

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:

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

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

“*Shall*” indicates a mandatory requirement.

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

[ARC 0129C, IAB 5/30/12, effective 7/4/12]

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

**7.3(1)** The county board of supervisors, city councils, and sheriff in each county shall cooperate with the homeland security and emergency management department 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.

(2) The county sheriff.

(3) The mayor from each city within the county.

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

*d.* A commission member may designate an alternate to represent the designated entity. For any activity relating to Iowa Code section 29C.17, subsection 2, or Iowa Code chapter 24, participation shall only be by a commission member or a designated alternate that is an elected official for the same designated entity.

**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 director of the homeland security and emergency management department.

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

(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 under the jurisdiction of the commission.

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

(2) Plans shall contain the following common elements:

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

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

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

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

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

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

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

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

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

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

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

(10) A comprehensive emergency plan shall not be considered approved by the homeland security and emergency management department 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 commission's having on file a state-approved, comprehensive emergency plan as provided in Iowa Code subsection 29C.9(8). Plans must be received by the department within 180 days of the formal closing of the disaster incident period for a presidential declaration for major disaster for the affected jurisdiction and must be approved by the department within 240 days of the formal closing of the disaster incident period for public or private nonprofit entities within the county to be eligible to receive state financial assistance.

*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 department.

*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, which have defined responsibilities in the comprehensive emergency 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 comprehensive emergency 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 functional 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 commissions may, upon review by the director and with the approval of their respective boards of supervisors, cities, and sheriffs, enter into agreements pursuant to Iowa Code chapter 28E for the joint coordination and administration of emergency management services throughout the multicounty area.

[ARC 0129C, IAB 5/30/12, effective 7/4/12; ARC 0336C, IAB 9/19/12, effective 10/24/12; ARC 2326C, IAB 12/23/15, effective 1/27/16]

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

**7.4(1)** Each commission shall appoint a local emergency management coordinator who shall serve at the pleasure of the commission. The commission shall delegate to the emergency management coordinator the authority to fulfill the commission's and coordinator's duties as provided in 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 commission shall not be appointed as the local 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)** Local emergency management coordinator qualifications. Each person appointed after July 1, 1990, as a local 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)** Local emergency management coordinator continuing education requirements. Each local emergency management coordinator shall meet the following educational development requirements.

The director may extend the time frame for meeting these continuing education requirements upon request from the commission.

*a.* Within five years of appointment as a local emergency management coordinator, the person must complete the following study courses:

- (1) A Citizen's Guide to Disaster Assistance IS-7.
- (2) Emergency Operations Center (EOC) Management and Operations 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.b.
- (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 a local 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 department, 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; ARC 9332B, IAB 1/12/11, effective 2/16/11; ARC 0129C, IAB 5/30/12, effective 7/4/12; ARC 2326C, IAB 12/23/15, effective 1/27/16]

#### **605—7.5(29C) Commission personnel.**

**7.5(1)** Personnel for the commission, including the coordinator, operations officers, and emergency management assistants, shall be considered as employees of that commission.

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

[ARC 0129C, IAB 5/30/12, effective 7/4/12]

**605—7.6(29C) Damage assessment and financial assistance for disaster recovery.** Disaster-related expenditures and damages incurred by local governments, private nonprofit entities, individuals, and businesses may be reimbursable and covered under certain state and federal disaster assistance programs. Preliminary damage assessments shall be provided to the homeland security and emergency management department 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 local emergency management coordinator shall be responsible for the coordination and collection of damage assessment and impact statement information immediately following a disaster that affects the jurisdiction.

**7.6(2)** *Damage assessment guidance and forms to be provided.* The homeland security and emergency management department 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 commission's having on file a state-approved, comprehensive emergency plan which meets the standards as provided in paragraph 7.3(4) "d."

[ARC 0129C, IAB 5/30/12, effective 7/4/12; ARC 2326C, IAB 12/23/15, effective 1/27/16]

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

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

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

**7.7(3) *Allocation and distribution of funds.***

*a.* The department shall allocate funds to eligible 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 homeland security and emergency management department 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 commissions on a federal fiscal year, quarterly basis; and such reimbursement will be based on eligible claims made against the 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 director may withhold or recover emergency management performance grant funds from any 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 emergency 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 department 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 commission cannot demonstrate achievement of agreed-upon work products, the department is empowered to withhold reimbursement or to recover funds from the 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 director becomes aware of serious nonperformance or noncompliance. This realization may arise from staff visits or other contacts with the local emergency management agency or commission, from indications in the commission's or coordinator's quarterly report that indicate a significant shortfall from planned accomplishments, or from the commission's or coordinator's failure to report. Financial sanctions are to be applied only after corrective action remedies fail to result in accomplishment of agreed-upon work product.

**7.7(6) Corrective actions.**

*a. Informal corrective action.* As a first and basic step to correcting nonperformance, a designated member of the homeland security and emergency management department staff will visit, call or write the local emergency management 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 department will take the following steps:

(1) Homeland security and emergency management department 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 commission.

(2) The director will prepare a letter to the commission which will contain, at a minimum, the following information:

1. The reasons why the department believes the commission may be in noncompliance, including the specified provisions in question.

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

3. A declaration of the 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 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 director may invoke the following financial sanction procedures:

*a.* Send a Notice of Intention to Withhold Payment to the chairperson of the commission. This notice shall also contain notice of a reasonable time and place for a hearing, should the commission request a hearing before the director.

*b.* Any request by a commission for a hearing must be made in writing, to the department, 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 director. However, the director may designate an administrative law judge to take evidence and certify to the director the entire record, including findings and recommended actions.

*d.* The commission shall be given full opportunity to present its position orally and in writing.

*e.* If, after a hearing, the director finds sufficient evidence that the commission has violated established rules and regulations or the terms and conditions of the cooperative agreement, the director 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 director 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 director may issue the findings and take appropriate action as described in paragraph 7.7(7) "e."

*g.* If the director finds there is serious nonperformance by the commission or its coordinator and issues an order to withhold payments to the 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 department and the commission.

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

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<sup>◇</sup> Two or more ARCs