

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rules I through VI pertaining to 9-1-1) PROPOSED ADOPTION
Grants)

TO: All Concerned Persons

1. On August 9, 2018, at 1:30 p.m., the Department of Administration will hold a public hearing in Room 7 of the Mitchell Building, at 125 N. Roberts St., Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on August 1, 2018, to advise us of the nature of the accommodation that you need. Please contact Rhonda Sullivan, Department of Administration, 1400 8th Ave., P.O. Box 200113, Helena, Montana 59620; telephone (406) 444-2420; fax (406) 444-2701; Montana Relay Service 711; or e-mail rsullivan@mt.gov.

3. The rules proposed to be adopted provide as follows:

NEW RULE I GRANT PROGRAM DEFINITIONS (1) "9-1-1 grant account" means the account established in 10-4-304(2)(b), MCA.

(2) "Certified PSAP" means the same as ARM 2.13.301(1).

(3) "Department's website" means the website sitsd.mt.gov/Governance/Boards-Councils/9-1-1 maintained by the department for the State Information Technology Services Division's Public Safety Communications Bureau.

(4) "Private telecommunications provider" means a provider as defined in 10-4-101(15), MCA.

AUTH: 10-4-108, MCA

IMP: 10-4-304, 10-4-306, MCA

GENERAL STATEMENT OF REASONABLE NECESSITY: The department is proposing to adopt NEW RULES I through VI to comply with the rulemaking requirements imposed by 2017 HB 61, section 4, codified at 10-4-108, MCA. The department's proposal is based on the work of the Administrative Rules Subcommittee of the 9-1-1 Advisory Council and the draft approved by the 9-1-1 Advisory Council on June 14, 2018. The rules describe the criteria for private telecommunications providers and local government entities that host certified public safety answering points (PSAPs) to receive grants from the account provided for in 10-4-304(2)(b), MCA. The rules are necessary to provide the eligibility requirements; the grant application process; criteria for awarding grants; and the

department's duty to monitor compliance with the requirements of Title 10, chapter 4, MCA. The approach taken in these proposed rules is to ensure clear, reasonable criteria are adopted to evaluate requests for grants while making it as easy as possible for the prospective grantees to apply for the grants.

STATEMENT OF REASONABLE NECESSITY: NEW RULE I defines terms used repeatedly in these rules, including frequently used statutory terms and new terms. The definitions are necessary for clarity and understanding of these terms in the context of the grant program for 9-1-1 systems and services.

NEW RULE II ELIGIBILITY REQUIREMENTS FOR GRANTS (1) The following may apply for grants as provided in 10-4-306, MCA:

- (a) private telecommunications providers; and
- (b) certified PSAPs.

(2) For grant awards made during state fiscal year 2019, expenditures incurred by a grant recipient between July 1, 2018, and the grant award date are eligible for reimbursement with 9-1-1 grant program funding.

AUTH: 10-4-108, MCA

IMP: 10-4-108, 10-4-306, MCA

STATEMENT OF REASONABLE NECESSITY: This rule identifies entities eligible to receive grants under 10-4-306, MCA. The rule also specifies that the department may award grants covering expenses incurred by private telecommunications providers and local government entities that host a certified PSAP between July 1, 2018, when the grant program account will be initially funded, and the date that grants are awarded, which will likely occur in the fourth calendar quarter of 2018. In the past, 9-1-1 funds went unspent, and the department is eager to put funds in the 9-1-1 grant account to use as near as possible to July 1, 2018, as required by the Legislature. Section 10-4-306(1), MCA provides: "Beginning July 1, 2018, grants must be awarded [to eligible entities]." As required by statute, NEW RULE II(2) allows the department to make awards to eligible entities for expenditures dating back to the beginning of the grant program on July 1, 2018. In fiscal year 2020 and thereafter, grants will be awarded on a prospective basis to encourage expansion of 9-1-1 systems and services.

NEW RULE III APPLICATION FOR GRANTS (1) An applicant for grant funds shall submit an application on a form approved by the department in consultation with the 9-1-1 Advisory Council and adopted by reference in this rule. The application form is available on the department's website. In fiscal year 2020 and thereafter, grants will be awarded on a prospective basis to encourage expansion of 9-1-1 systems and services.

(2) On or before September 30 each year, the department shall determine and provide public notice of the amount of grant funds available.

(3) The department shall provide notice on its website that it is accepting grant applications. Grant applications must be received by the department within 60

days of the posted notice. The department shall post notice of the application deadline on its website.

(4) The department shall make final grant awards within 90 days of receiving the 9-1-1 Advisory Council's recommendations.

AUTH: 10-4-108, MCA

IMP: 10-4-106, 10-4-306, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is necessary to provide the particular requirements to apply for a grant and key events in the grant award process.

The department will publish the amount of 9-1-1 grant funds available as soon as possible following the close of the state's fiscal year. The department expects the information to be available in September based on the accounting reconciliation process in previous fiscal years. Therefore, the department proposes to publish the amount of available funds no later than September 30 annually.

The department will announce it is accepting grant applications after the amount of available funds has been published. For the convenience of users and to reduce cost, the grant application announcement will be made on the department's website. The department did not fix a date for announcing the beginning of the application period because timing will depend on the quarterly meeting schedule of the 9-1-1 Advisory Council. Applicants will have 60 days to complete and submit an application. However, applicants will have access to the grant application form before the application period starts and could begin to prepare an application beforehand. The 60-day timeframe will allow sufficient time for applicants to complete the application process.

As required under 10-4-106, MCA, the 9-1-1 Advisory Council will review the applications and make recommendations to the department for grants.

The department determined that 90 days is sufficient time to review all grant applications received and for the 9-1-1 Advisory Council's evaluation of the applications and recommendations for grant awards. This timeframe balances the competing demands of the department's other 9-1-1 program administrative responsibilities with the need to award grants as expeditiously as possible to allow time for procurements and contract negotiations. In addition, the 90-day period coincides with the regular quarterly meeting schedule of the 9-1-1 Advisory Council.

NEW RULE IV APPLICANT PRIORITY AND CRITERIA FOR AWARDING GRANTS (1) The department, in consultation with the 9-1-1 Advisory Council, shall apply the applicant priority in 10-4-306(3), MCA.

(2) The department, in consultation with the 9-1-1 Advisory Council, shall evaluate all eligible applications using the following criteria:

(a) completeness and effectiveness of the application (20 points maximum). The application must be complete and fully address the requirements in the application form and clearly describe the fulfillment of grant award criteria;

(b) the extent to which the application supports planning, implementation, operation, or maintenance of 9-1-1 systems, 9-1-1 services, or both (50 points maximum); and

(c) support for the project demonstrated by letters of support from private telecommunications providers, local governments, public safety answering points, and emergency services agencies (30 points maximum).

(3) The 9-1-1 Advisory Council shall provide grant award recommendations to the department utilizing the criteria provided in (2).

(4) The department, in consultation with the 9-1-1 Advisory Council, may make conditional or partial grant awards.

(5) The department shall post on its website the 9-1-1 Advisory Council's grant award recommendations and the department's final grant awards.

AUTH: 10-4-108, MCA

IMP: 10-4-106, 10-4-306, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is necessary to describe the priority and criteria for making grant awards. Because 10-4-306(3), MCA, specifies that preference must be given first to private telecommunications providers and certified PSAPs working with private telecommunications providers, grant applications from local government entities that are not working with private telecommunications providers will not be considered until grants have been awarded for all eligible applications from entities entitled to preference.

Under 10-4-108, MCA, the department is required to adopt rules establishing criteria for awarding grants. The department's criteria include the completeness of the application; the extent to which the application would support planning, implementation, operation, or maintenance of a 9-1-1 system or service; and the level of public support for the project. The department benchmarked other state grant programs and chose these criteria because completeness and effectiveness of the application and support for the project demonstrated by letters of support are standard grant program criteria. Support for the planning, implementation, operation, or maintenance of 9-1-1 systems, 9-1-1 services, or both is the purpose of the 9-1-1 grant program. This criterion was included and was given the most significant weight (50 points). Completeness of the application is important to allow the 9-1-1 Advisory Council and department to make fully-informed decisions. The level of community support is an indicator of the need for a project in a community. Community support is more important than application completeness because, under 10-4-306, MCA, the grant program is intended to support collaboration between private telecommunications providers and local governments. Because community support is relatively more important than a complete application (which can be supplemented by questions from the 9-1-1 Advisory Council), the department assigned a 30-point value to community support and 20 points to the application.

The 9-1-1 Advisory Council will review applications and make recommendations to the department as required by 10-4-106, MCA. The department anticipates that grant applications may exceed the amount of available funds in some years. When this occurs, the 9-1-1 Advisory Council and the department must apply the statutory preference and the criteria provided in NEW RULE IV. The 9-1-1 Advisory Council and department may find it necessary to make partial awards and may do so based on the application scoring.

To provide transparency to the public, recommendations from the 9-1-1 Advisory Council and grant awards made by the department will be posted on the department's website.

NEW RULE V GRANT REPORTING, MONITORING, AND RECORDKEEPING (1) The department may request periodic progress reports from grant award recipients, but not more frequently than quarterly.

(2) The department may audit transactions involving funds received from the 9-1-1 grant account and may request information and records necessary to determine whether an expenditure complies with these rules.

(3) A grant award recipient shall keep and maintain records regarding all transactions for which the recipient received grant funding, including, at a minimum, supporting documentation (e.g., invoices) for each expenditure that verifies an expenditure is allowable under the terms of the grant award and 10-4-306, MCA.

(4) A grant award recipient shall maintain the records described in (3) for a period of five years following grant expiration. The department may determine a grant award recipient does not comply with these rules if records are not kept and maintained as provided in this rule.

(5) A grant award recipient may request protection from public disclosure of information subject to trade secret confidentiality pursuant to Montana's Uniform Trade Secrets Act by submitting a trade secret confidentiality affidavit in the form found on the department's website.

AUTH: 10-4-108, MCA

IMP: 10-4-107, 10-4-108, 10-4-306, MCA

STATEMENT OF REASONABLE NECESSITY: Under 10-4-107, MCA, the department is required to monitor for allowable uses of grant funds to ensure funds are used for 9-1-1 purposes. To fulfill this requirement, NEW RULE V describes the recordkeeping and reporting obligations of private telecommunications providers and local government entities that host a certified PSAP and the department's duty to monitor for compliance with the requirements of Title 10, chapter 4, MCA.

To facilitate monitoring, the department has proposed a requirement that grant recipients provide progress reports and submit to audits related to the expenditure of grant funds. This approach was taken because it will allow the department to keep abreast of how the grant money is being used, while preserving the option of doing a more detailed audit review if issues arise.

The department does not expect to audit all grant recipients' expenditures of funds during each grant cycle, but the department will audit as needed to verify the information provided in progress reports and ensure local governments and providers are providing accurate information to the department and using funds appropriately.

The rule advises grant recipients that they must keep records regarding the expenditure of grant funds for a period of five years, which parallels existing record retention requirements for state government. Without a reasonable retention period, the department would have a difficult time conducting an effective audit.

The department included (5) to assure private telecommunications providers participating in the grant program that they may seek protection of proprietary information maintained as trade secrets by submitting a trade secret affidavit. Given the highly competitive nature of the telecommunications industry, the department anticipates that some private telecommunications providers may be reluctant to participate in the grant program without assurance that their legitimate trade secrets can be protected.

NEW RULE VI PROCEDURES FOR REPAYMENT OF GRANT FUNDS

(1) The department may determine a grant recipient does not comply with these rules if the grant recipient:

(a) is not in compliance with any of the requirements of Title 10, chapter 4, MCA;

(b) uses or distributes funds for any purpose other than those identified in the grant agreement and 10-4-306, MCA; or

(c) has not timely provided information requested by the department.

(2) If the department determines a grant recipient does not comply with these rules, the department shall send the entity a deficiency letter identifying the rule or requirement that is not met and the action needed to correct the deficiency. The entity has 60 days from the date of the deficiency letter to correct all deficiencies and demonstrate compliance.

(3) A grant recipient that has received a deficiency letter may request an additional 30 days to correct deficiencies and demonstrate compliance with the rules. The request must be filed within 30 days of the date of the deficiency letter referenced in (2).

(4) If a grant recipient disputes a department determination, the entity may ask the department to provide formal notice of agency action and an opportunity for hearing.

(5) Except as provided in (3) or (4), if an entity has not corrected all deficiencies and demonstrated compliance with these rules within 60 days of the deficiency letter, the department shall provide the entity notice and an opportunity for hearing under Title 2, chapter 4, part 6, MCA.

(6) The department may appoint a hearing examiner to conduct hearings under 2-4-611, MCA.

(7) The final determination in a contested case regarding a grant recipient's compliance with these rules is made by the department director.

(8) When the department makes a final determination that a grant recipient does not comply with these rules, the department may either:

(a) reduce or suspend payment to the grant recipient;

(b) require repayment of funds expended on activities determined not to meet the eligibility requirements; or

(c) both.

AUTH: 10-4-108, MCA

IMP: 10-4-108, 10-4-306, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is necessary to describe circumstances allowing the department to seek repayment of grant funds. Under 10-4-108, MCA, the department is required to implement post-disbursement activities to monitor use of funding and to create procedures for repayment of funds expended on activities that do not meet the grant program eligibility requirements.

An entity that does not meet the statutory requirements either for eligibility or for the expenditure of funds cannot receive 9-1-1 funds, and the department must seek to recoup grant funds paid to a recipient that does not meet the requirements of Title 10, chapter 4, MCA. Because the department cannot effectively monitor use of grant funds if recipients do not respond to the department's requests for information, the department must be able to seek repayment of grant funds paid to an entity that is not cooperating with the grant program.

The department must ensure payments are made only as permitted by 10-4-306, MCA. If a grant recipient is not in compliance, the department must have a process for notification, appeal, and compliance and provide sufficient time for this process to be completed. Sixty days are necessary to allow the department to complete any necessary fact gathering and prepare a formal notice of agency action.

Prior to suspending payment or requiring repayment, under the Montana Administrative Procedure Act (MAPA) and due process, the department must provide formal notice of deficiencies and provide the recipient an opportunity to address or contest the issue. NEW RULE VI sets forth the notice and hearing process required by MAPA and due process.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Rhonda Sullivan, Department of Administration, 1400 8th Ave., P.O. Box 200113, Helena, Montana 59620; telephone (406) 444-2420; fax (406) 444-2701; or e-mail rsullivan@mt.gov, and must be received no later than 5:00 p.m., August 17, 2018.

5. Don Harris, Department of Administration, has been designated to preside over and conduct this hearing.

6. The division maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address or e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding Public Safety Communications Bureau rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this proposal notice is available through the department's website at doa.mt.gov/administrativerules. The department strives to make its online version of the notice conform to the official published version, but advises all concerned persons that if a discrepancy exists between the official

version and the department's online version, only the official text will be considered. In addition, although the department works to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor, Representative Frank Garner, was contacted on January 2, 2018, by electronic mail, telephone, and United States Postal Service first class mail.

9. The department has determined that under 2-4-111, MCA, the proposed adoption of NEW RULES I through VI will not significantly and directly affect small businesses.

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 July 10, 2018.