

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the adoption of New            ) NOTICE OF ADOPTION  
Rules I through VIII pertaining to Public        )  
Safety Answering Point certification,            )  
funding, and monitoring                            )

TO: All Concerned Persons

1. On December 22, 2017, the Department of Administration published MAR Notice No. 2-13-566 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 2363 of the 2017 Montana Administrative Register, Issue Number 24.

2. The department has adopted New Rule VIII (2.13.320) exactly as proposed.

3. The department is not adopting New Rule VII in this notice.

4. The department has adopted the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I (2.13.301) DEFINITIONS (1) remains as proposed.

~~(2) "Department" means the Department of Administration provided for in 2-15-1001, MCA.~~

(3) through (6) remain as proposed, but are renumbered (2) through (5).

NEW RULE II (2.13.304) PSAP CERTIFICATION (1) through (2) remain as proposed; however, the implementation citation is amended as follows:

IMP: 10-4-103, 10-4-107, 10-4-305, MCA

NEW RULE III (2.13.305) APPLICATION FOR CERTIFICATION (1) through (3) remain as proposed.

(a) the local government entities must have entered into an interlocal agreement under 7-11-104, MCA, or other agreement addressing the criteria set forth in 7-11-104, MCA, defining the terms of the parties' participation in the 9-1-1 system; and

(b) the declaration required in (2)(a) must be signed by an official authorized to act on behalf of each local government entity participating in the PSAP and must include an acknowledgment that the participating entities have entered into an interlocal agreement or other agreement addressing the criteria set forth in 7-11-104, MCA.

(4) If a tribal government is participating in a 9-1-1 system and PSAP with a local government entity that hosts a PSAP, and the tribal government will receive

distributions from a distribution of funds for 9-1-1 purposes from the local government entity receiving payments made under 10-4-305, MCA:

(a) through (5) remain as proposed.

(6) To receive payments under 10-4-305, MCA, in state fiscal year 2019, a local government entity shall apply for certification on or before May 1, 2018. To receive payments in subsequent fiscal years, a local government entity that hosts a PSAP shall apply for certification biennially on or before April 1, 2023, and every five years following. In the interim, a certified PSAP shall advise the department of any changes that may affect PSAP certification requirements.

NEW RULE IV (2.13.306) CERTIFICATION PROCESS (1) through (4) remain as proposed.

(a) deny the application; or

~~(b)~~ grant conditional PSAP certification; and

~~(c)~~ (b) provide the applicant notice and an opportunity for hearing.

(5) through (8) remain as proposed.

NEW RULE V (2.13.310) DECERTIFICATION AND FUNDING REDUCTION (1) through (8)(c) remain as proposed; however, the implementation citation is amended as follows:

IMP: 10-4-107, 10-4-108, 10-4-109, 10-4-305, MCA

NEW RULE VI (2.13.313) ALLOCATION OF FUNDS (1) through (3) remain as proposed; however, the implementation citation is amended as follows:

IMP: 10-4-107, 10-4-201, 10-4-305, MCA

5. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

Comment #1: The department received a request to clarify the definition of "department" in New Rule I in light of a discrepancy with the text in 10-4-101(4), MCA.

Response #1: The department has determined that the definition of "department" in New Rule I is unnecessary because "department" is defined in 10-4-101, MCA, and has removed the definition.

Comment #2: The department received a comment suggesting that 10-4-103, MCA, be listed as a statute implemented by New Rule II.

Response #2: The department agrees and has added the citation.

Comment #3: The department was asked to consider broadening the forms of acceptable documentation of agreements among local government entities beyond

the interlocal agreements required by the original proposal. The commenter explained less formality may benefit jurisdictions that do not have the resources to put together more formal interlocal agreements as part of the PSAP certification process.

Response #3: The department will accept alternative forms of agreement, provided that the agreement, at minimum, addresses the criteria set forth in 7-11-105, MCA. The department believes comprehensive agreements addressing these requirements are less likely to result in disputes. The department has amended New Rule III accordingly.

Comment #4: The department was asked to clarify whether a tribal government can receive direct distributions from the department under 10-4-305, MCA.

Response #4: Under 10-4-305, MCA, only a local government entity hosting a public safety answering point may receive payments directly from the 9-1-1 systems account. To the extent that a tribal government participating in a PSAP is eligible to receive 9-1-1 funds, the tribal government must obtain distributions from the local government entity that receives payments from the 9-1-1 systems account. The department has amended New Rule III(4) to clarify that the department cannot make payments directly to a tribal government.

Comment #5: A discrepancy was noted between the PSAP Certification Form posted on the department's website and New Rule III. The Certification Form appears to require submission of an interlocal agreement with every application, while the rule requires submission of an agreement only when multiple local government entities or a local government entity and a tribal government are participating together in a certified PSAP.

Response #5: The department regrets the discrepancy and has modified the Certification Form to clarify that an interlocal agreement or similar document is only required when two or more local government entities or a local and tribal government are applying together as part of a single certified PSAP.

Comment #6: Some commenters requested clarification that New Rule III allows local government entities to submit agreements with a duration exceeding the two-year certification period for a certified PSAP.

Response #6: New Rule III does not specify a duration for agreements submitted by local government entities in support of an application for certification. The department acknowledges longer-term agreements promote investment in larger capital expenditures and significant upgrades. Local government entities should take care to maintain certification and keep agreements up to date for as long as necessary to ensure longer-term projects continue to receive funding from the department.

Comment #7: The department was asked to extend PSAP certification beyond two years. The commenter noted that developing 9-1-1 infrastructure and cooperation between jurisdictions may require a longer timeframe.

Response #7: The department has amended New Rule III to allow a five-year certification period. The 9-1-1 Advisory Council chose five years to strike a balance between the department's need to receive updates from the PSAPs and the PSAPs' desire for less paperwork and bureaucracy.

Due to the extended certification period, the department added a statement reminding PSAPs to provide notice of changes that may affect certification.

Comment #8: A commenter noted that New Rule IV(4), as proposed, appears to require notice and hearing only for conditional certification and is ambiguous as to whether notice and hearing are required when an application is denied.

Response #8: The department agrees and has amended (4) to clarify that notice and hearing are required both when an application is denied and when an application is granted conditionally.

Comment #9: The department received a comment suggesting that 10-4-108, MCA, be listed as a statute implemented by New Rule V.

Response #9: The department agrees and has added the citation.

Comment #10: The department received a comment suggesting that 10-4-201, MCA, be listed as a statute implemented by New Rule VI.

Response #10: The department agrees and has added the citation.

Comment #11: The department received a comment indicating the list of allowable uses adopted and incorporated by reference in New Rule VII was not available on the main page at [sitsd.mt.gov/PublicSafetyCommunications](http://sitsd.mt.gov/PublicSafetyCommunications) as indicated in the rule.

Response #11: The list of allowable uses was originally posted in a subdirectory of the public safety communications bureau's website. The list of allowable uses was reposted to [sitsd.mt.gov/PublicSafetyCommunications](http://sitsd.mt.gov/PublicSafetyCommunications) on January 4, 2018. In the interest of providing a full opportunity to comment on the list of allowable uses, the department will not adopt New Rule VII during this rulemaking but is proposing the same rule in MAR Notice No. 2-13-574 in this issue of the Montana Administrative Register.

Comment #12: One commenter asked the department what rules will govern reimbursement of PSAPs if the department does not adopt rules regarding allowable uses of funds prior to July 1, 2018.

Response #12: In the absence of administrative rules, the department is required to administer funds based solely on statute; however, the department intends to make the rule regarding acceptable use of funds effective prior to July 1, 2018.

Comment #13: The department received a comment regarding discretionary approval of allowable uses contemplated by proposed New Rule VII.

Response #13: Because New Rule VII has been removed from the scope of this rulemaking, the department will not respond to these comments at this time.

Comment #14: The department received comments addressing use of funds from the 9-1-1 systems account for operating expenses.

Response #14: Because New Rule VII has been removed from the scope of this rulemaking, the department will not respond to these comments at this time.

Comment #15: The department was urged to adopt rules to implement 10-4-306, MCA, pertaining to the 9-1-1 grant program to ensure there is no gap in funding for the grant program and telecommunications providers and to allow grants to be distributed beginning July 1, 2018.

Response #15: The department is working with the 9-1-1 Advisory Council to create rules to implement 10-4-306, MCA, in anticipation of meeting the statutory timeline.

Comment #16: The department received a comment encouraging the department to address the statewide 9-1-1 plan in New Rules I through VIII and in the rules implementing the grant program described in 10-4-306, MCA, when the plan has been completed and adopted.

Response #16: The department anticipates that references to the statewide 9-1-1 plan will be added to these rules and the grant program rules when the plan has been completed.

Comment #17: A commenter requested clarification of the process for amending a document that is adopted and incorporated by reference.

Response #17: A document incorporated by reference in administrative rules must exist at the time of a proposed rulemaking and be available for public comment. Under 2-4-307, MCA, later editions of a publication may only be adopted by reference by following the rulemaking procedure in Title 2, chapter 4, part 3, MCA. Should it become necessary to amend a document incorporated by reference, the department is required to amend the rule to update the reference to the latest edition of the document before those changes may be implemented.

Comment #18: The department received a comment expressing general concern regarding the incorporation by reference of materials in administrative rules, and in particular, the incorporation by reference of the list of allowable uses as proposed in

New Rule VII. A commenter requested that materials adopted by reference be located in the same place as other administrative rules pertaining to the same subject.

Response #18: Incorporation by reference is often used by the department and other agencies to adopt lists and standards that are so lengthy that publication of the full text in the administrative rules could lead to confusion. The department has been advised that local governments may use the list of allowable uses in their budgeting and accounting processes. The department believes publication of a table adopted by reference will be more convenient than including a large table in rule. The department will post these PSAP certification rules on the program's website to make all materials, including the list of allowable uses, available in one place. As previously noted, New Rule VII is not being adopted in this notice, but is included in MAR Notice No. 2-13-574 in this issue of the Register.

Comment #19: A commenter thanked the department for its effort to explain the rationale underlying the proposed rules.

Response #19: The department appreciates the comment.

Comment #20: The department received a comment indicating the proposed rules were an essential first step in the implementation of 2017 HB 61, provided clarity to local governments, and adopted existing practice in relation to distribution of 9-1-1 system funds.

Response #20: The department appreciates the comment.

Comment #21: A commenter noted this proposal is the first in a series of rulemakings intended to implement 2017 HB 61.

Response #21: The department acknowledges additional rulemaking will be necessary to implement the legislation. The department appreciates the comment and the participation of interested persons in this and future rulemaking efforts.

By: /s/ John Lewis  
John Lewis, Director  
Department of Administration

By: /s/ Michael P. Manion  
Michael P. Manion, Rule Reviewer  
Department of Administration

Certified to the Secretary of State February 13, 2018.