

planning and service area not within the State.

(b) Before requesting permission of the Assistant Secretary for Aging to designate an interstate planning and service area, the Governor of each State shall execute a written agreement that specifies the State agency proposed to have lead responsibility for administering the programs within the interstate planning and service area and lists the conditions, agreed upon by each State agency, governing the administration of the interstate planning and service area.

(c) The lead State agency shall request permission of the Assistant Secretary for Aging to designate an interstate planning and service area by submitting the request, together with a copy of the agreement as part of its State plan or as an amendment to its State plan.

(d) Prior to the Assistant Secretary for Aging's approval for State agencies to designate an interstate planning and service area, the Assistant Secretary for Aging shall determine that all applicable requirements and procedures in §§ 1321.27 and 1321.29 are met.

(e) If the request is approved, the Assistant Secretary for Aging, based on the agreement between the State agencies, will increase the allocation(s) of the State agency or agencies with lead responsibility for administering the programs within the interstate area and will reduce the allocation(s) of the State agency or agencies without lead responsibility by one of these methods:

(1) Reallocation of funds in proportion to the number of individuals age 60 and over for funding provided under Title III, parts B, C, and D and in proportion to the number of individuals age 70 and over for funding provided under Title III, part E for that portion of the interstate planning and service area located in the State without lead responsibility; or

(2) Reallocation of funds based on the intrastate funding formula of the State agency or agencies without lead responsibility.

(f) Each State agency that is a party to an interstate planning and service area agreement shall review and confirm their agreement as a part of their

State plan on aging as set forth in § 1321.27.

§ 1321.17 Appeal to the Departmental Appeals Board on planning and service area designation.

(a) This section sets forth the procedures for providing hearings to applicants for designation as a planning and service area under § 1321.13, whose application is denied by the State agency or § 1321.15, whose application is denied by the Assistant Secretary for Aging.

(b) Any applicant for designation as a planning and service area whose application is denied, and who has been provided a hearing and a written decision by the State agency, may appeal the denial to the Departmental Appeals Board (DAB) in writing following receipt of the State agency's written decision, in accordance with the procedures set forth in 45 CFR part 16. The applicant must, at the time of filing an appeal with the DAB, mail a copy of the appeal to the State agency, if appealing subject to § 1321.13, or the Assistant Secretary for Aging, if appealing subject to § 1321.15, and include a certificate of service with its initial filing. The DAB may refer an appeal to its Alternative Dispute Resolution Division for mediation prior to making a decision.

§ 1321.19 Designation of and designation changes to area agencies.

(a) The State agency is responsible for designating an area agency on aging to serve each planning and service area. Only one area agency on aging shall be designated to serve each planning and service area. An area agency on aging may serve more than one planning and service area. An area agency that serves more than one planning and service area must maintain separate funding, planning, and advocacy responsibilities for each planning and service area. State agencies shall have policies and procedures regarding designation of area agencies on aging and changes to an agency's designation as an area agency on aging in accordance with the Act. Such policies and procedures should provide due process to affected parties, accountability, and transparency and must address the following:

§ 1321.21

(1) Provisions for designating an area agency on aging, including:

- (i) The application process;
- (ii) How notice to interested parties will be provided;
- (iii) How views offered by the unit(s) of general purpose local government in such area will be obtained and considered;
- (iv) How the State agency will provide the right of first refusal to a unit of general purpose local government if:
 - (A) Such unit demonstrates ability to meet the requirements as set forth by the State agency, in accordance with the Act; and
 - (B) The boundaries of such a unit and the boundaries of the area are reasonably contiguous.
- (v) How the State agency shall then give preference to an established office on aging if the unit of general purpose local government chooses not to exercise the right of first refusal;
- (vi) How the State agency will assume area agency on aging responsibilities in the event there are no successful applicants in the State agency's application process; and
- (vii) The appeals process for affected parties.

(2) Provisions for an area agency on aging that voluntarily relinquishes their area agency on aging designation, including that the State agency's written acceptance of the voluntary relinquishment of area agency on aging designation will be considered as the State agency's withdrawal of area agency on aging designation, and requirements under § 1321.21(b) will apply;

(3) Provisions for when the State agency takes action to withdraw an area agency on aging's designation, in accordance with § 1321.21;

(4) Provisions for when the State agency administers area agency on aging programs as provided for in section 306(f) (42 U.S.C. 3026(f)), where the Assistant Secretary for Aging may extend the 90-day period if the State agency requests an extension and demonstrates to the satisfaction of the Assistant Secretary for Aging a need for the extension; and

(5) If a State agency previously designated the entire State as a single planning and service area, provisions for when the State agency designates

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one or more additional planning and service areas.

(b) For any of the actions listed in paragraph (a) of this section, the State agency must submit a State plan amendment as set forth in § 1321.31(b) or State plan as set forth in § 1321.33;

(c) An area agency may be any of the following types of agencies:

(1) An established office on aging which is operating within a planning and service area;

(2) Any office or agency of a unit of general purpose local government, which is designated to function for the purpose of serving as an area agency on aging by the chief elected official of such unit;

(3) Any office or agency designated by the appropriate chief elected officials of any combination of units of general purpose local government to act on behalf of such combination for such purpose; or

(4) Any non-State, local public, or nonprofit private agency in a planning and service area, or any separate organizational unit within such agency, which is under the supervision or direction for this purpose of the designated State agency, and which demonstrates the ability and willingness to engage in the planning or provision of a broad range of services under the Act within such planning and service area.

(d) A State agency may not designate any regional or local office of the State as an area agency.

§ 1321.21 Withdrawal of area agency designation.

(a) In carrying out section 305 of the Act (42 U.S.C. 3025), the State agency shall withdraw the area agency designation whenever it, after reasonable notice and opportunity for a hearing, finds that:

(1) An area agency does not meet the requirements of this part;

(2) An area plan or plan amendment is not approved;

(3) There is substantial failure in the provisions or administration of an approved area plan to comply with any provision of the Act, regulations and other guidance as set forth by the Assistant Secretary for Aging, terms and conditions of Federal grant awards