

9-1-1 Advisory Council

January 23, 2018

MAR Notice No. 2-13-566 – Summary of Comments

NOTE: The draft responses below are intended to initiate discussion. The 9-1-1 Advisory Council's discussion from this meeting will be used in formulating the department's response to comments.

NEW RULE I – DEFINITIONS

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: In response to this request, the department has determined that the definition of "department" in New Rule I is unnecessary, and the department has amended New Rule I to strike the definition. Because "department" is defined in 10-4-101, MCA, it does not need to be defined in the administrative rules.

NEW RULE II – PSAP CERTIFICATION

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 with the comment and has added a citation to 10-4-103, MCA.

NEW RULE III – APPLICATION FOR CERTIFICATION

Comment #3: The department was asked to clarify whether a tribal government can receive direct distributions from the department under 10-4-305, MCA.

Response #3: 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 entity participating in a PSAP is eligible to receive 9-1-1 funds, the tribal government entity must obtain distributions from the local government entity that receives payments from the 9-1-1 systems account. The department has amended (4) to clarify that the department cannot make payments directly from the 9-1-1 systems account to a tribal government.

Comment #4: A discrepancy was noted between the language in the PSAP Certification Form posted on the department's website and the wording of 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 certified PSAP.

Response #4: The department regrets the discrepancy and has modified the Certification Form to clarify that an interlocal agreement or similar document is only required as part of an application when two or more local government entities or a local government and tribe are applying together as part of a single certified PSAP.

Comment #5: 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 noted that 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 #5: The department will accept alternate forms of documentation, including a memorandum of understanding or a memorandum of agreement, provided that the documentation must, at minimum, address the criteria set forth in 7-11-105, MCA. The department believes that comprehensive agreements addressing these requirements are less likely to result in disputes. The department has amended New Rule III accordingly.

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 agrees that longer-term agreements may 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 the PSAP certification period for more than two years. The commenter noted that developing 9-1-1 infrastructure and cooperation between jurisdictions may require a longer timeframe.

Response #7:

NEW RULE IV – CERTIFICATION PROCESS

Comment #8: The department received a comment noting that (4), as proposed, appears to require notice and hearing only for conditional certification and is ambiguous as to whether notice and hearing is required in the event an application is denied.

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

NEW RULE V – DECERTIFICATION AND FUNDING REDUCTION

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 with the comment and has added a citation to 10-4-108, MCA.

NEW RULE VI – ALLOCATION OF FUNDS

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 with the comment and has added a citation to 10-4-201, MCA.

NEW RULE VII – ALLOWABLE USES OF FUNDS

Comment #11: The department received 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 as articulated in the proposal.

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 on January 4, 2018. In the interest of providing a full opportunity to comment about the list of allowable uses, the department will not adopt New Rule VII during this rulemaking. The department expects to propose adoption of New Rule VII and the referenced list of allowable uses in a separate rulemaking prior to June 2018.

Comment #12: One commenter asked the department what rules would 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 would be required to administer funds based solely on statute; however, the department anticipates adopting rules governing allowable uses of funds 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.

NEW RULE VIII – REPORTING, MONITORING, AND RECORDKEEPING

No comments received.

GENERAL COMMENTS

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: Any document incorporated by reference in administrative rules must be in existence at the time of a proposed rulemaking and must be available for public comment. Under 2-4-307, MCA, later editions of a publication can only be adopted by reference by following the rulemaking procedure in Title 2, chapter 4, part 3. Therefore, should it become necessary to amend any document incorporated by reference in administrative rule, the department will be required to engage in rulemaking to update the reference to the latest edition of the document before changes to the document become effective.

Comment #18: The department received 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. For these local governments and for other members of the public, the publication of a table which has been adopted by reference may be more convenient than publication of the full text, in paragraph and subparagraph form, in the body of the administrative rules. While the department acknowledges the convenience of having all requirements relating to the same subject matter in one place, the department does not reprint the text of material incorporated by reference in the administrative rules themselves to avoid unnecessary repetition and to reduce

ambiguity due to slight differences in the way the material would be published, for example, in a table incorporated by reference and in paragraph format in the rules. As noted in response to prior comments, New Rule VII and the list of allowable uses will not be adopted at this time and are expected to be included in a future rulemaking.

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.