accordance with Iowa Code section 29C.6.

605—12.3(29C) Homeland security and emergency response teams.

12.3(1) The administrator shall issue requests to create homeland security and emergency response teams based on identified needs, on recommendations from the first responder advisory committee, and at the request of the governor.

12.3(2) Each team shall be designated by the administrator. To be eligible for designation, a team shall provide a written application to the administrator that details the following information:

- a. Type of assistance that the team provides.
- b. Emergency response team information.
 - (1) Team name.
 - (2) Team location.
 - (3) 24/7 contact information and procedures.
 - (4) Team agency, including head of agency and contact information.
 - (5) Team commander and assistant commander, including contact information.
 - (6) Title, names, and responsibilities of deployable response personnel assigned to the team.
- c. Listing of applicable local, state, and national standards and certifications to which team members are trained and certified.
- d. Detailed listing of the team’s major response assets that are related to the team’s mission. The listing shall provide details related to self-sufficiency including the amount of time the team can remain self-sufficient.
- e. Listing of communications assets, including radio frequencies used and any interoperability capabilities.
- f. An estimate of the time required to assemble the team members and assets and deploy upon the request of the administrator or governor.

12.3(3) Upon receipt of the written application from the team, the administrator shall review the application. The administrator may seek additional information from the team. The team shall provide the requested information in a timely fashion.

12.3(4) Following approval of the application, the administrator shall issue a letter formally designating the team as an “Iowa homeland security and emergency response team” in accordance with Iowa Code section 29C.8. The administrator may enter into an agreement with the team in accordance with Iowa Code chapter 28E.

12.3(5) Upon acceptance as a homeland security and emergency response team, the team shall routinely update all records to accurately reflect membership rosters and major assets at the team’s disposal. The team shall update records anytime personnel are added to or removed from the team.

605—12.4(29C) Use of homeland security and emergency response teams.

12.4(1) A designated team shall be deployed as a state asset only by a directive from the administrator or pursuant to a governor's disaster proclamation, unless the sponsoring agency's response team is needed to perform emergency services within its own jurisdiction.

12.4(2) A designated team may be deployed as a state asset to supplement and enhance disrupted or overburdened local emergency and disaster operations. A team may also be deployed as a state asset to other states pursuant to the interstate emergency management assistance compact as described in Iowa Code section 29C.21 with the concurrence of the sponsoring agency.

605—12.5(29C) Homeland security and emergency response team compensation.

12.5(1) A homeland security and emergency response team shall be compensated for its expenses while it is deployed as a state asset in accordance with rule 12.4(29C), subject to availability of funds. The application for compensation shall be in a manner as specified by the administrator. Compensation shall be made to the team or the team's governing jurisdiction.

12.5(2) A member of a homeland security and emergency response team listed on the team roster filed pursuant to subrule 12.3(5), while acting under the directive of the administrator or pursuant to a governor's disaster proclamation, shall be considered an employee of the state under Iowa Code section 669.21. Disability, workers' compensation, and death benefits for designated team members participating in a response or recovery operation initiated by the administrator or governor pursuant to rule 12.4(29C) or participating in a training or exercise activity approved by the administrator shall be paid by the state in a manner consistent with the provisions of Iowa Code chapter 85, 410, or 411 as appropriate. The department of administrative services shall process claims for compensable losses of deployed team members.

12.5(3) The homeland security and emergency response team's materials, equipment and supplies consumed or damaged while the team is deployed in accordance with rule 12.4(29C) shall be reimbursed on a replacement cost basis, subject to the availability of funds.

12.5(4) The administrator shall request funds from the executive council to address any obligations under rule 12.5(29C).

605—12.6(29C) Alternate deployment of homeland security and emergency response teams.

12.6(1) At its discretion, a homeland security and emergency response team may deploy at the direct request of a political subdivision of the state without a directive from the administrator or without a governor's disaster proclamation.

12.6(2) The provisions of rule 12.5(29C) do not apply to a team deployed under 12.6(29C). A team deployed upon local request may seek compensation from the political subdivision making the request and in accordance with any mutual aid agreements that may exist at the time of deployment.

12.6(3) If, during a team deployment, a governor's disaster proclamation is issued, the administrator shall specify the date and time when the team may be deployed under rules 12.4(29C) and 12.5(29C).

These rules are intended to implement Iowa Code chapter 29C.

[Filed 3/19/07, Notice 12/20/06—published 4/11/07, effective 5/16/07]

CHAPTER 13
COMMUNITY DISASTER GRANTS

605—13.1(29C,83GA,HF64) Purpose. In accordance with 2009 Iowa Acts, House File 64, the homeland security and emergency management division shall award disaster recovery grants to cities and counties based on their pro-rata share of damage costs associated with Presidential disaster declaration DR-1763-IA and incurred after May 24, 2008, and before August 14, 2008. The pro-rata share shall be based on the obligated funds from the Federal Emergency Management Agency Individual Assistance Program and Small Business Administration Disaster Loan Program as of February 2, 2009. The grant moneys shall be used by the eligible recipients for disaster-related costs not otherwise funded by federal or nonfederal sources. Each eligible city and county that completes and submits an application by April 1, 2009, shall receive a minimum of \$2,000. Community disaster grants are not covered by the competitive grant procedures set forth in 605—Chapter 8.

[ARC 7580B, IAB 2/25/09, effective 2/2/09; ARC 7752B, IAB 5/6/09, effective 6/10/09]

605—13.2(29C,83GA,HF64) Eligibility. Eligible recipients are those cities and counties located within the declared counties for Presidential disaster declaration DR-1763-IA. The incident period for this disaster is from May 24, 2008, to August 14, 2008.

[ARC 7580B, IAB 2/25/09, effective 2/2/09; ARC 7752B, IAB 5/6/09, effective 6/10/09]

605—13.3(29C,83GA,HF64) Notification of eligibility.

13.3(1) The administrator shall notify each eligible recipient of the availability of funds and provide to the eligible recipient the associated application for grant funds. The notification shall also include an estimated allocation based on rule 13.5(29C,83GA,HF64).

13.3(2) The notification shall be made to the chairpersons of the board of supervisors for eligible counties and the mayors of eligible cities.

13.3(3) The notification shall specify that all applications shall be mailed to the Iowa Homeland Security and Emergency Management Division, 7105 NW 70th Avenue, Camp Dodge, Building W-4, Johnston, Iowa 50131.

13.3(4) All applications shall be received by the division no later than April 1, 2009. Applications received after April 1, 2009, will be rejected, and no grant funding will be provided to the applicant. The applicant's allocated funds will be allocated on a pro-rata share basis amongst the applications that were received in a timely manner and in accordance with rule 13.5(29C,83GA,HF64).

[ARC 7580B, IAB 2/25/09, effective 2/2/09; ARC 7752B, IAB 5/6/09, effective 6/10/09]

605—13.4(29C,83GA,HF64) Eligible use of the grant funds.

13.4(1) Moneys awarded under this grant program shall be used by the recipient for disaster-related costs not otherwise funded by federal or nonfederal sources and may be used for any of the following purposes:

- a. Nonprofit organization assistance.
- b. Assistance for the public purchase of land and accompanying structures if financial assistance for such purchases is not available from the Federal Emergency Management Agency or when a nonfederal match is required for a grant involved in the public purchase of land and accompanying structures.
- c. Assistance for the repair, replacement, or upgrade of public infrastructure damaged by the disaster, including measures to assist in the mitigation of future damage due to natural disasters.
- d. Assistance for the increased costs associated with the reevaluation and assessment of property due to the natural disasters occurring in 2008.
- e. Small business assistance.
- f. Assistance for the replacement or rehabilitation of housing.

13.4(2) The associated chairperson or mayor shall certify that funds received in accordance with this grant will be used for disaster-related costs not otherwise funded from a federal or nonfederal source.

13.4(3) Any funds not spent in accordance with the eligible uses as defined in this rule will be subject to recoupment by the division.

[ARC 7580B, IAB 2/25/09, effective 2/2/09; ARC 7752B, IAB 5/6/09, effective 6/10/09]

605—13.5(29C,83GA,HF64) Allocation of grant funds.

13.5(1) The preliminary allocation of grant funds shall be conducted on February 2, 2009. This allocation shall be based on a pro-rata share of each eligible recipient's disaster damage costs associated with Presidential disaster declaration DR-1763-IA as calculated by obligated funds from the Federal Emergency Management Agency Individual Assistance Program and Small Business Administration Disaster Loan Program as of February 2, 2009. Each eligible recipient shall be allocated at least \$2,000.

13.5(2) The final allocation of funds shall be conducted on April 2, 2009. An eligible recipient shall be considered a qualified recipient only if the recipient has completed and submitted the approved application on or before April 1, 2009. The allocation shall be based on a pro-rata share of each qualified recipient's disaster damage costs associated with Presidential disaster declaration DR-1763-IA as calculated by obligated funds from the Federal Emergency Management Agency Individual Assistance Program and Small Business Administration Disaster Loan Program as of February 2, 2009. Each qualified recipient shall receive at least \$2,000.

[ARC 7580B, IAB 2/25/09, effective 2/2/09; ARC 7752B, IAB 5/6/09, effective 6/10/09]

605—13.6(29C,83GA,HF64) Application for grant funds.

13.6(1) The application for the grant funds allocated according to these rules shall include the following information:

- a. The name of the city or county making the request.
- b. The county in which the city is located.
- c. The name of the mayor or chairperson of the board of supervisors who will sign the application.
- d. The address of the recipient.
- e. Specifications for individual projects that the recipient has selected for grant funding to include

the following:

- (1) Category of the individual project in accordance with rule 13.4(29C,83GA,HF64);
- (2) Narrative of proposed work to be completed;
- (3) Anticipated costs, including detail of major cost elements;
- (4) Time line of milestones and a completion date of the project no later than June 30, 2010;
- (5) Detail of governance structure used to administer the funds for the recipient, including designation of community disaster grant manager;
- (6) Performance measures and basis of evaluation for project.

13.6(2) The application shall require the recipient to certify that the projects listed in the application are for disaster-related costs that have not otherwise been funded from other federal or nonfederal sources.

13.6(3) The application shall require the recipient to certify that the recipient will submit a written report to Iowa homeland security and emergency management by January 1, 2010, specifying the allocation and uses of the moneys received from this grant.

13.6(4) The application shall require the recipient to certify that the recipient understands these funds may be subject to audit by the state auditor.

13.6(5) The application will be created by the division and included in the initial notification as specified in rule 13.3(29C,83GA,HF64). Additionally, the division will make the application and these rules available on the division's Web site, www.iowahomelandsecurity.org.

[ARC 7580B, IAB 2/25/09, effective 2/2/09; ARC 7752B, IAB 5/6/09, effective 6/10/09]

These rules are intended to implement Iowa Code chapter 29C and 2009 Iowa Acts, House File 64, section 8.

[Filed Emergency ARC 7580B, IAB 2/25/09, effective 2/2/09]

[Filed ARC 7752B (Notice ARC 7581B, IAB 2/25/09), IAB 5/6/09, effective 6/10/09]

CHAPTERS 14 to 99
Reserved

*IOWA EMERGENCY RESPONSE
COMMISSION*

CHAPTER 100

MISSION OF COMMISSION

[Prior to 7/29/87, Natural Resources Department(561) Ch 100]

[Prior to 2/7/90, Public Defense Department(650) Ch 100]

[Prior to 12/23/92, Disaster Services Division(607) Ch 101]

605—100.1(30) Mission. The Iowa emergency response commission (IERC) was created to implement Emergency Planning and Community Right-to-Know Act (EPCRA).

The governor appoints one member each to represent department of agriculture and land stewardship, department of employment services, department of justice, department of natural resources, department of public defense, department of public health, department of public safety, state department of transportation, fire service institute of Iowa State University of science and technology and the office of the governor and two members from private industry.

The IERC shall enter into agreements with the department of employment services, the department of natural resources and the department of public defense to carry out those duties allocated to those departments under Iowa Code chapter 30.

This rule is intended to implement Iowa Code chapter 30 and 1992 Iowa Acts, chapter 1139.

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CHAPTER 101
OPERATIONS OF COMMISSION
[Prior to 7/29/87, Natural Resources Department (561) Ch 101]
[Prior to 2/7/90, Public Defense Department(650) Ch 101]
[Prior to 12/23/92, Disaster Services Division(607) Ch 101]

605—101.1(17A) Scope. This chapter governs the conduct of business by the Iowa emergency response commission (IERC).

605—101.2(30) Membership. The Iowa emergency response commission is composed of 15 members appointed by the governor.

101.2(1) Voting members. Members representing the departments of workforce development, natural resources, public defense, public safety, and transportation, and one of the private industry representatives, who is designated by the commission at the first meeting of the commission each year, serve as voting members of the commission.

101.2(2) Nonvoting members. The remaining members of the commission, representing the department of agriculture and land stewardship, the department of justice, the department of public health, the state fire service emergency response council, a local emergency planning committee, the Iowa hazardous materials task force, the office of the governor, and two members representing private industry serve as nonvoting, advisory members of the commission. Nonvoting members may fully participate in discussion of matters before the commission, serve on committees formed by the commission and serve as officers of the commission.

605—101.3(17A,21,30) Time of meetings. The IERC shall meet at least semiannually, at the call of the chairperson, or upon written request of a majority of the members of IERC. The chairperson shall establish the date of all other meetings, and provide notice of all meeting dates, locations, and agenda.

101.3(1) Call of the chairperson. The chairperson shall notify the IERC of the date, time, and location of all meetings and state the agenda.

101.3(2) Request of the IERC. The chairperson shall schedule a meeting upon the receipt of a written request from a majority of the members of the IERC. The request shall state the reason for the meeting and the proposed agenda.

605—101.4(17A,21,30) Place of meetings. Meetings will generally be held in Des Moines, Iowa. The IERC may meet at other locations. The meeting place and time will be specified in the agenda.

605—101.5(17A,21,30) Notification of meetings.

101.5(1) Form of notice. Notice of meetings is given by posting and distributing the agenda. The agenda lists the time, date, place, and topics to be discussed at the meeting.

101.5(2) Posting of agenda. The agenda for each meeting will be posted at the office of the chairperson and in the office of the department of public defense, emergency management division.

101.5(3) Distribution of agenda. Agenda will be mailed to anyone who files a request with the chairperson. The request should state whether the agenda for a particular meeting is desired, or whether the agendas for all meetings are desired.

101.5(4) Amendment to agenda. Any amendments to the agenda after posting and distribution under subrules 101.5(2) and 101.5(3) will be posted, but not distributed. The amended agenda will be posted at least 24 hours prior to the meetings unless, for good cause, notice is impossible or impractical, in which case as much notice as is reasonably possible will be given.

101.5(5) Supporting material. Written materials provided to the IERC with the agenda may be examined and copied. Copies of the materials may be distributed at the discretion of the chairperson to persons requesting the materials. The chairperson may require a fee to cover the reasonable cost to the agency to provide the copies.

605—101.6(17A,21,30) Attendance and participation by the public.

101.6(1) Attendance. All meetings are open to the public. The IERC may exclude the public from portions of the meeting in accordance with Iowa Code section 21.5.

101.6(2) Participation.

a. Items on agenda. Persons who wish to address the IERC on a matter on the agenda should notify the chairperson at least three days before the meeting. Presentations to the IERC may be made at the discretion of the chairperson.

b. Items not on agenda. Iowa Code section 21.4 requires a commission to give notice of its proposed agenda. Therefore, the IERC discourages persons from raising matters not on the agenda. Persons who wish to address the IERC on a matter not on the agenda should file a request with the chairperson to place the matter on the agenda of a subsequent meeting.

101.6(3) Coverage by press. Cameras and recording devices may be used during meetings provided they do not interfere with the orderly conduct of the meeting. The chairperson may order the use of these devices be discontinued if they cause interference and may exclude those persons who fail to comply with that order.

605—101.7(17A,21,30) Quorum and voting requirements.

101.7(1) Quorum. Four of the six voting members of the commission constitute a quorum.

101.7(2) Majority voting. All votes shall be determined by a majority of voting members present at a meeting of the commission. A quorum of the commission must be present at the time any vote is taken by the commission.

101.7(3) Voting procedures. The chairperson shall rule as to whether the vote will be by voice vote or roll call. A roll call vote shall be taken anytime a voice vote is not unanimous. Minutes of the commission shall indicate the vote of each member.

605—101.8(17A,21,30) Minutes, transcripts and recording of meetings.

101.8(1) Recordings. The chairperson shall record by mechanized means each meeting and shall retain the recording for at least one year. Recordings of closed sessions shall be sealed and retained at least one year.

101.8(2) Transcripts. Transcripts of meetings will not routinely be prepared. The chairperson will have transcripts prepared upon receipt of a request for a transcript and payment of a fee to cover its cost.

101.8(3) Minutes. The chairperson shall record minutes of each meeting. Minutes shall be reviewed, approved, and maintained by the IERC. The approved minutes shall be signed by the chairperson.

605—101.9(17A,21,30) Officers and election.

101.9(1) Officers. The officers of the IERC are the chairperson and vice chairperson.

101.9(2) Elections. Election of officers shall take place at the first commission meeting held each calendar year. If an officer does not serve out the elected term, a special election shall be held at the first meeting held after notice is provided to the commission to elect a member to serve out the remainder of the term.

These rules are intended to implement Iowa Code chapter 30.

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CHAPTER 102
EMERGENCY PLANNING DISTRICTS
[Prior to 2/7/90, Public Defense Department(650) Ch 102]
[Prior to 12/23/92, Disaster Services Division(607) Ch 101]

605—102.1(30) Requirement to designate, and organization of, emergency planning districts. The Iowa emergency response commission (IERC) is required to designate emergency planning districts. A local emergency planning committee is appointed by the IERC for each emergency planning district. The local emergency planning committee shall be responsible for the implementation of Emergency Planning and Community Right-to-Know Act (EPCRA) activities in each of the emergency planning districts including facilitating preparation and implementation of emergency planning for the emergency planning district.

605—102.2(30) Emergency planning districts—counties. Each of the presently existing 99 Iowa counties is designated as the geographic boundaries for an emergency planning district.

605—102.3(30) Application to modify districts. Two or more local emergency planning committees with commonality of interests may petition the IERC to amend, modify, or combine their districts. Petitions shall specify the geographical district requested, the reasons for the change, the benefit to the public by the designation of the proposed geographical district, and the proposed date for the change in designation.

These rules are intended to implement Iowa Code chapter 30 and 1992 Iowa Acts, chapter 1139.

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CHAPTER 103
LOCAL EMERGENCY PLANNING COMMITTEES

[Prior to 2/7/90, Public Defense Department(650) Ch 103]

[Prior to 12/23/92, Disaster Services Division(607) Ch 103]

605—103.1(30) Requirement to appoint local emergency planning committees (LEPC).

103.1(1) Purpose. The Iowa emergency response commission (IERC) is required to appoint members to local emergency planning committees. An LEPC is appointed for each of the emergency planning districts established in 607—Chapter 102.

103.1(2) Representation. As a minimum, each LEPC should be comprised of a representative from each of the following groups or organizations:

- a. Elected state and local officials,
- b. Law enforcement personnel,
- c. Civil defense personnel,
- d. Firefighting personnel,
- e. First-aid personnel,
- f. Health personnel,
- g. Local environmental personnel,
- h. Hospital personnel,
- i. Transportation personnel,
- j. Broadcast and print media,
- k. Community groups, and
- l. Owners and operators of facilities subject to the requirements of EPCRA.

A person may represent one or more of the disciplines listed, provided they are duly appointed by each group or organization to be represented.

605—103.2(30) Committee members.

103.2(1) Appointment of local emergency planning committees. Nominations to the LEPC shall be made by the county emergency management commission, established under Iowa Code section 29C.9, and shall be subject to review and appointment by the IERC. To the extent possible, membership of the LEPC shall be composed of members of the county emergency management commission. Vacancies on the LEPC shall be filled in accordance with this subrule.

103.2(2) Meeting participation. Any member of the county emergency management commission may participate in any meeting of the LEPC. If the county emergency management commission member is not the appointed representative of one of the groups or organizations specified in subrule 103.1(2), the county emergency management commission member shall not be eligible to vote on any issue before the LEPC.

103.2(3) Member changes. The IERC may revise the appointments made as it deems appropriate. Interested persons may petition the IERC to modify the membership of an LEPC.

605—103.3(30) Local emergency planning committee (LEPC) duties.

103.3(1) The LEPC shall establish procedures for the functioning of the committee to include:

- a. The length of terms of the LEPC members and the selection of a chair and vice-chair;
- b. The public notification of committee activity (42 U.S.C. 11001(c));
- c. The conduct of public meetings to discuss the emergency plan (Iowa Code chapter 21, 42 U.S.C. 11001(c)); and
- d. The procedures for receiving and responding to public comments; and the distribution of emergency plans. (42 U.S.C. 11001(c))

103.3(2) The LEPC shall establish procedures for receiving and processing requests from the public for information under EPCRA Section 324, including Form Tier Two information under EPCRA Section 312. (42 U.S.C. 11001(c))

103.3(3) The LEPC shall designate a 24-hour emergency contact point(s) for the immediate receipt of chemical release notifications. (42 U.S.C. 11003(c)(3))

103.3(4) The LEPC shall designate an official to respond to requests for information from the public for material safety data sheets, chemical lists, chemical inventory forms, emergency response plans, and toxic chemical releases forms. The information, including minutes of the LEPC and related committee actions shall be available to the public during normal working hours at a location designated by the LEPC. (42 U.S.C. 11044(a))

103.3(5) The LEPC shall prepare an emergency plan for the district and shall review and revise as necessary the emergency plan at least annually. Both the initial emergency plan and any updates or revisions shall be submitted by the LEPC to the IERC in accordance with subrule 103.4(2). (42 U.S.C. 11003(a), 42 U.S.C. 11003(e))

103.3(6) The LEPC shall evaluate the need for resources in the district necessary to develop, implement, and exercise the emergency plan(s) and make recommendations. (42 U.S.C. 11003(b))

103.3(7) The LEPC shall maintain a current listing of the emergency coordinators designated by each covered facility. (42 U.S.C. 11003(d)(1))

103.3(8) The LEPC shall receive, review and act upon information updates from covered facilities regarding emergency planning.

103.3(9) The LEPC shall annually publish notice that emergency response plan, material safety data sheets, and inventory forms have been submitted and how the public can obtain access to the material for review. (42 U.S.C. 11044(b))

605—103.4(30) Emergency response plan development. The IERC recognizes that emergency planning includes more than chemical release planning. The chemical release planning required by this chapter and EPCRA shall be included in the comprehensive emergency planning conducted by the county emergency management commission as required by Iowa Code chapter 29C and planning standards of the Iowa division of emergency management.

605—103.5(30) Local emergency planning committee office. The LEPC shall designate a local government office that will serve as the focal point for receiving nonemergency notifications from facilities that are subject to the law. This office shall also be the depository for material safety data sheets, chemical lists, chemical inventory forms, emergency response plans, and toxic chemical releases forms and a point of contact for the public regarding community right-to-know inquiries, and the office of record for minutes of the LEPC meetings and related committee actions.

605—103.6(30) Local emergency response committee meetings. The LEPC shall meet as frequently as deemed necessary by the chair until the local emergency operations plan is developed and concurred by the joint administration and reviewed by the IERC. Subsequent to plan approval, the LEPC is required to meet at least annually to review emergency response procedures, emergency plans and ensure the actions required are properly administered within the local emergency planning district.

605—103.7(30) Local emergency response plan submission. After completion of the initial emergency response plan and any subsequent revisions thereto, the LEPC shall submit a copy to the IERC. The IERC shall review the submission and make recommendations to the LEPC on appropriate revisions that may be necessary to comply with provisions in 42 U.S.C. 11003(c) and state planning standards in 607—Chapter 6 to ensure coordination with emergency response plans of other emergency planning districts, the state of Iowa, and adjacent states. To the maximum extent practicable, the review shall not delay implementation of the plan or revisions thereto. All plans shall be submitted annually by October 17.

These rules are intended to implement Iowa Code chapter 30 and 1992 Iowa Acts, chapter 1139.

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CHAPTER 104
REQUIRED REPORTS AND RECORDS
[Prior to 12/23/92, Disaster Services Division(607) Ch 104]

605—104.1(30) Department of public defense, emergency management division.

104.1(1) *Emergency planning notification.* The owner or operator of each facility subject to the planning notification requirement shall notify the department of public defense, emergency management division, that the facility is subject to the requirements of Section 302, Emergency Planning and Community Right-to-know Act, 42 U.S.C. 11002. The notification is to be on the Tier Two form specified in subrule 104.2(4). The facility owner or operator shall submit the notification to the department of natural resources by March 1 for covered chemicals in its possession. If the facility is reporting chemicals to the department of natural resources on the Tier Two form pursuant to subrule 104.2(4), a duplicate report is not required. The report shall be revised by a notification on the Tier Two form within 60 days after the acquisition of chemicals meeting the notification requirements and reported to the homeland security and emergency management division.

104.1(2) *Plan development.* Each local emergency planning committee (LEPC) shall prepare a comprehensive emergency response plan(s) pursuant to 42 U.S.C. 11033 which shall become an integrated portion of the emergency plan established by the joint administration. Where a local emergency planning district exceeds the jurisdictional boundaries of a single joint administration, a comprehensive emergency response plan shall be developed for each joint administration at least annually. The plan shall be reviewed and revised as necessary. The joint administration shall not change the plan without the approval of the LEPC.

104.1(3) *Submissions.* Plans and notifications required under this rule shall be submitted to the Department of Public Defense, Emergency Management Division, Hoover State Office Building, Level A, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code sections 30.5 and 30.9.

605—104.2(30) Department of natural resources.

104.2(1) *Emergency notifications of releases.* Each release subject to the requirements of Section 304, Emergency Planning and Community Right-to-know Act, 42 U.S.C. 11004, shall be submitted to the department of natural resources. This notification shall be done in conjunction with the notification required by 567—131.2(455B). Notifications of release shall be telephoned to the department at (515)281-8694 immediately. A written follow-up emergency notice shall be made within 30 days.

104.2(2) *Toxic chemical release form.* The owner or operator of a facility subject to the requirements of Section 313, Emergency Planning and Community Right-to-know Act, 42 U.S.C. 11023, shall submit information required by EPA regulations to the department of natural resources. The information for the previous calendar year shall be submitted by July 1 of the following year.

104.2(3) *Material safety data sheet information.* The owner or operator of a facility required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act shall submit a list of each chemical required to be submitted under Section 311, Emergency Planning and Community Right-to-know Act, 42 U.S.C. 11021. The list shall be submitted to the department of natural resources and to the appropriate local emergency planning committee (LEPC) and the fire department in whose jurisdiction the facility is located. The submission of material safety data sheets in lieu of a list is not permitted. A form is not designated.

104.2(4) *Emergency and hazardous chemical inventory form (Tier Two).* The owner or operator of a facility required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act shall submit emergency and hazardous chemical inventory information required to be submitted under Section 312, Emergency Planning and Community Right-to-know Act, 42 U.S.C. 11022. The information shall be submitted to the department of natural resources, the appropriate local emergency planning committee (LEPC), and the fire department within whose jurisdiction the facility is located by March 1 for the

chemicals in its inventory the preceding calendar year. Tier One forms will not be accepted. The information shall be submitted on the Iowa Tier Two form or in any electronic format approved by the department of natural resources.

104.2(5) Submissions. Written notifications and reports required under this rule shall be submitted to the Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319. For additional information, see rule 567—131.2(455B).

This rule is intended to implement Iowa Code sections 30.5 and 30.8.

605—104.3(30) Department of employment services, labor services division. Rescinded IAB 2/13/08, effective 3/19/08.

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