

**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.